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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

8 CFR Parts 1 and 292

RIN 1601–AA58

[Docket No. DHS–2009–0077]

Professional Conduct for Practitioners: Rules, Procedures, Representation, and Appearances

AGENCY: Office of the Secretary, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing representation and appearances by, and professional conduct of, practitioners in immigration practice before its components to: Conform the grounds of discipline and procedures regulations with those promulgated by the Department of Justice (DOJ); clarify who is authorized to represent applicants and petitioners in cases before DHS; remove duplicative rules, procedures, and authority; improve the clarity and uniformity of the existing regulations; make technical and procedural changes; and conform terminology. This rule enhances the integrity of the immigration adjudication process by updating and clarifying the regulation of professional conduct of immigration practitioners who practice before DHS.

DATES: *Effective date:* This interim rule is effective March 4, 2010.

Comments: Written comments must be submitted on or before March 4, 2010.

ADDRESSES: Comments may be submitted, identified by DHS Docket No. DHS–2009–0077, by the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Rachel A. McCarthy, Disciplinary Counsel, Office of the Chief Counsel, U.S. Citizenship and Immigration Services, Department of Homeland Security, 70 Kimball Avenue, Room 103, S. Burlington, VT 05403. To ensure proper handling, please reference DHS Docket No. DHS–2009–0077 on correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Rachel A. McCarthy, Disciplinary Counsel, Office of the Chief Counsel, U.S. Citizenship and Immigration Services, Department of Homeland Security, 70 Kimball Avenue, Room 103, S. Burlington, VT 05403.

FOR FURTHER INFORMATION CONTACT: Rachel A. McCarthy, Disciplinary Counsel, Office of the Chief Counsel, U.S. Citizenship and Immigration Services, Department of Homeland Security, 70 Kimball Avenue, Room 103, S. Burlington, VT 05403, telephone (802) 660–5043 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. DHS also invites comments that relate to the economic, environmental, or federalism affects that might result from this rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. DHS–2009–0077 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Background

DHS regulates immigration practitioners before U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). DOJ, through the Executive Office for Immigration Review (EOIR), regulates immigration practitioners before the Board of Immigration Appeals (Board) and the immigration courts. When DHS was established in 2003, DOJ duplicated the regulations on professional conduct for practitioners in the new chapter V in 8 CFR.

DOJ updated its rules on Professional Conduct for Practitioners—Rules of Procedures, and Representation and Appearances. 73 FR 44178 (July 30, 2008) (proposed rule); 73 FR 76914 (Dec. 18, 2008) (final rule). This interim final rule conforms DHS regulations to the DOJ regulations to maintain a unified, consistent practice; clarifies existing regulations; and eliminates references to procedural matters that are solely within the authority of DOJ.

In preparing this interim final rule, DHS reviewed the DOJ proposed rule, the four public comments submitted on the DOJ proposed rule, and the DOJ final rule. DHS is adopting this interim final rule for the reasons stated in the DOJ final rule and also considered its experience in administering the practitioner discipline process.

III. Changes Made by This Rule

This interim final rule amends DHS regulations at 8 CFR parts 1 and 292 to:

- Clarify who is authorized to represent applicants and petitioners before USCIS, ICE, and CBP;
- Conform the rules governing the authority of DHS to investigate complaints;
- Conform disciplinary charges against practitioners who appear before DHS with the regulations promulgated by DOJ;
- Improve the clarity and uniformity of the existing rules; and
- Incorporate miscellaneous technical and procedural changes necessitated by the creation of DHS.

Definition of attorney. This rule amends the definition of "attorney" at 8 CFR 1.1(f), to conform with DOJ's definition at 8 CFR 1001.1(f), by adding the requirement that an attorney must be eligible to practice law in the bar of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, in addition to the other requirements for attorneys

set forth in that regulation. State bar rules uniformly require licensed attorneys to maintain an active status in order to practice law; however, there has been some confusion as to the applicability of that requirement in determining eligibility to appear as a representative before DHS.

Definition of practice. This rule amends the definition of the term "practice" at 8 CFR 1.1(i) to reflect the creation of DHS, the transfer of the functions of the former Immigration and Naturalization Service (INS), and to update the definition to eliminate references to representational activities that occur before DOJ.

Definition of preparation. This rule amends the definition of the term "preparation" at 8 CFR 1.1(k) to reflect the creation of DHS and the transfer of the functions of the former INS to DHS.

Definition of representation. This rule amends the definition of the term "representation" at 8 CFR 1.1(m) to reflect the creation of DHS, the transfer of the functions of the former INS, and to eliminate the reference to representational activities that occur before DOJ.

Representation of others. This rule amends 8 CFR 292.1(a) to include a reference to the limitations on appearances in application and petition proceedings in 8 CFR 103.2(a)(3) and amends 8 CFR 292.1(a)(2) to clarify that law students and law graduates as defined under 8 CFR 1292.1(a)(4) appearing before DHS must be students or graduates of accredited law schools in the United States. There have been many instances of graduates of foreign law schools attempting to represent parties in DHS proceedings under this provision and this clarification is necessary to ensure that only eligible individuals are permitted to appear as representatives in immigration proceedings. This rule also amends 8 CFR 292.1(a)(2) and (6) to reflect the creation of DHS and the transfer of the functions of the former INS.

Grounds of discipline. This rule adopts the grounds of discipline in 8 CFR 1003.102 in their entirety and applies those grounds of discipline to practitioners before DHS. 8 CFR 292.3(b). Under this provision, DHS may seek disciplinary sanctions against a practitioner who falls within one or more of the categories enumerated in 8 CFR 1003.102, as revised by DOJ. By adopting all of the grounds of discipline, this rule clarifies that 8 CFR 1003.102(k) and (l) apply as grounds for discipline by DHS as well as EOIR. This change will encourage practitioners to timely appear for scheduled interviews and other case-related meetings before DHS officials and to properly represent their clients in DHS proceedings.

Immediate suspension. This rule amends 8 CFR 292.3(c) to clarify that DHS may petition to the Board for the immediate suspension of an attorney who, while a disciplinary investigation or proceeding is pending, has resigned from practice before the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal Court, or who has been placed on an interim suspension by such body pending a final resolution of the underlying disciplinary matter. This change would conform the language in DHS regulations to the DOJ rule.

Preliminary inquiry report. In this rule, 8 CFR 292.3(c)(3), as revised, limits the circumstances under which DHS will prepare and serve a copy of a preliminary inquiry report on the practitioner with the Notice of Intent to Discipline. In summary disciplinary proceedings, DHS must file a certified copy of the order, judgment and/or record evidencing the underlying criminal conviction or discipline with the Board along with the Notice of Intent to Discipline. Current regulations require that DHS file a preliminary inquiry report with all Notices of Intent to Discipline. A preliminary inquiry report summarizes the source of any information uncovered in the investigation of a disciplinary complaint, including the administrative record of immigration proceedings, a record of state disciplinary proceedings, or a record of criminal conviction. In summary disciplinary proceedings before the Board based upon a conviction for a serious crime, resignation while a disciplinary investigation or proceeding is pending, or disciplinary action by a court or other disciplinary authority under 8 CFR 1003.103(b)(2), the preliminary inquiry report summarizes records that are included in the disciplinary proceeding file as attachments to the Petition for Immediate Suspension or the Notice of Intent to Discipline. In all other cases, DHS will issue a Notice of Intent to Discipline to the practitioner containing a statement of the charge(s) and a preliminary inquiry report. The rule also clarifies that DHS will promptly initiate summary disciplinary proceedings against any practitioner upon receipt of certified copies of the required documents.

Public notice of suspension. This rule revises 8 CFR 292.3(h)(3) to clarify that DHS may publicly post notices of immediate suspension. This change is necessary to ensure consistency with DOJ regulations at 8 CFR 1003.106(c), which currently provide that notice of disciplinary sanctions may be posted publicly.

Filing of complaints of misconduct occurring before DHS. This rule revises the procedures in 8 CFR 292.3(d) for filing complaints with allegations of professional misconduct by practitioners in matters before DHS. The changes are necessary to reflect current requirements resulting from the creation of DHS and its component agencies.

Finally, this rule includes technical changes such as removing references to the "Office of the General Counsel of the Service," the "Immigration and Naturalization Service," or "INS," and other out-of-date terms to conform the regulations with current DHS terminology and structure. This rule corrects technical errors, and implements minor changes to improve regulatory structure and readability in the affected sections.

IV. Administrative Procedure Act

This rule relates to agency practice and procedure and is not subject to the requirements of advance notice and comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). To the extent that this interim final rule is a rule of agency practice and procedure under 5 U.S.C. 553(b)(A), DHS is requesting public comments as a matter of discretion.

Moreover, to the extent that a provision of this rule could be construed as not being a matter of agency procedure, DHS has determined that delaying the effect of this rule during the period of public comment would be impractical, unnecessary and contrary to the public interest. If the implementation of the provisions of this rule were delayed pending public comments, the Board of Immigration Appeals and Adjudicating Officials would be required to conduct practitioner disciplinary proceedings under one set of regulations for cases initiated by EOIR disciplinary counsel and under another for cases initiated by DHS disciplinary counsel. As discussed above, DOJ has promulgated a final rule amending the relevant rules of professional conduct for practitioners and representation and appearances. 73 FR 76914 (Dec. 18, 2008). As a result of the amendments made by the DOJ rule, some provisions of the existing DHS regulations are inconsistent with the DOJ regulations on the same subject matter for immigration practitioners in a separate but often overlapping practice area. Therefore, to avoid this result, DHS has determined that this rule should be implemented as soon as possible to avoid disparate or

inconsistent disciplinary standards. This rule conforms to the DOJ rule. In promulgating this final rule, DHS has considered the record of proceedings before DOJ, including the public comments.

Accordingly, DHS has determined that it would be impractical, unnecessary and contrary to the public interest to delay promulgation of this rule pending review of public comments. 5 U.S.C. 553(b)(B). This interim final rule is effective 30 days after publication in the **Federal Register.** DHS invites comments and will address those comments in the final rule.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. When a rule is exempt from APA notice and comment requirements, however, the RFA does not require an agency to prepare a regulatory flexibility analysis. This rule makes changes for which notice and comment are not required under the APA; therefore DHS is not required to prepare a regulatory flexibility analysis for this rule.

VI. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

VII. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

VIII. Executive Order 12866

This rule is not a "significant regulatory action" under Executive Order 12866, section 3(f). This rule adds no costs to the agency, imposes no direct costs to the public, has no budgetary impact, nor does it raise any novel legal or policy issues. Thus, the Office of Management and Budget (OMB) has not reviewed this rule.

IX. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

X. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

XI. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule does not impose any new, or modify an existing, reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 1

Administrative practice and procedures, Immigration.

8 CFR Part 292

Administrative practice and procedures, Immigration, Lawyer, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

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

Authority: 5 U.S.C. 301; 6 U.S.C. 112; 8 U.S.C. 1101 and 1103.

■ 2. Section 1.1 is amended by revising paragraphs (b), (f) (i), (k), and (m) to read as follows:

§ 1.1 Definitions.

* * * * *

(b) The term *Act* or *INA* means the Immigration and Nationality Act, as amended.

* * * * *

(f) The term *attorney* means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

* * * * *

(i) The term *practice* means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS.

* * * * *

(k) The term *preparation,* constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

* * * * *

(m) The term *representation* before DHS includes practice and preparation as defined in paragraphs (i) and (k) of this section.

* * * * *

PART 292—REPRESENTATION AND APPEARANCES

■ 3. The authority citation for part 292 is revised to read as follows:

Authority: 6 U.S.C. 112; 8 U.S.C. 1103, 1252b, 1362.

■ 4. Section 292.1 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraphs (a)(2) introductory text and (a)(2)(iv);
■ c. Revising paragraph (a)(3)(iv); and by
■ d. Revising paragraph (a)(6).

The revisions read as follows:

§ 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following, subject to the limitations in 8 CFR 103.2(a)(3):

* * * * *

(2) *Law students and law graduates not yet admitted to the bar.* A law student who is enrolled in an accredited U.S. law school, or a graduate of an accredited U.S. law school who is not yet admitted to the bar, provided that:

* * * * *

(iv) The law student's or law graduate's appearance is permitted by the DHS official before whom he or she wishes to appear. The DHS official may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

(3) * * *

(iv) His or her appearance is permitted by the DHS official before whom he or she seeks to appear, provided that such permission will not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself or herself out to the public as qualified to do so.

* * * * *

(6) *Attorneys outside the United States.* An attorney, other than one described in 8 CFR 1.1(f), who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he or she resides and who is engaged in such practice, may represent parties in matters before DHS, provided that he or she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the DHS official before whom he or she wishes to appear allows such representation as a matter of discretion.

* * * * *

■ 4. Section 292.3 is revised to read as follows:

§ 292.3 Professional conduct for practitioners—Rules and procedures.

(a) *General provisions.* (1) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before DHS when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in 8 CFR 1003.102. In accordance with the disciplinary proceedings set forth in 8 CFR part 1003, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(i) Expulsion which is permanent, from practice before the Board and the Immigration Courts, or DHS, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts, or DHS, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(2) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in 8 CFR 1.1(f) who does not represent the federal government, or any representative as defined in 8 CFR 1.1(j). Attorneys employed by DHS will be subject to discipline pursuant to paragraph (i) of this section.

(b) *Grounds of discipline.* It is deemed to be in the public interest for the adjudicating official or the Board to impose disciplinary sanctions as described in paragraph (a)(1) of this section against any practitioner who falls within one or more of the categories enumerated in 8 CFR 1003.102. These categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.

(c) *Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify DHS of conviction or discipline.* (1) *Immediate suspension proceedings.* Immediate suspension proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.103. DHS shall file a petition with the Board to suspend immediately from practice before DHS any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h), any practitioner who has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter.

(2) *Copies and proof of service.* A copy of the petition will be forwarded to EOIR, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of EOIR's request to broaden the scope of any immediate suspension must be filed with the Board.

(3) *Summary disciplinary proceedings.* Summary disciplinary proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.103. DHS shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (c)(1) of this section by the issuance of a Notice of Intent to Discipline, upon receipt of a certified copy of the order, judgment, and/or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a certified copy of such document. Delays in initiation of summary disciplinary proceedings under this section will not impact an immediate suspension imposed pursuant to paragraph (c)(1) of this section. Any such proceeding will not be concluded until all direct appeals from an underlying criminal conviction have been completed.

(4) *Duty of practitioner to notify DHS of conviction or discipline.* Within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending, of any conviction or discipline for professional misconduct entered on or after July 27, 2000, a practitioner must notify DHS disciplinary counsel if the practitioner has been: Found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h); suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or placed on an interim suspension pending a final resolution of the underlying disciplinary matter. Failure to notify DHS disciplinary counsel as required may result in immediate suspension as set forth in paragraph (c)(1) of this section.

(d) *Filing of complaints of misconduct occurring before DHS; preliminary inquiry; resolutions; referral of complaints.* (1) *Filing of complaints of misconduct occurring before DHS.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner before DHS must be filed with the DHS disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including,

but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. The DHS disciplinary counsel will notify EOIR disciplinary counsel of any disciplinary complaint that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(2) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the DHS disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceeding based thereon. If the DHS disciplinary counsel determines that a complaint is without merit, no further action will be taken. The DHS disciplinary counsel may, in his or her discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner will be notified of any such determination in writing.

(3) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The DHS disciplinary counsel may, in his or her discretion, issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(e) *Notice of Intent to Discipline.* (1) *Issuance of Notice to Practitioner.* If, upon completion of the preliminary inquiry, the DHS disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in 8 CFR 1003.102, it will file with the Board and issue to the practitioner who was the subject of the preliminary inquiry a Notice of Intent to Discipline. Service of this notice will be made upon the practitioner by either certified mail to his or her last known address, as defined in paragraph (e)(2) of this section, or by personal delivery. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to § 292.3(c), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline. Notice of Intent to Discipline proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.105 and 1003.106.

(2) *Practitioner's address.* For the purposes of this section, the last known address of a practitioner is the practitioner's address as it appears in DHS records if the practitioner is actively representing an applicant or petitioner before DHS on the date the DHS disciplinary counsel issues the Notice of Intent to Discipline. If the practitioner does not have a matter pending before DHS on the date of the issuance of a Notice of Intent to Discipline, then the last known address for a practitioner will be as follows:

(i) *Attorneys in the United States:* The attorney's address that is on record with a state jurisdiction that licensed the attorney to practice law.

(ii) *Accredited representatives:* The address of a recognized organization with which the accredited representative is affiliated.

(iii) *Accredited officials:* The address of the embassy of the foreign government that employs the accredited official.

(iv) *All other practitioners:* The address for the practitioner that appears in DHS records for the application or petition proceeding in which the DHS official permitted the practitioner to appear.

(3) *Copy of Notice to EOIR; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the EOIR disciplinary counsel. Under Department of Justice regulations in 8 CFR chapter V, the EOIR disciplinary counsel may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the Board or the adjudicating official.

(4) *Answer.* The practitioner shall file a written answer or a written request for a hearing to the Notice of Intent to Discipline in accordance with 8 CFR 1003.105. If a practitioner fails to file a timely answer, proceedings will be conducted according to 8 CFR 1003.105.

(f) *Right to be heard and disposition; decision; appeal; and reinstatement after expulsion or suspension.* Upon the filing of an answer, the matter shall be heard, decided, and appeals filed according to the procedures set forth in 8 CFR 1003.106. Reinstatement proceedings after expulsion or suspension shall be conducted according to the procedures set forth in 8 CFR 1003.107.

(g) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the DHS disciplinary counsel may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) will be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice.

(h) *Confidentiality.* (1) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation or as authorized by this regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the DHS disciplinary counsel may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) *Disclosure of information for the purpose of protecting the public.* The DHS disciplinary counsel may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the DHS disciplinary counsel may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such an authority;

(D) A practitioner is the subject of multiple disciplinary complaints and the DHS disciplinary counsel has determined not to pursue all of the complaints. The DHS disciplinary counsel may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(ii) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The DHS disciplinary counsel may, in his or her discretion, disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for conducting disciplinary investigations or proceedings;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(3) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in 8 CFR 1003.106(a)(v).

(i) *Discipline of government attorneys.* Complaints regarding the conduct or behavior of DHS attorneys shall be directed to the Office of the Inspector General, DHS. If disciplinary action is warranted, it will be administered pursuant to the Department's attorney discipline procedures.

■ 5. Section 292.4 is amended by:

■ a. Revising paragraph (a); and

■ b. Revising the term "Service" to read "DHS" wherever that term appears in paragraph (b).

The revisions read as follows:

§ 292.4 Appearances.

(a) *Authority to appear and act.* An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS. Substitution may be permitted upon the written withdrawal of the attorney or accredited representative of record or upon the filing of a new form by a new attorney or accredited representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is authorized and qualified to appear as a representative as provided in 8 CFR 103.2(a)(3) and 292.1. Further proof of authority to act in a representative capacity may be required.

* * * * *

§ 292.6 [Amended]

■ 6. Section 292.6 is amended by revising the term "part 3 of this chapter" to read "8 CFR part 1003".

Janet Napolitano,

Secretary.

[FR Doc. 2010–2149 Filed 2–1–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30707; Amdt. No. 3358]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 2, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available

online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPs). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—-(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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on 22 January 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 11 MAR 2010

Macon, GA, Middle Georgia Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3.
Worcester, MA, Worcester Rgnl, Takeoff Minimums and Obstacle DP, Amdt 8.
Benton Harbor, MI, Southwest Michigan Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6.
Malone, NY, Malone-Dufort, VOR/DME–A, Amdt 1, CANCELLED.
Mosinee, WI, Central Wisconsin, LOC BC RWY 26, Amdt 10B, CANCELLED.
Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 13, Orig–A.

Effective 8 APR 2010

Elim, AK, Elim, ELIM ONE Graphic Obstacle DP.
Elim, AK, Elim, RNAV (GPS) RWY 1, Orig.
Elim, AK, Elim, RNAV (GPS) RWY 19, Orig.
Elim, AK, Elim, Takeoff Minimums and Obstacle DP, Orig.
Palmdale, CA, Palmdale Rgnl/USAF Plant 42, VOR/DME OR TACAN RWY 25, Amdt 7.
Cortez, CO, Cortez Muni, LEDVE ONE Graphic Obstacle DP.
Cortez, CO, Cortez Muni, Takeoff Minimums and Obstacle DP, Amdt 3.
Crystal River, FL, Crystal River, Takeoff Minimums and Obstacle DP, Orig.
Marco Island, FL, Marco Island, VOR/DME RWY 17, Amdt 7.
Majuro Atoll, Marshall Islands, MH, Marshall Islands Intl, Takeoff Minimums and Obstacle DP, Orig.
Valley City, ND, Barnes County Muni, Takeoff Minimums and Obstacle DP, Orig.
Wildwood, NJ, Cape May County, RNAV (GPS) RWY 10, Orig–B.
Wildwood, NJ, Cape May County, RNAV (GPS) RWY 19, Orig–C.
Greer, SC, Greenville-Spartanburg Intl-Roger Milliken, ILS OR LOC RWY 22, Amdt 4.
Charlottesville, VA, Charlottesville-Albemarle, ILS OR LOC RWY 3, Amdt 14.

Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) Z RWY 21, Orig–A.
Clarksville, VA, Lake Country Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1.
Eau Claire, WI, Chippewa Valley Rgnl, RNAV (GPS) RWY 4, Orig.

[FR Doc. 2010–1989 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30708; Amdt. No. 3359]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 2, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected Airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

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

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR

part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs. Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
11-Mar-10	PA	Clarion	Clarion County	0/0393	1/7/10	RNAV (GPS) Rwy 24, Amdt 1.
11-Mar-10	IN	La Porte	La Porte Muni	0/0656	1/8/10	RNAV (GPS) Rwy 2, Orig.
11-Mar-10	IN	La Porte	La Porte Muni	0/0657	1/8/10	LOC/NDB Rwy 2, Amdt 1.
11-Mar-10	IN	La Porte	La Porte Muni	0/0658	1/8/10	VOR–A, Amdt 7.
11-Mar-10	IL	Chicago/West Chicago	Du Page	0/0662	1/8/10	ILS Rwy 10, Amdt 7A.
11-Mar-10	IL	Chicago/West Chicago	Du Page	0/0663	1/8/10	VOR or GPS Rwy 10, Amdt 11A.
11-Mar-10	IL	Grayslake	Campbell	0/0999	1/11/10	VOR–A, Orig-A.
11-Mar-10	IL	Lawrenceville	Lawrenceville-Vincennes Intl	0/1006	1/11/10	RNAV (GPS) Rwy 27, Orig-C.
11-Mar-10	IL	Lawrenceville	Lawrenceville-Vincennes Intl	0/1007	1/11/10	RNAV (GPS) Rwy 9, Orig-B.
11-Mar-10	IL	Lawrenceville	Lawrenceville-Vincennes Intl	0/1009	1/11/10	RNAV (GPS) Rwy 36, Orig-B.
11-Mar-10	IL	Lawrenceville	Lawrenceville-Vincennes Intl	0/1010	1/11/10	VOR Rwy 36, Amdt 1.
11-Mar-10	NJ	Wildwood	Cape May County	0/1026	1/13/10	VOR A, Amdt 3B.
11-Mar-10	NJ	Wildwood	Cape May County	0/1029	1/13/10	LOC Rwy 19, Amdt 6C.
11-Mar-10	IN	Shelbyville	Shelbyville Muni	0/1192	1/12/10	Takeoff Minimums and Obstacle DP, Amdt 4.
11-Mar-10	IL	Marion	Williamson County Rgnl	0/1193	1/12/10	Takeoff Minimums and Obstacle DP, Orig.
11-Mar-10	WI	La Crosse	La Crosse Muni	0/1194	1/12/10	ILS or LOC Rwy 18, Amdt 19.
11-Mar-10	IL	Macomb	Macomb Muni	0/1195	1/12/10	VOR/DME A, Amdt 8A.
11-Mar-10	IL	Lawrenceville	Lawrenceville-Vincennes Intl	0/1196	1/12/10	VOR Rwy 27, Amdt 7A.
11-Mar-10	FL	Cross City	Cross City	0/1480	1/13/10	RNAV (GPS) Rwy 31, Orig.
11-Mar-10	FL	Cross City	Cross City	0/1481	1/13/10	VOR Rwy 31, Amdt 18.
11-Mar-10	OH	Cleveland	Cleveland-Hopkins Intl	0/1483	1/13/10	ILS or LOC Rwy 28, Amdt 23.
11-Mar-10	OH	Cleveland	Cleveland-Hopkins Intl	0/1489	1/13/10	Converging ILS Rwy 28, Orig.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1504	1/13/10	RNAV (GPS) Rwy 5R, Amdt 2.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1505	1/13/10	VOR/DME Rwy 23L, Amdt 10.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1506	1/13/10	RNAV (GPS) Rwy 23L, Amdt 2.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1507	1/13/10	VOR Rwy 5R, Amdt 13.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1508	1/13/10	RNAV (GPS) Rwy 32, Amdt 1.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1509	1/13/10	ILS or LOC Rwy 23L, Amdt 9.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1510	1/13/10	ILS Rwy 14, Amdt 18A.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1511	1/13/10	RNAV (GSO) Rwy 14, Amdt 1.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1512	1/13/10	ILS Rwy 23L (CAT II), Amdt 9.
11-Mar-10	NC	Greensboro	Piedmont Triad Intl	0/1513	1/13/10	NDB Rwy 14, Amdt 15D.
11-Mar-10	AL	Decatur	Pryor Field Rgnl	0/1727	1/15/10	VOR Rwy 18, Amdt 13.
11-Mar-10	ME	Fryeburg	Eastern Slopes Rgnl	0/1762	1/13/10	Takeoff Minimums and Obstacle DP, Amdt 4.
11-Mar-10	IN	Greencastle	Putnam County	0/1786	1/15/10	NDB Rwy 18, Amdt 1.

[FR Doc. 2010–1997 Filed 2–1–10; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 331

RIN 2105–AD93

Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area; Removal

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule removes a DOT rule, *Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area,* 14 CFR Part 331. This rule is being removed because all reimbursements under the program have been made and all program activities completed. The rule established procedures to reimburse eligible fixed-based general aviation operators and providers of ground support services, at five Washington, DC area airports, for direct and incremental financial losses incurred while the airports were closed to general aviation operations solely due to actions of the Federal government after the September 11, 2001 terrorist attacks. The rule implemented a provision in the Department's Fiscal Year 2006 Appropriations Act, which made up to $17 million available for such reimbursements until expended. The rule required applications for reimbursement to be submitted by June 8, 2007. All applications have been processed, payments made, and required releases executed.

DATES: *Effective Date:* February 2, 2010.

FOR FURTHER INFORMATION CONTACT: Timothy E. Carmody, Transportation Industry Analyst, Office of Aviation Analysis, X–50, 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366–2348.

SUPPLEMENTARY INFORMATION: On November 30, 2005, the Congress authorized the Department to reimburse eligible fixed-based general aviation operators or providers of general aviation ground support services at five airports in the Washington, DC metropolitan area for direct and incremental losses due to the actions of the Federal Government to close airports to general aviation operations following the terrorist attacks of September 11, 2001. Section 185, Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006, Public Law 109–115, 119 Stat. 2396 (2005) ("Section 185").

Section 185 further appropriated up to $17 million to reimburse the eligible parties, to be available until expended, and identified the five airports as Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. Of the total $17 million, the Department was directed to set aside and make available up to $5 million to reimburse eligible operators and providers at College Park, Potomac Airfield, and Hyde Field airports. Section 185 stated various other conditions for reimbursement, among them that those losses incurred as the result of violations of law, or through fault or negligence of such entities or of third parties (including airports) were not eligible for reimbursement, and that the obligation and expenditure of funds were conditional upon full release of the United States Government for all claims for financial losses resulting from such actions.

On October 4, 2006, the Department published in the **Federal Register** a Notice of Proposed Rulemaking seeking comments on its proposed procedures implementing Section 185 (71 FR 58546 *et seq.*). Comments were received from 16 submitters. After fully considering all comments, the Department prepared a final rule and published it on April 9, 2007 in the **Federal Register** (at 72 FR 17381 *et seq.*). It was codified as 14 CFR Part 331.

The final rule set out eligibility standards for participation; specified the methodology that would be used in determining losses; stated the eligibility periods applicable at each airport; established special procedures for the $5 million set-aside; and provided an application form for reimbursement. The final rule also set a deadline of June 8, 2007 for applications. 14 CFR 331.27. Twenty-one applicants submitted claims for reimbursement, of which 18 were determined to be eligible and to have incurred reimbursable losses. The Department has completed its review of all applications and has reimbursed the eligible claimants for their financial losses in accordance with Section 185. Prior to payment each claimant signed a full release of the United States for all claims of loss due to such actions, as required by section 185.

The Department has completely fulfilled its responsibilities under Section 185 and ceased all actions under the regulations. As a result, 14 CFR Part 331 serves no further purpose and may be removed.

Regulatory Analyses and Notices

A. Administrative Procedure Act

The Department has determined that this rule may be issued without a prior opportunity for notice and comment because providing prior notice and comment would be unnecessary, impracticable, or contrary to the public interest. The final rule limited the period for submitting applications to June 8, 2007. The rule also limited the amount of money available for reimbursement and the scope of potential beneficiaries. Accordingly, there would not be any harm to any identifiable beneficiary by repealing the rule. The Department has completely fulfilled its responsibilities under Section 185 and ceased all actions under the regulations. Thus, this rule should be removed. For the same reasons, the Department finds that there is good cause to make the rule effective immediately.

B. Executive Order 12866 and Regulatory Flexibility Act

The Department has determined that this action is not considered a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. This rule is being adopted solely to remove a rule that is no longer necessary due to the Department's fulfillment of statutory responsibilities. Given the absence of compliance costs to anyone, I certify that this final rule does not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not

significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

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

F. Unfunded Mandates Reform Act

The Department of Transportation has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 14 CFR Part 331

Air carriers.

Authority: Section 185, Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006, Public Law 109–115, 119 Stat. 2396 (2005); 49 U.S.C. 322(a).

■ Accordingly, under the authority of 119 Stat. 2396 (2005) and 49 U.S.C. 322(a), the Department of Transportation amends 14 CFR chapter 2 by removing part 331:

PART 331—PROCEDURES FOR REIMBURSEMENT OF GENERAL AVIATION OPERATORS AND SERVICE PROVIDERS IN THE WASHINGTON, DC AREA

PART 331—[REMOVED AND RESERVED]

■ Remove and reserve Part 331, consisting of subparts A through C.

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

Susan Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010–2134 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS BUNKER HILL (CG 52)) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective February 2, 2010 and is applicable beginning January 21, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BUNKER HILL (CG 52)) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Five by revising the entry for USS BUNKER HILL (CG 52) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead light not over all other lights and obstructions Annex I, section 2(f)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, section 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS BUNKER HILL	CG 52		X	X	36.8
*	*	*	*	*	*

* * * * *

Approved: January 21, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Certified to be a true copy of the original document.

Dated: January 22, 2010.

A.M. Vallandingam,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2010–2121 Filed 2–1–10; 8:45 am]

BILLING CODE 3810–FF–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–12 and R2010–2; Order No. 375]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a bilateral agreement between the U.S. Postal Service and Canada Post for inbound market dominant services. This action is consistent with a postal reform law. Republication of the Market Dominant List and Competitive Product List is also consistent with statutory provisions.

DATES: Effective February 2, 2010 and is applicable beginning December 30, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 64771 (December 8, 2009).

Table of Contents

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 Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On November 19, 2009, the Postal Service filed a request pursuant to 39 U.S.C. 3622(c)(10) and 3642, and 39 CFR 3010.40 *et seq.* and 3020.30 *et seq.* to add the Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (Bilateral Agreement or Agreement) to the Market Dominant Product List.[1] This Request has been assigned Docket No. MC2010–12.

The Postal Service contemporaneously filed notice that the Governors have authorized a Type 2 rate adjustment to establish rates for inbound market dominant services as reflected in the Bilateral Agreement.[2] More specifically, the Bilateral Agreement, which has been assigned Docket No. R2010–2, governs the exchange of inbound air and surface letter post (LC/AO).[3]

Request. In support of its Request, the Postal Service filed the following materials: (1) Proposed Mail Classification Schedule (MCS) language;[4] (2) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] (3) a redacted version of the agreement;[6] and (4) an application for non-public treatment of pricing and supporting documents filed under seal.[7] Request at 2.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, reviews the factors of section 3622 and concludes, *inter alia*, that the revenues generated will cover the attributable costs of the services offered under the Bilateral Agreement; that the rates are preferable to default rates set by the Universal Postal Union; and that the rates represent a modest increase over those reflected in the existing bilateral agreement with Canada Post. *Id.*, Attachment 2, at 2–3.

In its Request, the Postal Service provides information responsive to part 3010, subpart D, of the Commission's rules. To that end, it addresses the requirements of section 3622(c)(10) as well as certain details of the negotiated service agreement. *Id.* at 2–7. The Postal Service asserts that the Bilateral Agreement satisfies all applicable statutory criteria. *Id.* at 6–8.

The Postal Service filed much of the supporting materials, financial analysis, and the Bilateral Agreement under seal. *Id.* at 2. In its Request, the Postal Service maintains that the Bilateral Agreement and related financial information should remain under seal. *Id.*

The Postal Service has an existing bilateral agreement with Canada Post, which is set to expire December 31, 2009.[8] *Id.*, Attachment 3, at 7. The instant Bilateral Agreement is a two-year agreement comparable to the existing agreement, with some modifications. The modifications include differences in specific operational details and the Postal Service's decision to classify Canada Post's "Xpresspost-USA" as a competitive product instead of a market dominant product as in the existing bilateral agreement.[9] The Agreement states it has an effective date of January 1, 2010. *Id.* at 3. The Request states that the inbound market dominant rates are scheduled to become effective on January 4, 2010. *Id.*

The Postal Service urges the Commission to act promptly to add this product to the Market Dominant Product List to allow rates to be implemented under 39 CFR 3010.40. *Id.* at 7.

In Order No. 346, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.[10]

On December 4, 2009, Chairman's Information Request No. 1 (CHIR No. 1) was issued, which sought clarification of various elements related to the proposed Bilateral Agreement. A response was due from the Postal Service by December 10, 2009. The Postal Service filed its responses to

[1] Request of United States Postal Service to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal), November 19, 2009; and United States Postal Service Notice of Erratum to Application for Non-Public Treatment, November 20, 2009 (Request).

[2] Type 2 rate adjustments involve negotiated service agreements. *See* 39 CFR 3010.5.

[3] To elaborate, the Bilateral Agreement covers Letter Post, including letters, flats, packets, bags, containers, and International Registered Mail service ancillary thereto. Request at 3–4.

[4] Attachment 1 to the Request.

[5] Attachment 2 to the Request.

[6] Attachment 3 to the Request.

[7] Attachment 4 to the Request. The Postal Service filed United States Postal Service Notice of Erratum to Application for Non-Public Treatment, November 20, 2009 (Erratum). It explained that due to a drafting error, the application contained an erroneous reference to a nonexistent page of the Agreement and provided a corrected page.

[8] The Postal Service maintains that the instant Bilateral Agreement is functionally comparable to the agreement in Docket Nos. MC2009–7 and R2009–1. *Id.*

[9] The Postal Service included Xpresspost in its Request to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List. See Docket Nos. CP2010–13 and MC2010–14.

[10] *See* PRC Order No. 346, Notice and Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, November 25, 2009 (Order No. 346).

CHIR No.1, questions 1–7 and 9–11, on December 10, 2009.[11]

On December 11, 2009, the Postal Service filed the response to question 8 as required.[12]

III. Comments

Comments were filed by the Public Representative.[13] No other interested person submitted comments. The Public Representative states that the Commission may want to consider adding additional rules specific to bilateral agreements with foreign postal administrations. *Id.* at 2. The Public Representative observes that because there are no similarly situated mailers comparable to Canada Post, compliance with 39 CFR 3010.40 may be at issue. *Id.*

The Public Representative also notes that the rates set under the UPU Convention may need further examination and suggests that the Commission continue to promote efficient pricing. *Id.* at 3.

The Public Representative relates that performance requirements in the Agreement such as presorting of airmail items and providing transportation to multiple mail acceptance centers increase efficiency and are a benefit to the Postal Service and the general public. *Id.* He also notes that the Commission determined in Docket Nos. MC2009–7 and R2009–1 that inbound Letter Post from Canada should be classified as two separate products, Air LC and Surface AO as market dominant, and Xpresspost as a competitive product. The Public Representative observes that in accordance with the Commission finding, the Postal Service has not included the Xpresspost product in this filing. *Id.* at 3–4. The Public Representative states that the Commission will glean further information on international mail services in the future from the Postal Service's filing of its Annual Compliance Report. *Id.* at 3. The Public Representative concludes that the Bilateral Agreement appears to comport with the applicable provisions of title 39.

IV. Commission Analysis

The Commission has reviewed the Agreement, supporting documentation, the financial analysis provided under seal that accompanies it, responses to the Chairman's Information Request and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning the Bilateral 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 market dominant products, a review of section 3622(c)(10).

Product list assignment. In determining whether to assign the Bilateral Agreement as a product 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 notes that the performance responsibilities in the instant agreement are consistent with the precursor agreement in Docket Nos. MC2009–7 and R2009–1. *Id.* at 5. As stated above, it notes that the current Bilateral Agreement continues to include work-sharing arrangements and providing transportation for inbound airmail items to multiple Postal Service International Service Centers for acceptance. *Id.* The Postal Service relates that the rates in the Bilateral Agreement provide superior cost coverage to the default rates set by the UPU and represent a modest increase over those in the previous agreement. It also states the new rates will have little effect on either Canada Post or American recipients. Request, Attachment 2, at 3.

The Postal Service contends that its monopoly on certain inbound letters from Canada within certain price and weight limits make it fairly certain that private entities would not be able to serve the United States market for Inbound Letter Post from Canada. *Id.* at 5. It also states that there are no similarly situated entities to Canada Post with the ability to tender Letter Post from Canada under similar operational conditions, nor any other entities that serve as a designated operator for Letter Post originating in Canada. *Id.* at 7. Therefore, the Postal Service states that it cannot envision a similarly situated mailer which could enter into a similar agreement. *Id.*

The Postal Service also contends that there is no significant competition in this market. As a result, it believes the Bilateral Agreement does not pose competitive harm in the marketplace.[14] *Id.*, Attachment 2, para. (h). It states that there have been agreements between the United States and Canada Post for these services (under rules set by the UPU) since 1888. *Id.*, para. (g).

The Postal Service asserts that the parties to this agreement serve as their designated entities for the exchange of mail, inclusive of Letter Post. *Id.* at 5. It contends that the Bilateral Agreement allows it to continue to offer Canada Post and small businesses in the United States affordable, reliable options for mailing letters and merchandise to the United States. *Id.* It states because there is no significant direct competition for Inbound Letter Post from Canada, it expects there will be no significant impact on small business competitors. The Postal Service also states that it is unaware of any small business concerns that offer competing services. Therefore, the Postal Service concludes that there can be no reasonable expectation of any competitive harm to the marketplace. *Id.* at 6.

No commenter opposes the proposed classification of the Bilateral Agreement as market dominant. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds, for purposes of this proceeding, that the Canada Post-United States Postal Service Contractual

[11] *See* Notice of the United States Postal Service of Filing Responses to Chairman's Information Request No. 1, Questions 1–7 and 9–11, December 10, 2009.

[12] *See* Notice of the United States Postal Service of Filing Response to Chairman's Information Request No. 1, Question 8, December 11, 2009. The Postal Service filed an accompanying Motion for Late Acceptance of Response to Chairman's Information Request No. 1, Question 8, December 11, 2009. The motion is granted.

[13] *See* Public Representative Comments in Response to United States Postal Service Request to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal), December 9, 2009 (Public Representative Comments).

[14] The Postal Service notes that the arguments and assertions which were applicable in Docket Nos. MC2009–7 and R2009–1 have not changed on this point and incorporates those points by reference here. This includes the reference that under Canadian law, Canada Post has an exclusive privilege to carry outbound letters weighing less than 500 grams (17.64 ounces) and subsequently is the single entity that can enter into this type of agreement with the Postal Service.

Bilateral Agreement for Inbound Market Dominant Services may be classified as a market dominant product and added to the Market Dominant Product List.

Additionally, in CHIR No. 1, Question 4, the Commission sought a more comprehensive description of the product "Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services" suitable for inclusion in the Mail Classification Schedule. While the level of detail in the Postal Service's response may not be optimal, the Commission will incorporate the Postal Service's proposed language into the draft Mail Classification Schedule subject to change.

Section 3622(c)(10) compliance. The Postal Service's filing seeks to establish a new international mail product. The requirements of 39 U.S.C. 3622(c)(10) obligate the Commission, when reviewing a negotiated service agreement, to determine whether such an agreement (1) Improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. The Commission concludes that the requirements of 39 U.S.C. 3622(c)(10)(A) are met. The Agreement provides delivery and scanning performance objectives and incentives to promote operational improvement. *Id.* at 4–5. The Postal Service filed information under seal regarding costs, volumes, and anticipated revenues. The Postal Service represents that the new Agreement "includes performance-based incentives to promote cost reduction, increase efficiency, and improve service performance." *Id.*, Attachment 2, at 2.

The Postal Service observes that the Bilateral Agreement provides incentives to encourage operational improvement. Additionally, the Postal Service asserts that the rates in the Bilateral Agreement result in a higher cost coverage than the default rates set by the UPU. *Id.* at 3.

Finally, the Postal Service asserts that the instant Agreement will not result in unreasonable harm to the marketplace because, among other things, Canada Post and the Postal Service are their respective countries' designated operators for the exchange of letter mail, and it states that the market is limited to these parties. *Id.*, para. (f). The Commission accepts the Postal Service representations and finds that the Bilateral Agreement is consistent with 39 U.S.C. 3622(c)(10).

To facilitate analysis, the Public Representative suggests that perhaps the Commission should develop new rules that are specific to bilateral agreements with foreign posts. The Commission acknowledges that the criterion that negotiated service agreements must be available on public and reasonable terms to similarly situated mailers (section 3622(c)(10)) is inapplicable to this Bilateral Agreement. However, other provisions of the rule do apply, and accordingly, the Commission need not specifically address additional requirements for bilateral agreements between postal administrations in its rules. The PAEA establishes the policy objectives of the Commission for international postal arrangements, and the current rules for negotiated service agreements are sufficient for determining the Postal Service's compliance at this time.

Data issues. The Commission's review of the supporting data for the current Agreement raises several areas of concern. The first issue is that the Postal Service relies on outdated financial data in its supporting documentation for the Bilateral Agreement. When forecasting unit costs for the contract period, it is preferable to use the most recent data. In its filing, the Postal Service uses FY 2008 unit costs to forecast cost for CY 2010 and CY 2011. In its response to CHIR No. 1, Questions 3 and 4, the Postal Service stated that it is unable to provide even preliminary FY 2009 unit costs for processing, delivery, and other. Similarly, the Postal Service stated that per-kilogram costs for FY 2009 for domestic air transportation and domestic surface transportation are also unavailable. The Commission is concerned that using Global Insight indices to forecast three years into the future may produce inaccurate results. In future requests, the Commission requests the Postal Service to submit the most recent supporting data available even if it is unaudited, in addition to the most recent ACD data.

The second issue arising from the analysis of the supporting documentation is the occurrence of anomalies in the data. In its financial model, the Postal Service utilized a different methodology to forecast costs for the contract period than in the previous bilateral agreement. In the current filing, the Postal Service's financial model uses cost by shape to estimate processing, delivery, and "other" costs for the contract period. These costs by shape are developed using the weighted tallies from IOCS for distributing both Air LC and Surface AO attributable cost to letters, flats, and parcels. The Commission is concerned with anomalies in the resulting data. For example, the Surface AO letter unit processing cost is more than 130 times that of a Surface AO parcel. The Commission has seen such anomalies surface in the past with regard to international mail. The data obtained from IOCS may be inaccurate if the number of IOCS tallies is too few to produce figures with a reasonable margin of error. While the Commission recognizes the difficulties in dealing with a small sample size, for future filings, the Commission expects the Postal Service to improve shape-specific unit costs. If feasible, the Postal Service should perform a special study to determine unit cost by shape.

Finally, the Commission expects that the supporting documentation filed by the Postal Service will provide accurate source information to support data in the worksheets. The Postal Service should provide a complete explanation of the rationale in instances where "USPS pricing decision" is used to source information.

Based on the data submitted and the comments received, the Commission finds that the Bilateral Agreement comports with section 3622(c)(10). Thus, an initial review of the proposed Bilateral Agreement indicates that it comports with the provisions applicable to rates for market dominant products.

Other considerations. The Postal Service shall, no later than 30 days after the effective date of the new contract, provide cost, revenue, and volume data associated with the current contract.

The Postal Service submitted the Bilateral Agreement, which has not been executed by the parties. The Postal Service is directed to file the executed Bilateral Agreement with the Commission within 30 days of its execution.

The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than the proposed two-year term, but no later than the actual termination date. The Commission will then remove the Agreement from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves the Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services as a new product. The revision to the Market Dominant 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. Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

(MC2010–12 and R2010–2) is added to the Market Dominant Product List as a new product under Negotiated Service Agreements, Inbound International.

2. The Postal Service shall notify the Commission if the Agreement terminates earlier than the proposed two-year term.

3. The Postal Service shall report the cost, revenue, and volume data under the expiring contract as set forth in this order.

4. 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 (MC2010-12 and R2010-2)

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]
- 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 Prduct 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. 2010–2066 Filed 2–1–10; 8:45 am]

BILLING CODE 7710–FW–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80

[WT Docket No. 04–257 and RM–10743; FCC 10–6]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) furthers its ongoing efforts to ensure that its rules governing the Maritime Radio Services continue to promote maritime safety, maximize effective and efficient use of the spectrum available for maritime communications, accommodate technological innovation, avoid unnecessary regulatory burdens, and maintain consistency with international maritime standards to the extent consistent with the United States public interest.

DATES: Effective April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Stana Kimball, Mobility Division, Wireless Telecommunications Bureau, at *Stanislava.Kimball@FCC.gov* or at (202) 418–1306, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order* in WT Docket No. 04–257, FCC 10–6, adopted on January 6, 2010, and released on January 7, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The WT Docket No. 04–257 rulemaking proceeding was established to develop rules to provide to VHF Public Coast (VPC) and Automated Maritime Telecommunications System (AMTS) licensees additional operational flexibility by permitting them to offer private correspondence service to units on land. The *Memorandum Opinion and Order* (MO&O) in WT Docket No. 04–257 addresses the petitions for reconsideration of the *Report and Order* in this proceeding, published at 72 FR 31192, June 6, 2007. In the *MO&O* in WT Docket No. 04–257, the Commission amends § 80.385(a)(1) of the its rules by eliminating the words "interconnected" and "integrated." This action is consistent with the identical amendments to §§ 80.5 and 80.475(d) made in the *Report and Order* in this proceeding.

I. Procedural Matters

A. Paperwork Reduction Act

2. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it 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, *see* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 80

Communications equipment, Radio.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 80 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 2. Amend § 80.385 by revising paragraph (a)(1) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(1) The Automatic Maritime Communications System (AMTS) is an automatic maritime telecommunications system.

* * * * *

[FR Doc. 2010–2095 Filed 2–1–10; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 512 and 552

[GSAR Amendment 2010–01; GSAR Case 2008–G504 (Change 43); Docket GSAR–2010–0001; Sequence 1]

RIN 3090–AI61

General Services Administration Acquisition Regulation; Rewrite of Part 512, Acquisition of Commercial Items

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update the text addressing the acquisition of commercial items. This rule is a result of the GSAM Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation, and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

DATES: *Effective Date:* March 4, 2010

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. For

information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVPR), Room 4041, 1800 F Street, NW., Washington, DC, 20405, (202) 501–4755. Please cite GSAR Amendment 2010–01, GSAR case 2008–G504 (Change 43).

SUPPLEMENTARY INFORMATION:

A. Background

The GSAR Rewrite Project and Process

GSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910 on February 15, 2006, with request for comments on all parts of the GSAM. As a result, four comments were received on GSAR part 512. These comments are addressed below. In addition, internal review comments have been incorporated, as appropriate. A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** at 73 FR 44953 on August 1, 2008. The public comment period for GSAR part 512 closed on September 30, 2008, and no comments were received.

The Rewrite of GSAR Part 512

This final rule contains the revisions made to GSAR Part 512, Acquisition of Commercial Items. The rule revises GSAR part 512 to address the text at GSAR 512.301, Solicitation provisions and contract clauses for the acquisition of commercial items. Section 512.203 has been revised to add language regarding using GSAM part 512 for construction contracts. GSAR clauses 552.212–70, Preparation of Offer (Multiple Award Schedule), and 552.212–73, Evaluation—Commercial Items (Multiple Award Schedule), are proposed for deletion from GSAR part 512 and proposed to be moved to GSAR Part 538, Federal Supply Schedule Contracting, as these GSAR clauses are a better fit in GSAR part 538. GSAR clauses 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items and 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items, are retained with no changes.

Discussion of Comments

A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** on August 1, 2008, at 73 FR 44953. The public comment period for GSAR part 512 closed on September 30, 2008, and no comments were received. Four comments covering GSAR part 512 were received in response to the Advanced Notice of Proposed Rulemaking. A discussion of these comments is provided below:

Comment: Add a clause to the GSAM that allows for use of FAR part 12 in relation to constructions or remodeling of real property.

Response: Section 512.203 has been revised to add language regarding using GSAM part 512 for construction contracts.

Comment: Revise the GSAR to address inconsistencies and duplications between and among GSA contract clauses and FAR part 12 that are often included in a single contract.

Response: The clauses were reviewed and any inconsistencies were eliminated to the maximum extent possible.

Comment: Revise the GSAR to encourage contracting officers to consider a vendor's commercial practices and policies during negotiation of contract terms and conditions consistent with the contracting officer's ability to tailor clauses under FAR 12.302.

Response: Current FAR part 12 requires contracting officers to consider a vendor's commercial practices and policies during negotiations of contract terms and conditions.

Comment: Revise the GSAR to eliminate inconsistencies and redundancies between the FAR and GSAR in the context of a Federal Supply Schedule, specifically citing Federal Supply Schedule 70.

Response: The Federal Supply Schedule clauses have been reviewed and are being published in GSAM part 538. Inconsistencies and redundancies between the FAR and GSAR were eliminated to the maximum extent possible.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. The revisions only update and reorganize existing coverage.

This is not a substantive change. Therefore, a Regulatory Flexibility Analysis was not performed. In accordance with 5 U.S.C. 610, the proposed rule requested comments from small entities concerning this assessment, and no comments were received.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 512 and 552

Government procurement.

Dated: January 26, 2010.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 512 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 512 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 512—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Revise section 512.301 to read as follows:

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(2) 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

(b) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302(c), include in solicitations and contracts by addendum other GSAR provisions and clauses.

(c) *Use of additional provisions and clauses.* The Senior Procurement Executive must approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in contracts for commercial items.

(2) Consistent with customary commercial practice.

(d) In solicitations issued in conjunction with the policy and procedures in FAR part 14, Sealed Bidding; or FAR part 15, Contracting by Negotiation, include the two notices in paragraphs (d)(1) and (d)(2) of this section, except that acquisitions of leasehold interests in real property, must include only the notice in paragraph (d)(1) of this section.

(1) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

(2) The General Services Administration's hours of operation are 8 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

PART 552—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

552.212–70 [Removed and Reserved]

■ 3. Remove and reserve section 552.212–70.

552.212–73 [Removed and Reserved]

■ 4. Remove and reserve section 552.212–73.

[FR Doc. 2010–2180 Filed 2–1–10; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 7, 10, and 40

[Docket No. OST–2009–0173]

RIN 2105–AD82

OST Technical Corrections

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT is making corrections to amendments to a number of its regulations that were published in the **Federal Register** on June 12, 2008 (73 FR 33326–30) to reflect reorganization of some elements of DOT and the move of DOT's Headquarters site in Washington, DC.

DATES: The amendments are effective February 2, 2010.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–60, Room W96–314, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone 202.366.9156; fax 202.366.9170; e-mail: *bob.ross@dot.gov.*

SUPPLEMENTARY INFORMATION: These corrections affect the following:

1. DOT moved its Headquarters in Washington, DC to a new site.

2. The Chief Information Officer has replaced the Assistant Secretary for Administration as the DOT Chief Privacy Officer.

3. A mistake was made in the definition of "Department" in our Freedom of Information regulations.

4. The list of exemptions in our Freedom of Information regulations are reorganized and corrected to reflect the transfer of motor carrier safety oversight from the Federal Highway Administration to the Federal Motor Carrier Safety Administration.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Department's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, I find good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register.**

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034). It was not reviewed by the Office of Management and Budget. There are no costs associated with this rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule would impose any costs on small entities because it simply delegates authority from one official to another and makes other nonsubstantive corrections. Therefore, I certify this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

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

F. Unfunded Mandates Reform Act

The Department of Transportation has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects

49 CFR Part 7

Freedom of information, Reporting and recordkeeping requirements.

49 CFR Part 10

Penalties, Privacy.

49 CFR Part 40

Administrative practice and procedure, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

■ For the reasons discussed in the preamble, Subtitle A of title 49, Code of Federal Regulations, is amended as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

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

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600; 3 CFR, 1987 Comp., p. 235.

■ 2. In Section 7.2, the introductory text of the definition of 'Department' is revised to read as follows:

§ 7.2 Definitions.

* * * * *

Department means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the following DOT Operating Administrations, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in § 7.15. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

* * * * *

PART 10—MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

■ 3. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

§ 10.77 [Amended]

■ 4. In § 10.77, paragraph (c) is amended by removing 'Assistant Secretary for Administration' and replacing it with 'Chief Information Officer'.

■ 5. In Appendix to Part 10—Exemptions, paragraph A of Part II is amended by removing paragraphs 3. through 12., and adding new paragraphs 3. through 7. to read as follows:

Appendix to Part 10—Exemptions

* * * * *

Part II. Specific Exemptions

A. * * *

3. Federal Motor Carrier Safety Administration (FMCSA) Enforcement Management Information System, maintained by the Chief Counsel, FMCSA (DOT/FMCSA 002).

4. DOT/NHTSA Investigations of Alleged Misconduct or Conflict of Interest, maintained by the Associate Administrator for Administration, National Highway Traffic Safety Administration (DOT/NHTSA 458).

5. Civil Aviation Security System (DOT/FAA 813), maintained by the Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration.

6. Suspected Unapproved Parts (SUP) Program, maintained by the Federal Aviation Administration (DOT/FAA 852).

7. Motor Carrier Management Information System (MCMIS), maintained by the Federal Motor Carrier Safety Administration (DOT/FMCSA 001).

* * * * *

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

§ 40.213 [Amended]

■ 6. In § 40.213(a), remove the words, "400 7th Street, SW., Room 10403" and add, in their place, the words "1200 New Jersey Avenue, SE.".

Issued under authority delegated in 49 CFR 1.57(j) at Washington, DC, on January 19, 2010.

Robert S. Rivkin,

General Counsel, Department of Transportation.

[FR Doc. 2010–1657 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–RSPA–2004–19854; Amdt. 192–113]

RIN 2137–AE15

Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines; Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; correction.

SUMMARY: PHMSA is correcting a final rule that appeared in the **Federal Register** on December 4, 2009. That final rule amended the Federal Pipeline Safety Regulations to require operators of gas distribution pipelines to develop and implement integrity management programs. In addition to a minor correction in terminology, this document corrects an erroneous effective date given in the December 4 publication.

DATES: The effective date for the final rule published December 4, 2009 (74 FR 63906), is correctly revised from February 2, 2010, to February 12, 2010. The correction to § 192.383 is effective February 12, 2010.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571 or by e-mail at *Mike.Israni@dot.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. E9–28467 appearing on page 63906 in the **Federal Register** of Friday, December 4, 2009 the following corrections are made:

■ 1. On page 63906, in the first column, the effective date is corrected to read "Effective Date: This Final Rule takes effect on February 12, 2010."

§ 192.383 [Corrected]

■ 2. On page 63934, in the first column, in § 192.383:

■ a. In paragraph (a), "natural gas" is corrected to read "gas" in both places it appears; and

■ b. In paragraph (b), "February 2, 2010" is corrected to read "February 12, 2010."

Issued in Washington, DC, on January 28, 2010.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–2186 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2009–0066; Notice 2]

RIN 2127–AK40

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document increases the maximum civil penalty amounts for violations of motor vehicle safety requirements involving school buses, bumper standards, consumer information requirements, odometer tampering and disclosure requirements, and vehicle theft protection requirements. This action is taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This final rule is effective March 4, 2010.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Fourth Floor, Washington, DC 20590, with a copy to the DOT docket. Copies to the docket may be submitted electronically [identified by DOT Docket ID Number NHTSA–2009–0066] by visiting the following Web site.

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

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, 19477–78).

FOR FURTHER INFORMATION CONTACT: Jessica Lang, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461, Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (referred to collectively as the "Adjustment Act" or, in context, the "Act"), requires us and other Federal agencies to adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the penalties under statutes administered by NHTSA, as adjusted, in 49 CFR Part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties. 64 FR 37876. In 2000, the Transportation Recall Enhancement, Accountability and Documentation ("TREAD") Act increased the maximum penalties under the National Traffic and Motor Vehicle Safety Act as amended (sometimes referred to as the "Motor Vehicle Safety Act"). We codified those amendments in Part 578 on November 14, 2000. 65 FR 68108. On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer tampering and disclosure requirements and vehicle theft prevention. 66 FR 41149. On September 28, 2004, we adjusted the maximum penalty amounts for a related series of violations involving the agency's provisions governing vehicle safety, bumper standards, and consumer information. 69 FR 57864. On September 8, 2005, the agency adjusted its penalty amounts for violations of its vehicle theft protection standards and those involving a related series of odometer-related violations. 70 FR 53308. On May 16, 2006, the agency adjusted its penalty amounts for violations of the Motor Vehicle Safety Act, as amended, and codified amendments made to the Motor Vehicle Safety Act by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), 119 Stat. 1144, 1942–43 (Aug. 10, 2005). 71 FR 28279. Most recently, on February 25, 2008, the agency made adjustments to odometer-related violations and violations of certain administrative provisions of the Energy Policy and Conservation Act. 73 FR 9955.

The Energy Independence and Security Act of 2007 (EISA), Public Law No. 110–140, 121 Stat. 1492, 1506–07 (Dec. 19, 2007) (codified at 49 U.S.C. 32304A) established a separate penalty provision for a new consumer tire information provision. As a matter of organization, we include this penalty provision in 49 CFR 578.6(d). In order to avoid confusion with the consumer information penalty regarding crashworthiness and damage susceptibility currently in this section, we bifurcated 49 CFR 578.6(d) into two parts. The first addresses crashworthiness and damage susceptibility; the second codifies consumer tire information under EISA. We have decided to adopt text of this rule that tracks the wording in EISA; it does not interpret EISA.

On June 15, 2009, the Agency published a Notice of Proposed Rulemaking (NPRM) entitled "Civil Penalties" which proposed the adjustment of certain civil penalties for inflation. 74 FR 28204. The Agency received no comments to this NPRM.

We have reviewed the civil penalty amounts in 49 CFR Part 578 and, in this notice, adjust certain penalties under the Adjustment Act. The civil penalties that we now adjust are available for violations of: (1) The Motor Vehicle Safety Act involving school buses (single violations and a related series of violations), (2) bumper requirements (a related series of violations), (3) consumer information requirements regarding crashworthiness and damage susceptibility (a related series of violations), (4) odometer requirements including tampering and disclosure (a related series of violations), and (5) the vehicle theft protection requirements (daily violations and a series of related violations).

Method of Calculation—Adjustments

Under the Adjustment Act, we first calculate the inflation adjustment for each applicable civil penalty by arithmetically increasing the maximum civil penalty amount per violation by a cost-of-living adjustment. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as:

The percentage (if any) for each civil monetary penalty by which—

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Under the Adjustment Act, the relevant Consumer Price Index (CPI) is that for the month of June of the preceding calendar year. This figure is provided by the Department of Labor and is adjusted annually using the base year 1967 = 100. The Adjustment Act uses the CPI for all urban consumers. Because the adjustment will be effective in 2010, the proper CPI is that from June 2009. The June 2009 CPI is 646.1.[1] In the NPRM, which was published in 2009, we had used the CPI for June 2008 (655.5).

Two of the penalty amounts that NHTSA now adjusts involve a related series of violations of bumper standards and of consumer information requirements regarding crashworthiness and damage susceptibility. These amounts were last adjusted in 2004 (CPI = 568.2). Accordingly, the factor that we used to calculate the increases for these penalties is 1.14 (646.1/568.2).

The other penalty amounts that NHTSA now adjusts are for single violations and a related series of violations pertaining to school bus safety, a related series of violations involving odometer tampering and disclosure, as well as single violations and a related series of violations involving vehicle theft protection. These amounts were last adjusted in 2005 (CPI = 582.6). Accordingly, the factor that we used to calculate the increases is 1.11 (646.1/582.6).

Next, using these inflation factors, increases above the current maximum penalty levels were calculated and were then subject to a specific rounding formula set forth in Section 5(a) of the Adjustment Act. 28 U.S.C. 2461, Notes. Under that formula:

Any increase shall be rounded to the nearest

(1) Multiple of $10 in the case of penalties less than or equal to $100;

[1] Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index Home Page at *http://www.bls.gov/cpi/home.htm*. Scroll down to "Most Requested Statistics" and select the "All Urban Consumers (Current Series)" option, select the "U.S. ALL ITEMS 1967–100–CUUR0000AA0" box, and click on the "Retrieve Data" button.

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

Amendments to Maximum Penalties

Change to Maximum Penalty (Single Violations and a Related Series of Violations) Under the School Bus Safety Provisions, 49 U.S.C. Chapter 301, (49 CFR 578.6(a)(2))

The maximum civil penalty for a single violation under the school bus safety provisions is $10,000, as specified in 49 CFR 578.6(a)(2). The underlying statutory provision is 49 U.S.C. 30165(a)(2), as amended in 2005. Applying the appropriate inflation factor (1.11) raises the $10,000 to $11,100, an increase of $1,100. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000. Accordingly, we now amend Section 578.6(a)(2) to increase the maximum civil penalty for a single violation from $10,000 to $11,000.

The maximum civil penalty for a related series of violations under the school bus safety provisions is $15,000,000, as specified in 49 CFR 578.6(a)(2). The underlying statutory provision is 49 U.S.C. 30165(a)(2), as amended in 2005. Applying the appropriate inflation factor (1.11) raises the $15,000,000 to $16,650,000, an increase of $1,650,000. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Accordingly, we now amend Section 578.6(a)(2) to increase the maximum civil penalty from $15,000,000 to $16,650,000 for a series of related violations.

Change to Maximum Penalty (Related Series of Violations) Under the Bumper Standards Provision, 49 U.S.C. Chapter 325 (49 CFR 578.6(c))

The maximum civil penalty for a related series of violations of the bumper standards provision or a regulation prescribed thereunder is $1,025,000 as specified in 49 CFR 578.6(c)(2). The underlying statutory civil penalty provision is contained in 49 U.S.C. 32507. Applying the appropriate inflation factor (1.14) raises the $1,025,000 figure to $1,168,500, an increase of $143,500. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this case, the increase is $150,000. Accordingly, we now amend Section 578.6(c) to increase the maximum civil penalty from $1,025,000 to $1,175,000 for a related series of violations.

Change to Maximum Penalty (Related Series of Violations) Under the Consumer Information Regarding Crashworthiness and Damage Susceptibility Requirements, 49 U.S.C. Chapter 323 (49 CFR 578.6(d))

The maximum civil penalty for a related series of violations of the consumer information regarding crashworthiness and damage susceptibility requirements is $500,000, as specified in 49 CFR 578.6(d). The underlying statutory civil penalty provision is 49 U.S.C. 32308(b). Applying the appropriate inflation factor (1.14) raises the $500,000 figure to $570,000, an increase of $70,000. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this case, the increase is $75,000. Accordingly, we now amend Section 578.6(d) to increase the maximum civil penalty from $500,000 to $575,000 for a series of related violations.

Change to Maximum Penalty (Related Series of Violations) Under the Odometer Tampering and Disclosure Requirements, 49 U.S.C. Chapter 327 (49 CFR 578.6(f))

The maximum civil penalty for a related series of violations of the odometer requirements is $130,000, as specified in 49 CFR 578.6(f)(1). The underlying statutory penalty provision is 49 U.S.C. 32709. Applying the appropriate inflation factor (1.11) raises the $130,000 to $144,300, an increase of $14,300. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000. Accordingly, we now amend Section 578.6(f)(1) to increase the maximum civil penalty from $130,000 to $140,000 for a series of related violations.

Change to Maximum Penalty (Daily Violation and a Related Series of Violations) Under the Vehicle Theft Protection Provisions, 49 U.S.C. Chapter 331 (49 CFR 578.6(g)(1), (2))

The maximum civil penalty for a daily violation of vehicle theft protection provisions is $130,000, as specified in 49 CFR 578.6(g)(2). The underlying statutory penalty provision is 49 U.S.C. 33115. Applying the appropriate inflation factor (1.11) raises the $130,000 figure to $144,300, an increase of $14,300. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000. Accordingly, we now amend Section 578.6(g)(2) to increase the maximum civil penalty from $130,000 to $140,000 for a daily violation.

The maximum civil penalty for a related series of violations of the vehicle theft protection provisions is $325,000, as specified in 49 CFR 578.6(g)(1). The underlying statutory penalty provisions is 49 U.S.C. 33115. Applying the appropriate inflation factor (1.11) raises the $325,000 to $360,750, an increase of $35,750. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Accordingly, we now amend Section 578.6(g)(1) to increase the maximum penalty from $325,000 to $350,000 for a series of related violations.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action is limited to adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b).

The Small Business Administration (SBA) regulations define a small business in part as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification (SIC) Codes. SIC Code 336211 "Motor Vehicle Body Manufacturing" applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System (NAICS), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.

Many small businesses are subject to the penalty provisions of Title 49 U.S.C. Chapters 301 (motor vehicles—school bus safety), 325 (bumper standards), 323 (consumer information requirements), 327 (odometer requirements) and 331 (vehicle theft protection requirements); therefore, small businesses may be affected by the changes this final rule makes. By the amendments, entities that are potentially affected vary by statute and may include manufacturers of motor vehicles and motor vehicle equipment, sellers of vehicles and equipment, repair shops and others.

The adjustment to penalty amounts in 49 U.S.C. 30165(a)(2) and relating to school bus safety potentially impacts numerous entities including school bus manufacturers, school bus equipment manufacturers, school bus and equipment sellers, and schools and school systems. We do not have data on how many other entities within the ambit of 49 U.S.C. 30165(a)(2) are small businesses, but the number is considerable.

The adjustment to penalty amounts in Chapter 325 relating to bumper standards and to penalty amounts in Chapter 323 involving crashworthiness, damage susceptibility and country of origin labeling potentially impacts manufacturers of passenger motor vehicles and, in some instances, equipment manufacturers as variously included and defined in the statutes and regulations. We estimate that of the light vehicle manufacturers reporting under the early warning program (EWR), 49 CFR Part 579, six are small businesses. We recognize that there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. In addition, these statutes cover other entities, but we do not have information on the number of small businesses.

The adjustment to penalty amounts in Chapter 327 relating to odometer requirements potentially impacts a number of small businesses including repair businesses, used car dealers, businesses that are lessors of vehicles, auction houses, and entities making devices that could change an odometer's mileage. Although we do not have information on how many of these entities are small businesses, we believe a large percentage are small businesses.

The adjustment to penalty amounts in Chapter 331 relating to theft prevention potentially impact manufacturers of regulated passenger motor vehicle parts in passenger motor vehicles, some multi-purpose vehicles, and some light trucks in high theft lines. It also impacts other entities including salvaging, repair and chop shops. As previously stated, of the manufacturers of passenger vehicles reporting under the EWR program, three are small businesses. Although we do not have data on the numbers of salvaging, repair or chop shops, we believe many are small businesses.

Finally, the new tire fuel efficiency information program under 49 U.S.C. 32304A may affect a number of entities. We note that there are 28 tire manufacturers, none of which is a small business. There are estimated to be over 60,000 tire dealers and retailers; though we do not have exact estimates, we believe a substantial number are small businesses.

As noted throughout this preamble, this final rule on civil penalties increases the maximum penalty amounts that the Agency could obtain for certain violations of provisions related to school bus safety, bumper standards, certain consumer information, odometer tampering and disclosure, and vehicle theft prevention. It also codifies the penalty provisions set out in 49 U.S.C. 32308(c). This final rule does not set the amount of penalties for any particular violation or series of violations. Under the statutes for motor vehicle safety/school buses, consumer information, and vehicle theft prevention, the penalty provisions require the agency to take into account the size of a business when determining the appropriate penalty in an individual case. *See* 49 U.S.C. 30165(c) (school bus safety); 49 U.S.C. 32308(b)(3) (consumer information); 49 U.S.C. 33115(a)(3) (vehicle theft prevention). The statute for odometers does not directly address small business size as a consideration, but does require consideration of "any effect on the ability to continue doing business."49 U.S.C. 32709(a)(3)(B). The agency would consider the size of the business in such a calculation. While the bumper standards penalty provision does not specifically require the agency to consider the size of the business, the agency would consider business size under its civil penalty policy when determining the appropriate civil penalty amount. *See* 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (SBREFA)).

The penalty adjustments in this final rule do not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Because this regulation does not establish penalty amounts, this final rule will not have a significant economic impact on small businesses.

Small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this final rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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, 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 officials early in the process of developing the regulation.

This 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. Thus, the requirements of Section 6 of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law No. 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

■ In consideration of the foregoing, 49 CFR Part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. Revise the authority citation for 49 CFR Part 578 to read as follows:

Authority: Pub. L. No. 101–410, Pub. L. No. 104–134, 49 U.S.C. 30165, 30170, 30505, 32304A, 32308, 32309, 32507, 32709, 32710, 32912, and 33115 as amended; delegation of authority at 49 CFR 1.50.

■ 2. In § 578.6, revise paragraphs (a)(2)(ii), (c)(2), (d), (f)(1), (g)(1) and (g)(2), to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) * * *

(2) * * *

(ii) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than $11,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph for a related series of violations is $16,650,000.

* * * * *

(c) * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is $1,175,000.

(d) *Consumer information*—(1) *Crashworthiness and damage susceptibility.* A person that violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is $575,000.

(2) *Consumer tire information.* Any person who fails to comply with the national tire fuel efficiency program under 49 U.S.C. 32304A is liable to the United States Government for a civil penalty of not more than $50,000 for each violation.

* * * * *

(f) * * *

(1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than $3,200 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is $140,000.

* * * * *

(g) * * *

(1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under this paragraph for a related series of violations is $350,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than $140,000 a day for each violation.

* * * * *

Issued on: January 26, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–1957 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA–2009–0120; Notice 2]

RIN 2127–AK67

Requirements and Procedures for Consumer Assistance To Recycle and Save Program

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Consumer Assistance to Recycle and Save (CARS) program, published on July 29, 2009 in the **Federal Register** under the CARS Act. The rule change allows disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle traded in under the CARS program. This additional time will allow the public to benefit from the availability of lower cost used vehicle parts from vehicles traded in under the CARS program and will provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding.

DATES: This final rule is effective February 2, 2010. *Petitions:* If you wish to petition for reconsideration of this rule, your petition must be received by March 19, 2010.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the public docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/search/footer/privacyanduse.jsp*.

FOR FURTHER INFORMATION CONTACT: For questions, you may call David Jasinski, NHTSA Office of Chief Counsel, at (202) 366–5552.

SUPPLEMENTARY INFORMATION:

Current Rule and Notice of Proposed Rulemaking

This final rule amends the regulations implementing the Consumer Assistance to Recycle and Save (CARS) program, published on July 29, 2009 in the **Federal Register** (74 FR 37878) under the CARS Act (Pub. L. 111–32). Those rules were amended by final rules published on August 5, 2009 (74 FR 38974), and September 28, 2009 (74 FR 49338).

On November 27, 2009, NHTSA published, in the **Federal Register**, a notice of proposed rulemaking (November 27 NPRM) (74 FR 62275). The November 27 NPRM proposed a rule change that would allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle traded in under the CARS program. The additional time would allow the public to benefit from the availability of lower cost, used vehicle parts from CARS trade-in vehicles and would provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding, thereby providing additional economic benefit from the CARS program.

Section 1302(c)(2) of the CARS Act grants the agency discretion to determine the appropriate time period by which a disposal facility must crush a vehicle. The rule currently requires a disposal facility that receives a vehicle traded in under the CARS program to crush or shred the vehicle within 180 days of receipt of the vehicle. 49 CFR 599.401(a)(3). After consulting with representatives of disposal facilities, the agency determined that 180 days was an appropriate amount of time to allow a disposal facility to possess a car prior to crushing or shredding. This time period was based upon an estimate that 250,000 vehicles would be traded in under the CARS program and that the program's duration would be four months.

Due to the enormous popularity of the CARS program, the initial $1 billion in available funds were quickly depleted and, on August 7, 2009, Congress provided the CARS program with an additional $2 billion (Pub. L. 111–47). On August 25, 2009, approximately one month after the CARS program began, the agency stopped accepting new submissions because the additional funds were also depleted. By that time, nearly 700,000 new vehicles had been sold under the CARS program.

Shortly after CARS program transactions ceased and the majority of the dealers' transactions were reimbursed by NHTSA, a representative of disposal facilities requested a meeting with NHTSA officials to discuss the possibility of extending the 180-day time period for crushing or shredding a trade-in vehicle. Although disposal facilities initially expected to receive 250,000 CARS trade-in vehicles spread out over four months, disposal facilities actually received nearly 700,000 CARS trade-in vehicles. Further, the majority of the CARS trade-in vehicles were received within less than one month.

At a September 29, 2009, meeting with disposal facility representatives,[1] agency officials learned that some disposal facilities were experiencing substantial difficulty processing all of the CARS trade-in vehicles that were purchased from dealers or salvage auctions and that many disposal facilities anticipated significant difficulty in meeting the 180-day deadline to crush and shred these vehicles. The representatives also noted that the processing problems made it difficult for facilities to effectively inventory and sell parts from these vehicles, as authorized by the CARS Act. The disposal facilities suggested that, if they were able to hold a vehicle for more than 180 days prior to crushing or shredding, then consumers would have the benefit of cheaper used vehicle parts. The disposal facility representatives suggested that one year (an additional 180 days) would be a suitable time to ensure that the public received the maximum benefit from used vehicle parts while simultaneously ensuring that the vehicles are crushed or shredded within a reasonable time frame.

In the November 27 NPRM, the agency balanced the concerns of the disposal facilities and the public's interest in having access to cheaper used vehicle parts with two considerations that weighed against allowing more time to crush or shred trade-in vehicles. First, and most importantly, the agency was concerned about possible fraud. The CARS Act contains an explicit Congressional instruction to take measures to prevent fraud and the statute's clear environmental objective is to ensure that the fuel inefficient trade-in vehicles are never again used on the highway. The risk of fraud related to extending the deadline for crushing or shredding vehicles is mitigated substantially by the requirement that dealers disable the vehicles' engines within seven days after receipt of payment for the transaction and that vehicles be flagged by disposal facilities in the National Motor Vehicle Title Information System (NMVTIS) as scrap vehicles within seven days of receipt. Nevertheless, the risk of a vehicle returning to the highway is not fully eliminated until the vehicle is crushed or shredded.

The agency was also concerned about the additional administrative burden that would result from extending the deadline for crushing or shredding vehicles. The agency is committed to enforcing the requirements of the CARS program, including the requirements that vehicles are not transferred prior to crushing or shredding, vehicles' engine blocks are not sold, and vehicles are crushed or shredded on site. The longer disposal facilities are allowed to keep vehicles on their lots prior to crushing, the longer the agency must devote resources to ensuring that disposal facilities comply with the requirements of the CARS program.

After considering the relevant interests, the agency proposed to amend section 599.401(a)(3) to allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle. The agency stated that the 90 additional days struck an appropriate balance between the public benefit of having cheaper used vehicle parts from the vehicles traded in under the CARS program and the interest in minimizing fraud and the administrative burdens on the agency.

As part of the certification forms currently required under section 599.400 and Appendix E, a disposal facility must certify that a CARS program trade-in vehicle will be crushed or shredded within 180 days after receipt of the vehicle. Because NHTSA had already received the majority of the 700,000 Disposal Facility Certification Forms, it would be unnecessarily burdensome on both NHTSA and disposal facilities to require disposal facilities to submit new forms to NHTSA. Instead, NHTSA stated its intent to treat the certifications on the forms already submitted as if they required disposal facilities to crush or shred a vehicle within 270 days of receipt. NHTSA also proposed adding language to section 599.401 to formalize the de facto change to the existing certification.

[1] A memorandum summarizing the meeting has been placed in the docket. (Docket No. NHTSA–2009–0120–0020).

Summary of Comments Received and Agency's Response

NHTSA has considered all comments received by December 31, 2009. As of that date, NHTSA had received 84 comments on the proposed rule change. The overwhelming majority of comments received were from disposal facilities. NHTSA also received comments from a State automobile dealers association, State automobile recyclers associations, a national automobile recyclers association, and a national law enforcement support organization.

Of the 84 comments received, 79 commenters expressed full support for the proposal to extend by 90 days the deadline for disposal facilities to crush or shred a CARS trade-in vehicle. The commenters cited many reasons for supporting the rule. The most often cited reason for favoring the proposed extension was the economic benefit of having cheaper used vehicle parts available to consumers. Commenters also cited the environmental benefits of the proposed rule associated with more re-use of used vehicle parts. Commenters also noted, as did NHTSA in the November 27 NPRM, that the original rule was based on the expectation that disposal facilities would receive 250,000 vehicles over four months. Instead, disposal facilities received nearly 700,000 vehicles within less than one month. Many commenters noted that they hired more workers to process CARS trade-in vehicles. Finally, commenters supporting the proposed rule change also observed that winter weather conditions made the transport of mobile crushers to some parts of the country difficult.

Four commenters did not fully support the proposed rule changes, expressing a preference for a longer extension of time for crushing or shredding CARS trade-in vehicles. The New Hampshire Automobile Dealers Association and Barger Auto Parts simply expressed a preference for having a full year to crush or shred a vehicle, but both stated that they supported the proposed 90-day extension. Motor Pro Auto Recycling stated that, because the funding for the CARS program was tripled, it would be unfair not to at least double the amount of time required for crushing or shredding. One individual observed that, in North Dakota, the winter climate makes it difficult to move vehicles in disposal facilities and that it would be ideal if facilities had until the end of the summer of 2010 to crush or shred vehicles.

We have made no changes to the proposed rule based on these comments. Although we considered the reasons offered by the commenters in support of a longer period by which to crush or shred vehicles, nothing has altered the balance of interests discussed above and in the November 27 NPRM. The disposal facilities' economic interests and the public benefits must be balanced against the risk of fraud and the administrative burden of maintaining the CARS program. After consideration of all comments, the agency still believes that the 90-day extension strikes the appropriate balance.

One commenter, Howard Nusbaum, Administrator of the National Salvage Vehicle Reporting Program, expressed support for the 90-day extension as a reasoned compromise between the interests of the disposal facilities and the agency. However, Mr. Nusbaum offered two additional comments related to the involvement of salvage auctions in the disposal process. First, Mr. Nusbaum noted that there is no set time period by which salvage auctions must transfer CARS trade-in vehicles to disposal facilities. Mr. Nusbaum observed that the CARS program is, therefore, open-ended.

Second, Mr. Nusbaum noted that NHTSA does not know what is happening to a CARS trade-in vehicle between the time it is transferred from a dealer to a salvage auction and the time it is transferred from the salvage auction to the disposal facility. Mr. Nusbaum also observed that a salvage auction cannot submit a disposal facility's certification form prior to selling the vehicle, leaving the enforcement of a disposal facility's eligibility to participate in a salvage auction up to the auction. According to Mr. Nusbaum, the current rules create a gap in the audit trail that introduces an opportunity for fraud by making it difficult for NHTSA to know that a salvage auction is properly disposing of a vehicle. Mr. Nusbaum recommends setting a final end date for the CARS program, which would limit the amount of time salvage auctions could hold CARS trade-in vehicles.

NHTSA has made no changes to the proposed rule based on this comment. Mr. Nusbaum expressed support for the proposed 90-day extension. The remainder of his comments relate to issues that are not within the scope of the November 27 NPRM. Therefore, we will not address them in this rulemaking document. However, NHTSA will treat Mr. Nusbaum's comments as a petition for rulemaking and will address them in a forthcoming notice to be published in the **Federal Register**.

For the reasons discussed above and in the November 27 NPRM, and having considered all of the comments received, NHTSA will adopt without change the amendments proposed in the November 27 NPRM.

Statutory Basis for This Action

This proposed rule would make amendments to regulations implementing the Consumer Assistance to Recycle and Save Act (CARS Act) (Pub. L. 111–32), which directs the Secretary to issue regulations implementing the Act.

APA Requirements and Effective Date

Section 1302(d) of the CARS Act provides that "notwithstanding" the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate final regulations to implement the Program not later than 30 days after the date of the enactment of the CARS Act. The agency considered public notice and comment impracticable and used the statutory authority in the CARS Act to issue the CARS program regulations and two subsequent amendments.

In the interest of openness and public participation, the agency determined that a 20-day public notice and comment period was warranted in the November 27 NPRM. Because the transaction submission portal was opened on July 27, 2009, the first vehicles would have been received by disposal facilities shortly thereafter. Therefore, the deadline for crushing or shredding some vehicles traded in under the CARS program would be as soon as approximately February 1, 2010 under the current regulations.

Although the agency recognizes that some vehicles traded in under the CARS program have already been crushed or shredded voluntarily well in advance of the 180 day deadline, basic fairness requires that all vehicles traded in under the CARS program and not yet crushed or shredded be subject to the same deadline for crushing or shredding.

Therefore, to ensure consistency, this final rule extending the deadline for crushing or shredding a trade in vehicle is effective immediately upon publication in the **Federal Register**. The 90-day extension from 180 days to 270 days would apply to all vehicles not yet crushed or shredded pursuant to the CARS program.

Regulatory Analyses and Notices

We have considered the impact of this rulemaking action under Executive

Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory Planning and Review." This action is limited to the proposed extension contained herein, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

The agency has discussed the relevant requirements of the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the National Environmental Policy Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act in the July 29, 2009 final rule cited above. This rule does not change the findings in those analyses.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

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

List of Subjects in 49 CFR Part 599

Fuel economy, Motor vehicle safety.

■ In consideration of the foregoing, NHTSA hereby amends 49 CFR part 599 as set forth below.

PART 599—REQUIREMENTS AND PROCEDURES FOR CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT PROGRAM

■ 1. The authority citation for Part 599 continues to read as follows:

Authority: 49 U.S.C. 32901, Notes; delegation of authority at 49 CFR 1.50.

■ 2. Section 599.401 is amended by revising paragraph (a)(3) and adding paragraph (d) to read as follows:

§ 599.401 Requirements and limitations for disposal facilities that receive trade-in vehicles under the CARS program.

(a) * * *

(3) Crush or shred the trade-in vehicle onsite, including the engine block and the drive train (unless with respect to the drive train, the transmission, drive shaft, and rear end are sold separately), using its own machinery or a mobile crusher, within 270 days after receipt of the vehicle from the dealer or salvage auction;

* * * * *

(d) A completed Disposal Facility Certification Form (Appendix E to this part) for an individual transaction, which includes a certification by the disposal facility that the trade-in vehicle will be crushed or shredded within 180 days of receipt by the disposal facility, is deemed to be amended to include an extension of time such that the trade-in vehicle will be crushed or shredded within 270 days of receipt by the disposal facility.

Issued on: January 28, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–2194 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XU15

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet (18.3 Meters) Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2010 Pacific cod total allowable catch (TAC) specified for pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 28, 2010, through 1200 hrs, A.l.t., September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 Pacific cod TAC allocated to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI is 6,422 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2010) and inseason adjustment (74 FR 68717, December 29, 2009).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season directed fishing allowance of the 2010 Pacific cod TAC allocated to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels greater than or equal to 60 ft (18.3 m) LOA using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent,

relevant data only became available as of January 26, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 27, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–2156 Filed 2–28–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 75, No. 21

Tuesday, February 2, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

RIN 1545–BJ04

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2509, 2520 and 2550

RIN 1210–AB33

Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans

AGENCY: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Request for information.

SUMMARY: The Department of Labor and the Department of the Treasury (the "Agencies") are currently reviewing the rules under the Employee Retirement Income Security Act (ERISA) and the plan qualification rules under the Internal Revenue Code (Code) to determine whether, and, if so, how, the Agencies could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. The purpose of this request for information is to solicit views, suggestions and comments from plan participants, employers and other plan sponsors, plan service providers, and members of the financial community, as well as the general public, on this important issue.

DATES: Comments must be submitted on or before May 3, 2010.

ADDRESSES: You may submit written comments to any of the addresses specified below. Any comment that is submitted to either Agency will be shared with the other Agency. Please do not submit duplicates.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB33, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: e-ORI@dol.gov.* Include RIN 1210–AB33 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Lifetime Income RFI.

All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

Internal Revenue Service. Comments to the IRS, identified by REG–148681–09, by one of the following methods:

- *Mail:* CC:PA:LPD:PR (REG–148681–09), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148681–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (IRS REG–148681–09).

All submissions to the IRS will be open to public inspection and copying in Room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward or Luisa Grillo-Chope, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500 or Peter J. Marks, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service, Department of the Treasury, at (202) 622–6090. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

The Agencies are issuing this request for information in furtherance of their efforts to promote retirement security for American workers. The Secretary of Labor's overarching vision for the work of the Department of Labor is to advance good jobs for everyone. Good jobs provide wages that support families, and rise with time and productivity. Good jobs also provide safe and healthy working conditions. Finally, good jobs, no matter the type or income level, provide retirement security. Consistent with these objectives, the Department of the Treasury strives to promote economic growth, stability, and economic security, including retirement security, for American workers, and oversees the federal tax expenditures for retirement savings and security.

Retirement security is provided to many workers through defined benefit pension plans sponsored by their employers. Employers that sponsor defined benefit pension plans are responsible for making contributions that are sufficient for funding the promised benefit, investing and managing plan assets (as fiduciaries), and bearing investment risks because the employer, as plan sponsor, is required to make enough contributions to the plan to fund benefit payments during retirement. In addition, when the defined benefit pension plan pays (or offers to pay) a lifetime annuity, it provides (or offers to provide) protection against the risk of outliving one's assets in retirement (longevity risk).

Department of Labor data, however, show a trend away from sponsorship of defined benefit plans, toward sponsorship of defined contribution plans. The number of active participants in defined benefit plans fell from about 27 million in 1975 to approximately 20 million in 2006, whereas the number of active participants in defined

contribution plans increased from about 11 million in 1975 to 66 million in 2006.[1]

While defined contribution plans have some strengths relative to defined benefit plans, participants in defined contribution plans bear the investment risk because there is no promise by the employer as to the adequacy of the account balance that will be available or the income stream that can be provided after retirement. Moreover, while defined benefit plans are generally required to make annuities available to participants at retirement, 401(k) and other defined contribution plans typically make only lump sums available. Furthermore, many traditional defined benefit plans have converted to lump sum-based hybrid plans, such as cash balance or pension equity plans, and many others have simply added lump sum options. Accordingly, with the continuing trend away from traditional defined benefit plans to 401(k) defined contribution plans and hybrid plans, including the associated trend away from annuities toward lump sum distributions, employees are not only increasingly responsible for the adequacy of their savings at the time of retirement, but also for ensuring that their savings last throughout their retirement years and, in many cases, the remaining lifetimes of their spouses and dependents.

In recognition of the foregoing, the Agencies are considering whether it would be appropriate for them to take future steps to facilitate access to, and use of, lifetime income or other arrangements designed to provide a stream of income after retirement. This includes a review of existing regulations and other guidance and consideration of whether any such steps would enhance the retirement security of participants in retirement plans, taking into account potential effects on and tradeoffs involving other policy objectives. To that end, this request for information (RFI) sets forth a number of questions that are generally organized into categories under which the Agencies may be able to provide additional guidance if appropriate. This RFI also includes a number of questions pertaining to the economic impact of rulemaking, and to impediments beyond the statutory requirements, if any. Commenters are not limited to these questions and are invited to respond to all or any subset of the questions, but the Agencies request that commenters relate their responses to specific questions when possible.

Similar considerations arise when participants decide how to take retirement distributions from an IRA (including an IRA that holds rollover distributions from qualified retirement plans). Further, participants often elect to take lump sum distributions where they are available from defined benefit plans, which may also be rolled over to an IRA. Commenters are encouraged to address these contexts as well, identifying the particular types of arrangements to which their comments relate.

All comments will be considered, and comments supported by references to empirical data will be particularly appreciated. In considering the questions set forth in this RFI, commenters are encouraged to take into account the following studies and commentary:

2009 GAO Report

In July 2009, the Government Accountability Office (GAO) published Report GAO–09–642 entitled, "Private Pensions: Alternative Approaches Could Address Retirement Risks Faced by Workers but Pose Trade-offs." The GAO found that workers face a number of risks in both accumulating and preserving pension benefits. The GAO found, in relevant part, that:

> Workers that receive lump-sum distributions, in particular, face several risks related to how they withdraw, or "draw down" their benefits, including:
> • Longevity risk—retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
> • Investment risk—assets in which pension savings are invested may decline in value.
> • Inflation risk—inflation may diminish the purchasing power of a retiree's pension benefits.

Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at *http://www.gao.gov/new.items/d09642.pdf.*

2007 GAO Report

In November 2007, the GAO published Report GAO–08–8 entitled, "Private Pensions: Low Defined Contribution Plan Savings May Pose Challenges to Retirement Security, Especially for Many Low-Income Workers." The GAO concluded that only 36 percent of workers participated in a current defined contribution plan in 2004, with the total median account balance (for workers with a current or former DC plan, including rolled-over retirement funds) of only $22,800. The median account balance was $50,000 for workers age 55 to 64 and $60,600 for those age 60 to 64. The report is relevant to this RFI because the need for lifetime income may be most acute among workers who have small but significant retirement savings balances. Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at *www.gao.gov/new.items/d088.pdf.*

2003 GAO Report

In July 2003, the General Accounting Office (GAO) published Report GAO–03–810 entitled, "Private Pensions: Participants Need Information on Risks They Face in Managing Pension Assets at and During Retirement." The GAO concluded that:

> The decreasing number of employer-sponsored pension plans that offer only life annuities at retirement and the increasing percentage of retiring participants who choose benefit payouts other than annuities suggest that, in the future, fewer retirees may receive pension income guaranteed to last throughout retirement. The growth in the number of DC plans, along with the increasing availability of lump sums from DB plans, means that retirees will face greater responsibility and choices for managing their pension and other assets at and throughout retirement. Depending on their choices, retirees could be at greater risk of outliving their pension and retirement savings plan assets or ultimately having insufficient income to maintain their standard of living through their retirement years.
>
> Such risks underscore the need for providing enhanced information and education to participants about their available payout options, the issues they may face in managing retirement assets, and how different options may mitigate, or increase, these risks. As part of their responsibility, retirees will have to weigh certain pros and cons of different ways to manage and preserve pension assets. Currently, the notices that plan sponsors must furnish to retiring participants are not sufficient to help them choose payout options that suit their individual circumstances, while assuring adequate levels of such income to the extent possible. Our expert panel suggested that providing several types of information, such as on risks that could affect retirement income security, could help retiring participants make more informed decisions regarding how they balance income and expenditures during retirement.

This report, which did not recommend executive branch action, nonetheless recommended that the Congress may wish to consider

[1] The number of active participants in 1975 and 2006 are not directly comparable because of adjustments in the definition of a participant. Please see a detailed explanation of the adjustment in U.S. Department of Labor, Employee Benefits Security Administration, "Private Pension Plan Bulletin Historical Tables and Graphs," February 2009, p. 1–9. See *www.dol.gov/ebsa/pdf/1975-2006historicaltables.pdf.*

amending ERISA to require plan sponsors to provide participants with a notice on risks that individuals face in managing their income and expenditures at and during retirement. Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at *http://www.gao.gov/new.items/d03810.pdf.*

ERISA Advisory Council Reports

In 2007, the ERISA Advisory Council's Working Group on Financial Literacy of Plan Participants and the Role of the Employer undertook a study of numerous issues relating to increasing the financial decision-making skills of plan participants. The Working Group issued a report containing, among others, the following recommendation: "The Working Group recommends that the Department of Labor expand the reach of [Interpretive Bulletin 96–1] by changing and updating it. As innovation continues in the financial marketplace, educational initiatives will need to address items heretofore not necessarily addressed in 96–1. 96–1 needs to address information, education, and advice in the de-accumulation stage as well as the accumulation phase. Further, as innovation continues in this area, 96–1 needs to be continually updated." Commenters are encouraged to consider this report in reviewing the issues identified in this RFI. This report may be accessed at *http://www.dol.gov/ebsa/publications/AC-1107a.html.*

In 2008, the ERISA Advisory Council's Working Group on the Spend Down of Defined Contribution Assets at Retirement undertook a study on the types of guidance that could help plan sponsors and plan participants make better informed decisions regarding plan investment and insurance vehicles that provide periodic or lifetime distributions. The Working Group issued a report containing, in relevant part, the following recommendations: (1) Expand the reach of Interpretive Bulletin 96–1 by adapting it to the spend down phase; (2) clarify that products which are eligible qualified default investment alternatives while participants are actively participating in the plan will continue to so qualify; (3) encourage, authorize, endorse and facilitate plan communications that use retirement income replacement formulas based on final pay and other reasonable assumptions in employee benefit statements on an individual participant basis; and (4) enhance plan sponsor and participant education by publishing and regularly updating information about the distribution options available to participants in defined contribution plans. Commenters are encouraged to consider this report in reviewing the issues identified in this RFI. This report may be accessed at *www.dol.gov/ebsa/publications/2008ACreport3.html.*

B. Request for Information

The purpose of this notice is to solicit views, suggestions and comments from plan participants, plan sponsors, plan service providers and members of the financial community, as well as the general public, to assist the Agencies in evaluating what steps, if any, they could or should take, by regulation or otherwise, to enhance the retirement security of participants in employer-sponsored retirement plans and IRAs by facilitating access to, and use of, lifetime income or other arrangements designed to provide a stream of lifetime income after retirement. To facilitate consideration of the issues, the Agencies have set forth below a number of matters and specific questions with respect to which views, suggestions, comments and information are requested. In addition to addressing any or all of the matters and questions referred to below, interested persons are encouraged to address any other matters they believe to be germane to the Agencies' consideration of lifetime annuities and similar lifetime income issues, particularly as they relate to defined contribution plans and defined benefit plans that distribute benefits as lump sums.

General

1. From the standpoint of plan participants, what are the advantages and disadvantages for participants of receiving some or all of their benefits in the form of lifetime payments?

2. Currently the vast majority of individuals who have the option of receiving a lump sum distribution or ad hoc periodic payments from their retirement plan or IRA choose to do so and do not select a lifetime income option. What explains the low usage rate of lifetime income arrangements? Is it the result of a market failure or other factors (*e.g.,* cost, complexity of products, adverse selection, poor decision-making by consumers, desire for flexibility to respond to unexpected financial needs, counterparty risk of seller insolvency, etc.)? Are there steps that the Agencies could or should take to overcome at least some of the concerns that keep plan participants from requesting or electing lifetime income?

3. What types of lifetime income are currently available to participants directly from plans (in-plan options), such as payments from trust assets held under a defined benefit plan and annuity payments from insurance contracts held under a defined contribution or defined benefit plan?

4. To what extent are the lifetime income options referenced in question 3 provided at retirement or other termination of employment as opposed to being offered incrementally during the accumulation phase, as contributions are made? How are such incremental or accumulating annuity arrangements structured?

5. To what extent are 401(k) and other defined contribution plan sponsors using employer matching contributions or employer nonelective contributions to fund lifetime income? To what extent are participants offered a choice regarding such use of employer contributions, including by default or otherwise?

6. What types of lifetime income or other arrangements designed to provide a stream of income after retirement are available to individuals who have already received distributions from their plans (out-of-plan options), such as IRA products, and how are such arrangements being structured (fixed, inflation adjusted, or other variable, immediate or deferred, etc.)? Are there annuity products under which plan accumulations can be rolled over to an individual retirement annuity of the same issuer to retain the annuity purchase rights that were available under the plan?

7. What product features have a significant impact on the cost of providing lifetime income or other arrangements designed to provide a stream of income after retirement, such as features that provide participants with the option of lifetime payments, while retaining the flexibility to accelerate distributions if needed?

8. What are the advantages and disadvantages for participants of selecting lifetime income payments through a plan (in-plan option) as opposed to outside a plan (*e.g.,* after a distribution or rollover)?

9. What are the advantages and disadvantages from the standpoint of the plan sponsor of providing an in-plan option for lifetime income as opposed to leaving to participants the task of securing a lifetime income vehicle after receiving a plan distribution?

10. How commonly do plan sponsors offer participants the explicit choice of using a portion of their account balances to purchase a lifetime annuity, while leaving the rest in the plan or taking it as a lump sum distribution or a series of ad hoc distributions? Why do some

plan sponsors make this partial annuity option available while others do not? Would expanded offering of such partial annuity options—or particular ways of presenting or framing such choices to participants—be desirable and would this likely make a difference in whether participants select a lifetime annuity option?

11. Various "behavioral" strategies for encouraging greater use of lifetime income have been implemented or suggested based on evidence or assumptions concerning common participant behavior patterns and motivations. These strategies have included the use of default or automatic arrangements (similar to automatic enrollment in 401(k) plans) and a focus on other ways in which choices are structured or presented to participants, including efforts to mitigate "all or nothing" choices by offering lifetime income on a partial, gradual, or trial basis and exploring different ways to explain its advantages and disadvantages. To what extent are these or other behavioral strategies being used or viewed as promising means of encouraging more lifetime income? Can or should the 401(k) rules, other plan qualification rules, or ERISA rules be modified, or their application clarified, to facilitate the use of behavioral strategies in this context?

12. How should participants determine what portion (if any) of their account balance to annuitize? Should that portion be based on basic or necessary expenses in retirement?

13. Should some form of lifetime income distribution option be required for defined contribution plans (in addition to money purchase pension plans)? If so, should that option be the default distribution option, and should it apply to the entire account balance? To what extent would such a requirement encourage or discourage plan sponsorship?

14. What are the impediments to plan sponsors' including lifetime income options in their plans, *e.g.,* 401(k) or other qualification rules, other federal or state laws, cost, potential liability, concern about counterparty risk, complexity of products, lack of participant demand?

15. What are the advantages and disadvantages of approaches that combine annuities with other products (reverse mortgages, long term care insurance), and how prevalent are these combined products in the marketplace?

16. Are there differences across demographic groups (for example men vs. women) that should be considered and reflected in any retirement security program? Can adjustments for any differences be made within existing statutory authority?

Participant Education

The Department of Labor issued Interpretive Bulletin 96–1 (29 CFR 2509.96–1) to clarify that the provision of investment education, as described in the Bulletin, will not be considered the provision of "investment advice," which would give rise to fiduciary status and potential liability under ERISA for plan participants' and beneficiaries' investment decisions.

17. What information (*e.g.,* fees, risks, etc.) do plan participants need to make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement? When and how (*i.e.,* in what form) should it be provided? What information currently is provided to participants, who typically provides it, and when and how is it provided to them?

18. Is there a need for guidance, regulatory or otherwise, regarding the extent to which plan assets can be used to pay for providing information to help participants make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement, either via an in-plan or out-of plan option?

19. What specific legal concerns do plan sponsors have about educating participants as to the advantages and disadvantages of lifetime income or other arrangements designed to provide a stream of income after retirement? What actions, regulatory or otherwise, could the Agencies take to address such concerns?

20. To what extent should plans be encouraged to provide or promote education about the advantages and disadvantages of lifetime annuities or similar lifetime income products, and what guidance would be helpful to accomplish this?

Disclosing the Income Stream That Can Be Provided From an Account Balance

ERISA section 105 requires defined contribution plans to furnish to each participant an individual benefit statement, at least annually, that includes the participant's "accrued benefits," *i.e.,* the individual's account balance.

21. Should an individual benefit statement present the participant's accrued benefits as a lifetime income stream of payments in addition to presenting the benefits as an account balance?

22. If the answer to question 21 is yes, how should a lifetime stream of income payments be expressed on the benefit statement? For example, should payments be expressed as if they are to begin immediately or at specified retirement ages? Should benefit amounts be projected to a future retirement age based on the assumption of continued contributions? Should lifetime income payments be expressed in the form of monthly or annual payments? Should lifetime income payments of a married participant be expressed as a single-life annuity payable to the participant or a joint and survivor-type annuity, or both?

23. If the answer to question 21 is yes, what actuarial or other assumptions (*e.g.,* mortality, interest, etc.) would be needed in order to state accrued benefits as a lifetime stream of payments? If benefit payments are to commence at some date in the future, what interest rates (*e.g.,* deferred insurance annuity rates) and other assumptions should be applied? Should an expense load be reflected? Are there any authoritative tools or sources (online or otherwise) that plans should or could use for conversion purposes, or would the plan need to hire an actuary? Should caveats be required so that participants understand that lifetime income payments are merely estimates for illustrative purposes? Should the assumptions underlying the presentation of accrued benefits as a lifetime income stream of payments be disclosed to participants? Should the assumptions used to convert accounts into a lifetime stream of income payments be dictated by regulation, or should the Department issue assumptions that plan sponsors could rely upon as safe harbors?

24. Should an individual benefit statement include an income replacement ratio (*e.g.,* the percentage of working income an individual would need to maintain his or her pre-retirement standard of living)? If so, what methodology should be used to establish such a ratio, such as pre-retirement and post-retirement inflation assumptions, and what are the impediments for plans to present the ratio in a meaningful way to participants on an individualized basis?

401(k) and Other Plan Qualification Rules

Income Tax Regulations that apply specifically to lifetime annuities include: 26 CFR 1.401(a)–11, 26 CFR 1.401(a)–20, 26 CFR 1.401(a)(9)–1 through 26 CFR 1.401(a)(9)–9, 26 CFR 1.417(a)(3)–1, and 26 CFR 1.417(e)–1.

25. How do the 401(k) or other plan qualification rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives?

26. Could or should any changes be made to the rules relating to qualified joint and survivor annuities and spousal consents to encourage the use of lifetime income without compromising spousal protections?

27. Should further guidance clarify the application of the qualified joint and survivor annuity rules or other plan qualification rules to arrangements in which deferred in-plan insurance annuities accumulate over time with increasing plan contributions and earnings?

28. How do the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives? In particular, how are deferred annuities that begin at an advanced age (sometimes referred to as longevity insurance) affected by these rules? Are there changes to the rules that could or should be considered to encourage such arrangements?

29. Are employers that sponsor both defined benefit and defined contribution plans allowing participants to use their defined contribution plan lump sum payouts to "purchase" lifetime income from the defined benefit plan? Could or should any actions be taken to facilitate such arrangements? Should plans be encouraged to permit retirees who previously took lump sums to be given the option of rolling it back to their former employer's plan in order to receive annuity or other lifetime benefits?

Selection of Annuity Providers

The Department of Labor's regulation 29 CFR 2550.404a–4 contains a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from defined contribution plans.

30. To what extent do fiduciaries currently use the safe harbor under 29 CFR 2550.404a–4 when selecting annuity providers for the purpose of making benefit distributions?

31. To what extent could or should the Department of Labor make changes to the safe harbor under 29 CFR 2550.404a–4 to increase its usage without compromising important participant protections? What are those changes and why should they be made?

32. To what extent could or should the safe harbor under 29 CFR 2550.404a–4 be extended beyond distribution annuities to cover other lifetime annuities or similar lifetime income products? To which products should or could the safe harbor be extended?

ERISA Section 404(c)

ERISA section 404(c) and 29 CFR 2550.404c–1 provide defined contribution plan fiduciaries with limited relief from the fiduciary responsibility provisions of ERISA where a participant or beneficiary exercises control over the assets in his or her account.

33. To what extent are fixed deferred lifetime annuities (*i.e.,* incremental or accumulating annuity arrangements) or similar lifetime income products currently used as investment alternatives under ERISA 404(c) plans? Are they typically used as core investment alternatives (alternatives intended to satisfy the broad range of investments requirement in 29 CFR 2550.404c–1) or non-core investment alternatives? What are the advantages and disadvantages of such products to participants? What information typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products?

34. To what extent do ERISA 404(c) plans currently provide lifetime income through variable annuity contracts or similar lifetime income products? What are the advantages and disadvantages of such products to participants? What information about the annuity feature typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products?

Qualified Default Investment Alternatives

ERISA section 404(c)(5) provides that, for purposes of ERISA section 404(c)(1), a participant in a defined contribution plan will be treated as exercising control over the assets in his or her account with respect to the amount of contributions and earnings if, in the absence of an investment election by the participant, such assets are invested by the plan in accordance with regulations of the Department of Labor. The Department of Labor's regulation 29 CFR 2550.404c–5 describes the types of investment products that are qualified default investment alternatives under ERISA section 404(c)(5).

35. To what extent are plans using default investment alternatives that include guarantees or similar lifetime income features ancillary to the investment fund, product or model portfolio, such as a target maturity fund product that contains a guarantee of minimum lifetime income? What are the most common features currently in use? Are there actions, regulatory or otherwise, the Agencies could or should take to encourage use of these lifetime income features in connection with qualified default investment alternatives?

Comments Regarding Economic Analysis, Regulatory Flexibility Act, and Paperwork Reduction Act

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. For this purpose, the Agencies consider a small entity to be an employee benefit plan with fewer than 100 participants. The Paperwork Reduction Act (PRA) requires an estimate of how many "respondents" will be required to comply with any "collection of information" requirements contained in regulations and how much time and cost will be incurred as a result.

The Agencies in this section of the RFI are requesting comments that may contribute to any analyses that may eventually need to be performed under EO 12866, RFA, and PRA, both generally and with respect to specific areas identified in questions 36 through 39.

36. What are the costs and benefits to a plan sponsor of offering lifetime annuities or similar lifetime income products as an in-plan option? Please quantify if possible.

37. Are there unique costs to small plans that impede their ability to offer lifetime annuities or similar lifetime income products as an in-plan option to their participants? What special consideration, if any, is needed for these small entities?

38. Would making a lifetime annuity or other lifetime income product the default form of benefit payment have an impact on employee contribution rates? If so, in which direction and why?

39. For plans that offer lifetime annuities or similar lifetime income products, what percentage of eligible workers elect to annuitize at least some of their retirement assets and what percentage elect to annuitize all of their assets?

Signed at Washington, DC, this 27th day of January 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Signed at Washington, DC, this 27th day of January 2010.

Nancy J. Marks,

Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC, this 26th day of January 2010.

J. Mark Iwry,

Senior Advisor to the Secretary, Deputy Assistant Secretary for Retirement and Health Benefits, Department of the Treasury.

[FR Doc. 2010–2028 Filed 2–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2009–0201 (HM–208H)]

RIN 2137–AE47

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: PHMSA is proposing to adjust the statutorily-mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. PHMSA's proposal would provide that, for registration years beginning in 2010–2011, the annual fee to be paid by those registrants not qualifying as a small business or not-for-profit organization would increase from $975 (plus a $25 administrative fee) to $2,975 (plus a $25 administrative fee). The proposed fee increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at its authorized level of approximately $28,000,000.

DATES: Submit comments by March 4, 2010.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number PHMSA–2009–0201 by any of the following methods:

- *Fax:* 202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: Include the agency name and docket number PHMSA–2009–0201 (HM–208H) or Regulatory Identification Number (RIN) RIN 2137–AE47 for this rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Docket: You may review the public docket through the Internet at *http://www.regulations.gov* or in person at the Dockets Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366–4484, and Ms. Deborah Boothe or Mr. Steven Andrews, Office of Hazardous Materials Standards, PHMSA, (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1992 PHMSA has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and to fund the Hazardous Materials and Emergency Preparedness (HMEP) grants program and additional related activities. *See* 49 U.S.C. 5108(b), 5116, 5128(b). PHMSA may set the annual registration fee between a minimum of $250 and maximum of $3,000. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Since 2006, the annual registration fee has been set at $250 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $975 (plus a $25 processing fee) for all other registrants. *See* 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (*see* 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, we have been able to fully fund the obligation limit of $28,318, 000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110–116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to $1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010–2011 and following registration years and fully fund the current authorization and expected budget requests of $28.3 million for Fiscal Years beginning in 2010. This can be done by leaving the annual registration fee at $250 (plus a $25 processing fee) for those persons who are a small business or not-for-profit organization and increasing to $2,975 (plus a $25 processing fee) the annual fee paid by all other persons required to register.

II. HMEP Grants Program

A. Purpose and Achievements of the HMEP Grants Program

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to: (1) Develop, improve, and implement emergency plans; (2) train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; (3) determine flow patterns of hazardous materials within a state and between states; and (4) determine the need within a state for regional hazardous materials emergency response teams.

The HMEP grants program encourages the growth of the hazardous materials planning and training programs of state, local, and tribal governments by limiting the Federal funding to 80 percent of the cost a state or Indian tribe incurs to carry out the activity for which the grant is made. *See* 49 U.S.C. 5116(e).

HMEP grants supplement the amount already being provided by the state or Indian tribe. By accepting an HMEP grant, the state or tribe makes a commitment to maintain its previous level of support. *See* 49 U.S.C. 5116(a)(2)(A) and 5116(b)(2)(A).

Since 1993, PHMSA has awarded all states and territories and 45 Native American tribes planning and training grants totaling $203 million. These grants helped to:

- Train 2,420,000 hazardous materials responders;
- Conduct 9,282 commodity flow studies;
- Write or update more than 55,826 emergency plans;
- Conduct 13,372 emergency response exercises; and
- Assist 25,059 local emergency planning committees (LEPCs) or approximately 1,670 per year.

Since the beginning of the program, HMEP program funds have also supported the following related activities in the total amounts indicated:

- $3.4 million for the development and periodic updating of a national curriculum used to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, state, and local experts, include criteria for establishing training programs for emergency responders at five progressively more skilled levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- $2.6 million to monitor public sector emergency response planning and training for hazardous materials incidents, and to provide technical assistance to state or Indian tribe emergency response training and planning for hazardous materials incidents.
- $7.6 million for periodic updating and distribution of the North American Emergency Response Guidebook. This guidebook provides immediate information on initial response to hazardous materials incidents, and is distributed free of charge to the response community.
- $3.5 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

B. Funding of the HMEP Grants Program

An estimated 800,000 shipments of hazardous materials make their way through the national transportation system each day. It is impossible to predict when and where a hazardous materials incident may occur or what the nature of the incident may be. This potential threat requires state and local agencies to develop emergency plans and train emergency responders on the broadest possible scale.

The HMEP training grants are essential for providing adequate training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. There are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers. Due to the high turnover rates of emergency response personnel, there is a continuing need to train a considerable number of recently recruited responders at the most basic level.

In addition, training at more advanced levels is essential to ensure that emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The availability of funding for the HMEP grants program will encourage state, tribal, and local agencies to provide more advanced training.

The funding for HMEP grants will enable PHMSA to help meet previously unmet needs of state, local and tribal governments, and public and private trainers by providing for the following activities authorized by law:

- $21,800,000 for training and planning grants;
- A new $4,000,000 grant program for non-profit hazmat employee organizations to train hazmat instructors who will train hazmat employees;
- $1,000,000 for grants to support certain national organizations to train instructors to conduct hazardous materials response training programs, an increase of $750,000;
- $625,000 for revising, publishing, and distributing the North American Emergency Response Guidebook;
- $188,000 for continuing development of a national training curriculum; and
- $150,000 for monitoring and technical assistance;
- $555,000 for administrative support.

III. Summary of Proposal To Fund HMEP

A registration fee system should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor reflecting the differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and (3) ensure adequate funding for the HMEP grants program. PHMSA considered the following alternatives for maintaining the funds available for the HMEP grants program: (1) To increase the fee for all businesses offering for transportation or transporting the covered hazardous materials, and (2) to maintain the current fee for small businesses and not-for-profit organizations while adjusting the fee for larger businesses.

PHMSA believes adjusting the fee solely for larger, for-profit businesses is the best approach to meet the objectives listed above. Although there are exceptions, small businesses and not-for-profit organizations generally offer for transportation or transport fewer and smaller hazardous materials shipments as compared to larger companies. Raising the registration fee only for other-than-small businesses rather than for all businesses correlates the fee structure to the level of risk associated with shipments offered for transportation and transported by larger companies.

Moreover, increasing the registration fees only for other-than-small businesses will affect significantly fewer entities and will affect entities that can more easily absorb the increase. Presently, PHMSA has received approximately 41,000 registrations for each registration year. Small businesses and not-for-profit organizations make up 83%, or 34,025 of the registrants, while large businesses make up 17%, or 6,975, of the registrants.

Accordingly, PHMSA is proposing to increase the registration fees for persons other than small businesses from $975 (plus $25 processing fee) to $2,975 (plus $25 processing fee) for registration year 2010–2011 and following, in order to maintain the statutorily mandated goal of funding the HMEP grants program activities at approximately $28,000,000.

IV. Multi-Year Registrations

We allow a person to register for up to three years in one registration statement (49 CFR 107.612(c)). PHMSA has received approximately 2,100 advance registrations for the 2010–2011 registration year from other-than-small businesses that have paid the fee previously established for those years. Approximately 1,250 also included advance registrations for the 2011–2012 registration year. PHMSA applies fees according to the fee structure ultimately established by regulation for the registration year rather than according to the fee set at the time of payment.

Thus, if PHMSA adopts the increase in registration fees proposed in this NPRM, additional fees would be required for registrations paid in advance at the lower levels in effect at the time of payment. When PHMSA lowered the fees for all registrants in 2003, PHMSA provided more than 7,100 refunds amounting to over $2.3 million within the first year to registrants who had overpaid the newly established fees. If PHMSA adopts this proposal, PHMSA will notify each registrant who will be required to pay additional fees for the 2010–2011 and following registration years.

V. Prior Year Registration Information

PHMSA proposes to revise § 107.612 to remove information on previous years' registration fees. This information is no longer needed. Information on fees in effect for registration years 1999–2000 to 2009–2010 is available in the registration brochure, previous editions of the CFR, and on the registration Web site (*http://www.phmsa.dot.gov/hazmat/registration*). Note that persons subject to registration requirements must pay the annual registration fee, including the processing fee, in effect for the specific registration year for which the person is submitting registration information.

VI. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund HMEP grants. The HMEP grants program, as mandated by 49 U.S.C. 5116, authorizes Federal financial and technical assistance to states and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.*

The Federal hazmat law makes available funding for the HMEP grants program at approximately $28,000,000, and directs PHMSA to establish an annual registration fee between a minimum of $250 and a maximum of $3,000.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The cost to industry of increasing registration fees will be an additional $14 million per year. The funding for the HMEP grants program will provide essential training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. In addition, training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The funding for the HMEP grants will enable PHMSA to help meet previously unmet needs of state, local and tribal governments, and public and private trainers by providing funding for activities such as: (1) Planning and training grants for local emergency planning committees; (2) a new program for non profit hazmat employee organizations to train hazmat instructors that will train hazmat employees; (3) support to certain national organizations to train instructors to conduct hazardous materials response training programs; (4) revising, publishing, and distributing the North American Emergency Response Guidebook; (5) continuing development of a national training curriculum; and (6) monitoring and technical assistance.

While the safety benefits resulting from improved emergency response programs are difficult to quantify, PHMSA believes these benefits significantly outweigh the annual cost of funding the grants program. The importance of planning and training cannot be overemphasized. To a great extent, we are a nation of small towns and rural communities served by largely volunteer fire departments. In many instances, communities' response resources already are overextended in their efforts to meet routine emergency response needs. The planning and training programs funded by the HMEP grants program enable state and local emergency responders to respond quickly and appropriately to hazardous materials transportation accidents, thereby mitigating potential loss of life and property and environmental damage. The regulatory evaluation to the final rule issued under Docket HM–208 (57 FR 30620) showed that the benefits to the public and to the industry from the emergency response grant program would at least equal, and likely exceed, the annual cost of funding the grant program. Based on estimates of annual damages and losses resulting from hazardous materials transportation accidents, the analysis concluded that the HMEP program would be cost-beneficial if it were only 3% effective in reducing either the frequency or severity of the consequences of hazardous materials transportation accidents. Achieving this level of effectiveness is well within the success rates of training and planning programs to reduce errors and increase the proficiency and productivity of response personnel. A regulatory evaluation for this proposed rule is available for review in the public docket.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). There is no preemption of state fees on transporting hazardous materials that meet the conditions of 49 U.S.C. 5125(f). This proposed rule does not propose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this proposed rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to businesses not falling within the small entities category. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this proposed rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. PHMSA is proposing in this rule changes to the requirements in the Hazardous Materials Regulations on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed increase in registration fees will provide additional funding for the HMEP program to help mitigate the safety and environmental consequences of hazardous materials transportation accidents.

J. Privacy Act

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

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Part 107 as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. Revise § 107.612 to read as follows:

§ 107.612 Amount of fee.

(a) For the registration year 2010–2011 and subsequent years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay an annual registration fee, as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section must pay an annual registration fee of $2,975 and the processing fee required by paragraph (a)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(b) For registration years 2009–2010 and prior years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay the annual registration fee, including the processing fee, in effect for the specific registration year.

Issued in Washington, DC, on January 28, 2010, under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2010–2174 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 7)]

Waybill Data Reporting for Toxic Inhalation Hazards

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to amend its rules with respect to Waybill Sample information railroads are required to submit to the Board. Currently, railroads that are required to file Waybill Sample information report a random sample of as little as 1% of carloads on a waybill. The proposed amendment, set forth below, would expand the carload Waybill Sample information submitted to include all traffic movements designated as a TIH (Toxic Inhalation Hazard). The revised reporting would commence with the January 2011 Waybill Sample collection.

DATES: Comments on this proposal are due by March 4, 2010. Replies are due by April 5, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 385 (Sub-No. 7), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be posted to the Board's Web site at *http://www.stb.dot.gov* and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245–0323. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: A carload waybill is a document describing the

characteristics of an individual rail shipment, and includes the following information: the originating and terminating freight stations, the railroads participating in the movement, the points of all railroad interchanges, the number of cars, the car initial and number, the movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR 1244.2, a railroad is required to file Waybill Sample information for all line-haul revenue waybills terminating on its lines if: (a) It terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) it terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years. The Board recognizes that some of the submitted information is commercially sensitive, and thus the Board's regulations place limitations on releasing Waybill Sample data. *See* 49 CFR 1244.9.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminating in the United States. The expanded information gathered from this proposed rule would permit the Board to assess more accurately TIH traffic within the United States, and specifically would be beneficial in Three-Benchmark rail rate cases involving TIH traffic. In those cases, the parties would have more data to draw upon when forming their comparison groups; therefore, the parties could construct comparison groups that would be more comparable to the issue traffic.[1] The additional information would also assist the Board in quantifying the magnitude of TIH traffic, and would help the Board more accurately measure the associated costs of handling such traffic.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612. Most railroads that are required to report Waybill Sample information are not small entities. As explained above, these reporting requirements would apply only to railroads that terminate a large number of carloads. *See* 49 CFR 1244.2. Because small entities (small railroads) typically do not terminate the number of carloads necessary to trigger the reporting requirement, any resulting impact would not affect a substantial number of that group. Moreover, any resulting impact on small entities that report TIH movements would not be significant. The Board's regulations allow for either computerized or manual reporting. 49 CFR 1244.4(a). In the most recent submission of Waybill Sample information—representing 2008—all railroads that reported TIH traffic did so using a computerized system, and it is likely that such computerized systems are easily adaptable to expanding the traffic to be reported under the proposed rule. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether this collection of information, as modified in the proposed rule and further described in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Information pertinent to these issues is included in the Appendix. This proposed rule has been submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 27, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Kulunie L. Cannon,

Clearance Clerk.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

1. The authority citation for Part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

2. In § 1244.4, add paragraphs (b)(5) and (c)(3) to read as follows:

§ 1244.4 Sampling of waybills.

* * * * *

(b) * * *

(5) Subject railroads shall submit all waybill information for movements of Toxic Inhalation Hazards (TIH). For purposes of this section, TIH shall be defined in accordance with 49 CFR 171.8, 173.115, and 173.132 to include materials that, when inhaled, are known or presumed on the basis of testing to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. These materials include, but are not limited to, hazardous materials listed at 49 CFR 172.101 as either Division 2.3 materials, or Division 6.1 materials that can be characterized as an inhalant under § 173.132.

(c) * * *

(3) Subject railroads shall submit all waybill information for movements of Toxic Inhalation Hazards (TIH). For purposes of this section, TIH shall be defined in accordance with 49 CFR 171.8, 173.115, and 173.132 to include materials that, when inhaled, are known or presumed on the basis of testing to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. These materials include, but are not limited to, hazardous materials listed at 49 CFR 172.101 as either Division 2.3 materials, or Division 6.1 materials that can be characterized as an inhalant under § 173.132.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Waybill Sample.

OMB Control Number: 2140–0015.

STB Form Number: None.

Type of Review: Modification of approved collection.

Respondents: Any railroad that did one of the following: (a) Terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) terminated at least 5% of the

[1] *See US Magnesium, L.L.C.* v. *Union Pacific Railroad Company,* STB Docket No. 42114, at 5–12 (STB served Jan. 28, 2010); *Simplified Standards for Rail Rate Cases,* STB Docket No. 646 (Sub-No. 1), at 82–84 (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *and vacated in part on reh'g, CSX Transp., Inc.* v. *STB,* 584 F.3d 1076 (D.C. Cir. 2009).

revenue carloads terminating in any state in any of the 3 preceding years.

Number of Respondents: 50.

Estimated Time per Response: 75 minutes.

Frequency: 7 respondents report monthly; 43 report quarterly.

Total Burden Hours (annually including all respondents): 320 hours.

Total "*Non-hour Burden*" *Cost:* No "non-hour cost" burdens associated with this collection have been identified.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States and it is authorized to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145. Under 49 CFR 1244, a railroad is required to file Waybill Sample information for all line-haul revenue waybills terminating on its lines if it did one of the following: (a) Terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years. The information in the Waybill Sample is used by the Board, other Federal and state agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop evidence in Board proceedings.

The expanded information gathered from this proposed rule would permit the Board to assess more accurately TIH traffic within the United States, and specifically would be beneficial in Three-Benchmark rail rate cases involving TIH traffic. In those cases, the parties would have more data to draw upon when forming their comparison groups; therefore, the parties could construct comparison groups that would be more comparable to the issue traffic. The additional information would also assist the Board in quantifying the magnitude of TIH traffic, and would help the Board more accurately measure the associated costs of handling such traffic.

Retention Period: Information in this report will be maintained on the Board's Web site for a minimum of 1 year and will be otherwise maintained permanently.

[FR Doc. 2010–2150 Filed 2–1–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0071; 92220–1113–0000–C6]

RIN 1018—AW07

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Okaloosa Darter From Endangered to Threatened and Proposed Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Okaloosa darter (*Etheostoma okaloosae*) from endangered to threatened under the authority of the Endangered Species Act of 1973, as amended (Act). The endangered designation no longer correctly reflects the current status of this fish due to a substantial improvement in the species' status. This proposed action is based on a thorough review of the best available scientific and commercial data, which indicates a substantial reduction in threats to the species, significant habitat restoration in most of the species' range, and a stable or increasing trend of darters in all darter stream systems. We also propose a special rule under section 4(d) of the Act. This special rule would allow Eglin Air Force Base to continue activities, with a reduced regulatory burden, and would provide a net benefit to the Okaloosa darter. We are seeking information, data and comments from the public on this proposal.

DATES: To ensure that we are able to consider your comments on this proposed rule, they must be received on or before April 5, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 19, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R4–ES–2008–0071.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2008–0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Don Imm, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Ave., Panama City, FL 32405; telephone (850) 769–0552. Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service at (800) 877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that are supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) Biological, trade, or other relevant data concerning any threat (or lack thereof) to the Okaloosa darter, including whether or not climate change is a threat to the Okaloosa darter;

(2) The location of any additional populations of the Okaloosa darter;

(3) Additional information concerning the range, distribution, and population size and population trends of the Okaloosa darter;

(4) Current or planned activities within the geographic range of the Okaloosa darter that may impact or benefit the species including the proposed toll bypass road; and

(5) Activities relevant to Okaloosa darter and its habitat that are proposed for inclusion in the special rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*).

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that a determination as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. Please note that comments posted to this Web site are

not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publically viewable until we post it, which might not occur until several days after submission.

If you mail or hand-deliver a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on *http://www.regulations.gov.*

In addition, comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* In the Search Documents box, enter, FWS–R4–ES–2008–0071, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want to view under the Document Type heading.

(2) You can make an appointment during normal business hours to view the comments and materials in person at the U.S. Fish and Wildlife Service, Panama City Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposal, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** section by the date shown in the **DATES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Previous Federal Action

We proposed listing the Okaloosa darter as endangered on January 15, 1973 (38 FR 1521) and listed the species as endangered under the Act on June 4, 1973 (38 FR 14678) due to its extremely limited range, habitat degradation, and apparent competition from a possibly introduced related species, the brown darter. We completed a recovery plan for the species on October 23, 1981, and a revised recovery plan on October 26, 1998.

On June 21, 2005, we provided notice in the **Federal Register** that we were initiating a 5-year status review under the Act for the Okaloosa darter (70 FR 35689). In that notice, we specifically requested information on:

(1) The status of the Okaloosa darter in areas outside the boundaries of Eglin Air Force Base (AFB), Florida;

(2) Threats to the species and its habitat, including the areas in the Turkey Creek, Swift Creek, and East Turkey Creek watersheds outside the boundaries of Eglin AFB; and

(3) Conservation measures in these same areas that may have benefited the Okaloosa darter.

The 5-year status review was completed in July 2007, and is available on our Web site at *http://www.fws.gov/southeast/5yearReviews/5yearreviews/okaloosa_darterfinal.pdf.*

Background

The Okaloosa darter, *Etheostoma okaloosae,* is a member of the family Percidae. It is a small, perch-like fish (maximum size is 49 millimeters (mm) (1.93 inches (in.)) Standard Length) that is characterized by a well-developed humeral spot, a series of five to eight rows of small spots along the sides of the body, and the first anal spine being longer than the second. General body coloration varies from red-brown to green-yellow dorsally, and lighter ventrally, although breeding males have a bright orange submarginal stripe on the first dorsal fin (Burkhead *et al.* 1992, p. 23).

The Okaloosa darter is known to occur in only six clear stream systems that drain into two Choctawhatchee Bay bayous in Walton and Okaloosa Counties in northwest Florida. They have been found only in the tributaries and main channels of Toms, Turkey, Mill, Swift, East Turkey, and Rocky Creeks. Approximately 90 percent of the 457 square kilometer (176 square mile) watershed drainage area is under the management of Eglin AFB, and we estimate that 98.7 percent of the darter's extant range is within the boundaries of Eglin AFB. The remainder of the watershed and extant range is within the urban complex of the Cities of Niceville and Valparaiso (USAF 2006, p. 3–1).

Longleaf pine-wiregrass-red oak sandhill communities dominate the vegetation landscape in Okaloosa darter watershed basins. These areas are characterized by high sand ridges where soil nutrients are low and woodland fire is a regular occurrence. Where water seeps from these hills, acid bog communities of *Sphagnum* sp. (sphagnum moss), *Sarracenia* sp. (pitcher plants), and other plants adapted to low nutrient soils develop. In other areas, the water emerges from seepage springs directly into clear flowing streams where variation of both temperature and flow is moderated by the deep layers of sand. The streams support a mixture of *Mayaca fluviatilis* (bog moss), *Scirpus etuberculatus* (bulrush), *Orontium aquaticum* (golden club), *Sparganium americanum* (burr-weed), *Potamogeton diversifolius* (pondweed), *Eleocharis* sp. (spikerush), and other aquatic and emergent plants.

Okaloosa darters typically inhabit the margins of moderate to fast flowing streams where detritus, root mats, and vegetation are present. Historic densities averaged about two darters per meter (3.28 feet) of stream length while more recent abundance estimates show an increase to an average of 2.9 darters per meter (Jordan and Jelks 2004, p. 3; USAF 2006, p. 3–1). They have not been collected in areas where there is no current or in open sandy areas in the middle of the stream channel. The creeks with Okaloosa darters are generally shaded over most of their courses, with temperatures ranging from 20° to 22° Celsius (68° to 72° Fahrenheit) in the winter (Tate 2008, pers. comm.) to 22° to 24° Celsius (72° to 75° Fahrenheit) in the summer (Mettee and Crittenden 1977, p. 5).

Okaloosa darters feed primarily on fly larvae (*Diptera* sp.) mayfly nymphs (*Ephemeroptera* sp.), and caddis fly (*Trichoptera* sp.) larvae (Ogilvie 1980, as referenced in Burkhead *et al.* 1992, p. 26). The breeding season extends from late March through October, although it usually peaks in April. Spawning pairs have been videographed attaching one or two eggs to vegetation, and observed attaching eggs to woody debris and root mats (Collete and Yerger 1962, p. 226; Burkhead *et al.* 1994, p. 81). Ogilvie (1980, as referenced in Burkhead *et al.* 1992, p. 26) found a mean of 76 ova (unfertilized eggs) and 29 mature ova in 201 female Okaloosa darters, although these numbers may underrepresent annual fecundity as the prolonged spawning season is an indication of

fractional spawning (eggs develop and mature throughout the spawning season). Estimates of longevity range from 2 to 4 years (Burkhead *et al.* 1992, p. 27; Tate 2008, pers. comm.).

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of threatened and endangered species unless we determine that such a plan will not promote the conservation of the species. The Act directs that, to the maximum extent practicable, we incorporate into each plan:

(1) Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species;

(2) Objective, measurable criteria, which when met would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and

(3) Estimates of the time required and cost to carry out the plan.

However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is threatened or endangered (or not) because of one or more of five threat factors. Therefore, recovery criteria must indicate when a species is no longer threatened or endangered by any of the five factors. In other words, objective, measurable criteria, or recovery criteria, contained in recovery plans must indicate when an analysis of the five threat factors under 4(a)(1) would result in a determination that a species is no longer threatened or endangered. Section 4(b) requires the determination made under section 4(a)(1) as to whether a species is threatened or endangered because of one or more of the five factors be based on the best available science.

Thus, while recovery plans are intended to provide guidance to the Service, states, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulation required under section 4(a)(1). Determinations to remove a species from the list made under section 4(a)(1) must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

Thus, while the recovery plan provides important guidance on the direction and strategy for recovery, and indicates when a rulemaking process may be initiated, the determination to remove a species from the Federal List of Endangered and Threatened Species is ultimately based on an analysis of whether a species is no longer threatened or endangered. The following discussion provides a brief review of recovery planning for the Okaloosa darter as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

The recovery plan for the Okaloosa darter was approved on October 23, 1981 (Service 1981, 18 pp.) and revised on October 26, 1998 (Service 1998, 42 pp.). The recovery plan identifies a recovery objective of downlisting, and eventually delisting, the Okaloosa darter by enabling wild populations capable of coping with natural habitat fluctuations to persist indefinitely in the six stream systems they inhabit by restoring and protecting stream habitat, water quality, and water quantity. The Okaloosa darter may be considered for reclassification from endangered to threatened (downlisted) when:

(1) Instream flows and historical habitat of stream systems have been protected through management plans, conservation agreements, easements or acquisitions or both;

(2) Eglin AFB has and is implementing an effective habitat restoration program to control erosion from roads, clay pits, and open ranges;

(3) The Okaloosa darter population is stable or increasing and comprised of two plus age-classes in all six stream systems for 5 consecutive years;

(4) The range of the Okaloosa darter has not decreased at all historical monitoring sites; and

(5) No foreseeable threats exist that would impact the survival of the species.

For more information on the recovery plan for the Okaloosa darter, a copy of the plan is posted on our Web site at *http://ecos.fws.gov/docs/recovery_plan/970407.pdf.*

Each of the above criteria for downlisting the Okaloosa darter to threatened has been met, as described below. Additionally, the level of protection currently afforded to the species and its habitat and the current status of threats are outlined in the Summary of Factors Affecting the Species section below.

Downlisting Criterion (1): Instream Flows and Historical Habitat of Stream Systems Have Been Protected Through Management Plans, Conservation Agreements, Easements or Acquisitions or Both

Water quality, water quantity and stream habitat have been adequately protected or restored for the Okaloosa darter. The Okaloosa darter's extant range occurs almost exclusively (98.7 percent) within the boundaries of Eglin AFB. This affords the species considerable protections from development and large-scale habitat disturbances. Eglin AFB is implementing an effective habitat restoration program to control erosion from roads, borrow pits (areas where materials like sand or gravel are removed for use at another location), and cleared test ranges. Since 1995, Eglin AFB has restored 317 sites covering 196.2 hectares (ha) (484.8 acres (ac)) that were eroding into Okaloosa darter streams. All 38 borrow pits within Okaloosa darter drainages are now stabilized (59.3 ha; 146.5 ac) (USAF 2005, p. 3–18). The other 279 sites (136.9 ha; 338.3 ac) included in the total area are characterized as non-point sources (pollution created from larger processes and not from one concentrated point source, like excess sediment from a construction site washing into a stream after a rain) of stream sedimentation. Eglin AFB

estimates that these efforts have reduced soil loss from roughly 69,000 tons/year in darter watersheds in 1994 to approximately 3,000 tons/year in 2004 (Pizzalotto 2005, pers. comm.). As of 2006, Eglin AFB had completed about 95 percent of the erosion control projects identified for the darter watersheds (USAF 2006, p. 3–5). Restoration activities began earlier in the Boggy Bayou drainages. Accordingly, darter numbers increased in the Boggy Bayou drainages earlier than in the Rocky Bayou drainages. Increases in darter numbers over the past 10 years generally track the cumulative area restored in that timeframe (Jordan and Jelks 2004, p. 9).

Many road crossing structures have been eliminated as part of Eglin AFB's restoration activities. Of the 152 road crossings that previously existed in Okaloosa darter drainages, 57 have been eliminated: 28 in Boggy Bayou streams, and 29 in Rocky Bayou streams. Most of these were likely barriers to fish passage or problems for stream channel stability, and removing them has improved habitat and reduced population fragmentation. Of the remaining 95 road crossings, we have determined that 21 are barriers to fish passage. Many of these are culverts with the downstream end perched above the stream bed, precluding the upstream movement of fish during normal and low-flow conditions. Ten of the 21 barriers are of little to no adverse consequence to darter habitat connectivity because they occur on the outskirts of the current range or immediately adjacent to another barrier or impoundment. However, darters downstream of the 11 remaining barriers cannot move upstream during normal and low-flow conditions.

Impoundments may also fragment darter habitat and populations. Like road-crossing barriers to passage, many of the 32 impoundments within the darter's range are located within reaches from which darters are extirpated or are near the margins of the extant range. Only three impoundments, one each in the Toms Creek, Turkey Creek, and Rocky Creek basins, separate more than 1 kilometer (km) (0.62 miles (mi)) of stream from the rest of the stream network in the basin.

In FY 2007, Eglin AFB restored portions of Mill Creek. Staff from Eglin Natural Resources, the Eglin golf course, and the Service determined that it was feasible to restore all impoundments upstream of Plew Lake, the largest impoundment on the system, to free-flowing streams and to remove all but one of the culverts that convey the stream underneath fairways on the golf course. The Service prepared the designs for the restoration, and Eglin AFB and Florida Fish and Wildlife Conservation Commission (FWC) secured funding for the work, which was completed in May 2007. Present in the smallest of the six darter watersheds, the darter population in Mill Creek is probably most vulnerable to extirpation. We anticipate that restoration at Mill Creek will secure a viable population in this system. Eglin and FWC also secured funding for removal of the abandoned railroad crossing of Little Rocky Creek and completed the removal in May 2007. These two projects eliminated five fish passage barriers and three impoundments, restoring approximately 3 km (1.8 mi) of stream habitat. Accomplishments have been made in recovering Okaloosa darter habitat, and the Service continues to work with Eglin AFB, the City of Niceville, and Okaloosa and Walton Counties to restore additional habitat through the removal and replacement of road crossings and impoundments throughout the darter's range.

The management plans of several agencies apply to streams in the range of the Okaloosa darter and are being implemented to protect this fish's water quality and quantity and its overall habitat. Probably the most influential of these is Eglin's Integrated Natural Resource Management Plan (INRMP) (USAF 2007), including the Final Threatened and Endangered Species Component Plan (USAF 2006). The INRMP is updated every 5 years in consultation with the Service and FWC (see Factor D. under the Summary of Factors Affecting the Species section below for further detail and description of Department of Defense (DOD) protections, and the Available Conservation Measures section for Endangered Species Act protections). The INRMP defines goals and specific objectives for managing natural resources on the base. The primary goal of Okaloosa darter management on Eglin AFB is to provide the highest level of capability and flexibility to the military testing and training mission while meeting the legal requirements of the Endangered Species Act, Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable laws. Another goal of the 2007 INRMP is to maintain or restore hydrologic processes in streams, floodplains, and wetlands when feasible. The specific objectives of Okaloosa darter management on Eglin AFB include:

(1) Downlist the Okaloosa darter from endangered to threatened by the end of 2007 and delist the darter by the end of 2012;

(2) Complete the restoration of Mill Creek for Okaloosa darter by 2008;

(3) Annually restore 2 fish passage barriers from the 20 identified sites in Okaloosa darter drainages as funding allows;

(4) Develop a public information and awareness program for threatened and endangered species on Eglin AFB that have greater potential to be impacted by public activities, such as Okaloosa darters;

(5) Complete a program by 2010 that would include an A3 class (combined with Endangered Species Act class), informational brochures, and portable display boards;

(6) Cooperate with the City of Niceville, Okaloosa County, and private landowners adjacent to Eglin AFB to recover the Okaloosa darter;

(7) Identify and rehabilitate 150 soil erosion sites that have the potential to impact threatened and endangered species (Gulf sturgeon and Okaloosa darter) habitat by 2011; and

(8) Train and use Okaloosa darter monitoring crews and aquatic monitoring crews to survey and report the presence of invasive nonnative plants and animals during their regular monitoring activities and treat invasive nonnative plants as necessary.

In 2005, the Service, Eglin's Natural Resources Branch, the Nature Conservancy, and the FWC signed an agreement to cooperate in the stewardship of aquatic systems on lands of the Gulf Coastal Plain Ecosystem Partnership (GCPEP) in western Florida. GCPEP's Aquatic Team agreed to initially assign priority to strategies and projects that contribute to the recovery of the Okaloosa darter. We are working with GCPEP to use stream restoration techniques and management actions that have been established for Okaloosa darter watersheds on partner lands.

The Three Rivers Resource Conservation and Development Council is a nonprofit organization set up to conserve the natural resources for, and to improve the overall economic condition of, rural and urban citizens. The Council is composed of representatives from the county Commissions and Soil and Water Conservation Districts, and includes three members at large from Escambia, Santa Rosa, Okaloosa, Walton, Bay, Washington, and Holmes Counties in Florida. The Council has developed an Area Plan (2003–2008) which includes:

(1) A natural resources goal of encouraging proper management use and protection of the natural resource base;

(2) An objective to assist local military bases in conservation planning efforts;

(3) A strategy to continue a non-point project to control erosion with Eglin AFB; and

(4) Several projects funded for 2008 that will assist with Okaloosa darter restoration.

The Florida Department of Environmental Protection (DEP) (2003) classifies all streams in the range of the Okaloosa darter as Class III waters for administration of the Clean Water Act. Class III waters are used for recreation, propagation, and maintenance of a healthy, well-balanced population of fish and wildlife. Although no streams in the Okaloosa darter's range are designated as impaired in DEP's 2003 Basin Status Report, six stream segments are on the "3c planning list," which means that "enough data and information are present to determine that one or more designated uses may not be attained according to the Planning List methodology." The six segments are:

(1) Anderson Branch (Turkey Creek tributary);

(2) Lower Turkey Creek (including South Branch near the City of Niceville landfill and the rest of the basin downstream to Boggy Bayou);

(3) Mill Creek;

(4) Shaw Still Branch (Swift Creek Basin);

(5) Little Rocky Creek; and

(6) Open Branch (Rocky Creek Basin).

All six segments are considered potentially impaired using a set of three biological indicators based upon aquatic insect samples. DEP characterized a site on South Branch near the landfill as severely limited by pollutants from the landfill (Ray 2001, p. 1).

Using aquatic insect sampling methods and indicators comparable to DEP's, we sampled 42 sites in the darter's range (Thom and Herod 2005, pp. 4–3 thru 4–17). About 26 sites appeared healthy, 4 were suspect, and 12 were impaired. Three small darter basins, Mill Creek, Swift Creek, and East Turkey Creek, had the highest percentage of impaired sites. Several sites in these three basins, plus a site on South Branch near the Niceville landfill, also had unusually high stream conductivity measurements, which is generally an indicator of degraded water quality (Thom and Herod 2005, p. 5–3). It appears likely that the wastewater treatment sprayfields located near the headwaters of East Turkey Creek and Swift Creek are adversely affecting water quality, as this is the principal non-forested land use in the area. The Okaloosa darter recovery plan identifies wastewater treatment sprayfields as potential sources of habitat degradation.

In 2007, the Service, along with the U.S. Geological Survey, Loyola University, and Eglin AFB, initiated a 3-year research project to comprehensively assess water quality data for these two streams. Preliminary samples show unusually high conductivity and salinity—an indication of wastewater introduction. Water quality data will be compared to darter population status and trends information. This will enable us to identify the problems and recommend corrective actions that will prevent future declines in Okaloosa darter populations. Elimination of stressors originating from these sprayfields will prevent continued declines in Okaloosa darter populations. It will also achieve recovery objectives outlined in the recovery plan (Objectives 2.2, 3.2, 3.2.2), and meet a critical delisting criterion (1F).

The Eglin golf course dominates land use in the Mill Creek Basin. Along with West Long Creek in the Rocky Creek Basin, these are the same drainages where monitoring suggests darter numbers have been declining in recent years. As noted above, the Service and Eglin AFB have recently completed a habitat restoration project in the portion of Mill Creek that runs through the Eglin golf course. Work is ongoing to assess causes of declines in East Turkey and West Long Creeks.

The Choctawhatchee Basin Alliance (a citizen's group), along with supporting state and Federal agencies, is implementing a program called "Breaking New Ground," which is a set of place-based air and watershed action plans for the Choctawhatchee River and Bay watershed. These plans address water quality monitoring, point- and non-point source pollution, growth management, water supply, education, and citizen involvement in all Choctawhatchee Bay watersheds, including the darter drainages. This planning effort has resulted in the funding of studies to assess point and non-point source water pollution in the basin, including darter watersheds, and is expected to continue to assist in identifying and addressing potential long-term water quality and supply issues in the watershed, which is a positive step towards securing permanent protections for Okaloosa darter water quality and quantity.

In addition, the Northwest Florida Water Management District (NWFWMD) (in conjunction with the DEP) has a Surface Water Improvement and Management (SWIM) Plan that addresses water issues in the Choctawhatchee River and Bay System, including the projected water supply needs of the coastal portions of Okaloosa and Walton Counties. Protecting water-dependent endangered species and their habitats are integral components of the SWIM Plan. In its water supply plan for the counties that encompass the range of the darter, the NWFWMD examines the water sources that could supply growing human water demands in the region (Bartel *et al.* 2000). Depending on its magnitude and spatial distribution, substantial new use of the Sand and Gravel Aquifer could diminish stream flow in the darter streams; however, the potential well fields that the NWFWMD identified are located south and west of the darter drainages.

The opportunities for easements or acquisitions or both to protect the Okaloosa darter are limited, because 98.7 percent of the extant range is on Federal land. Because Eglin AFB and others have demonstrated a commitment to recovery of the Okaloosa darter through natural resource management planning and coordination with the Service, we consider this downlisting criterion to be satisfied.

Downlisting Criterion (2): Eglin AFB Has (and Is Implementing) an Effective Habitat Restoration Program To Control Erosion From Roads, Clay Pits, and Open Ranges

Eglin AFB has implemented a habitat restoration program to control erosion since 1995. The details and accomplishments previously described above in downlisting criterion (1) all contribute to this criterion. Based on the facts shared above, Eglin AFB has effectively implemented this downlisting criterion and continues to make additional progress in reducing remaining erosion problems on the base. These actions have resulted in identifiable increases in Okaloosa darter numbers and occupied range. We will continue to partner with Eglin AFB to find similar opportunities like Mill Creek to restore habitat and reduce erosion.

In addition, Eglin's Threatened and Endangered Species Component Plan (Eglin 2006, pp. 3–3 and 3–4) identifies several objectives for the Okaloosa darter, including the development of a public information program for threatened and endangered species on Eglin AFB that have greater potential to be impacted by public activities. The public information program would include an Air Armament Academy (A3) class (Eglin's civilian employee training program), combined with an Endangered Species Act class,

informational brochures, and portable display boards. The goal of completion of the public information program is 2010. The program will be provided to both Eglin military users and the general public. As of December 2007, Eglin has completed two brochures and portable display boards. There is also a permanent display board in the lobby of the Natural Resources Section, known as Jackson Guard, which provides information to the public about the darter and efforts to protect and restore its habitat. The A3 class is in the process of being designed, and as needed it will be scheduled and presented twice a year beginning in 2008. Additionally, tours of Eglin, for military personnel, non-government delegates, and the general public frequently involve presentations of ongoing darter conservation activities. Because Eglin AFB and others have demonstrated a commitment to recovery of the Okaloosa darter through natural resource management planning and coordination with the Service, we consider this downlisting criterion to be satisfied.

Downlisting Criterion (3): Okaloosa Darter Population Is Stable or Increasing and Comprised of Two Plus Age-Classes in All Six Stream Systems for 5 Consecutive Years

We had no estimate of population size at the time of listing, although the historic range of the Okaloosa darter is fairly well documented. Relative abundance estimates were determined annually from 1987–88 to 1998 while monitoring increases in sprayfield loading at Eglin AFB. Bortone (1999, p. 15) compared the relative abundance (number per sampling hour) of darters at 16 to 18 stations over 10 sampling seasons. The mean number of Okaloosa darters per sample (in those samples that yielded darters) was slightly lower in the earlier sampling period (1987 to 1991), higher during the middle sampling years (1992 to 1997), and distinctly lower in 1998 and 1999. Bortone (1999, p. 9) concluded that this may not have indicated an overall trend in the reduction in Okaloosa darters as much as it may be indicative of changes that specifically reduced preferable habitat and increased sampling effectiveness at certain sites, as several sites were altered by beaver activity while others became more rooted with undergrowth. Generally, the data do not indicate any overall major trends in decline or increase during the 10-year sampling period (Bortone 1999, p. 10).

The U.S. Geological Survey (USGS) and cooperators have surveyed between 12 and 60 sites for Okaloosa darters annually since 1995 (Jordan and Jelks 2004, p. 2), primarily using visual counts in 20-m (66-ft) segments. Collectively, Jordan and Jelks' data show an almost tripling of darter numbers in a 10-year timeframe, from an average of about 20 darters per 20-m (66-ft) segment sampled in 1995 to about 55 darters per segment in 2004. A dip in the increasing trend occurred in 2001 and 2002, which corresponded with years of regional drought conditions. Even during these years, however, darter numbers were almost double those of 1995 and 1996.

The current rangewide population, estimated by applying Jordan and Jelks (2004, p. 3) study area-wide density estimate of 3.1 darters per meter (m) (or per 3.28 feet) to our estimates of occupied stream length in each of the six Okaloosa darter basins, gives a total population estimate of 802,668 darters with an estimated 625,279 mature individuals (Service 2007, Table 2). In order to expand the surveyed range of the species, 69 sites were seine surveyed in 50-m (164-ft) segments by the Service in 2004–2005, with many of those being outside the area surveyed by Jordan and Jelks (2004). Observed segment densities were transformed to local abundance estimates based upon Jordan and Jelks' (2004, App. 1) comparison of seine versus visual counts and depletion sampling. These surveys produced an overall density estimate of 1.28 darters per meter (or per 3.28 ft) and an abundance estimate of 259,355 mature individuals (Service 2007, Table 3). Acknowledging the greater error likely associated with seine-based calculations, they provide a more conservative population estimate.

Annual population monitoring is conducted at 26 long-term monitoring sites by the USGS per the sampling methodology outlined in the Okaloosa darter recovery plan (Service 1998). This methodology has evolved into counting darters using mask and snorkel visual surveys, and includes collection of numerous habitat conditions including water depth and discharge, substrate type, and canopy cover. Annual monitoring has been conducted on Eglin AFB by personnel from Loyola University (New Orleans) and the Service since 1995, and on private lands since 1987. For complete information, see the Service's 2007 5-year status review of the Okaloosa darter (Service 2007).

Downlisting criterion number (3) is further defined in Appendix A of the Okaloosa darter recovery plan to include a specific standardized sampling methodology. An operational definition of a "stable" population is also provided in Appendix A of the recovery plan. The definition of a "stable" population applies to 26 long-term monitoring sites and has three parts:

(1) Okaloosa darter numbers remain above 1.75 standard deviations below the cumulative long-term average at each of the monitoring sites;

(2) The long-term trend in the average counts at each monitoring site is increasing, or neutral; and

(3) The range that the species inhabits is not decreased by more than a 500-meter (1,640.4-ft) stream reach within any of the six stream systems.

Although the darter meets the criterion for a stable population, the validity of the criteria in the operational definition of "stable" has come into question since 1998 when the recovery plan was prepared.

As identified in our 2007 5-year status review of the Okaloosa darter (Service 2007, p. 6), monitoring has shown that natural variation coupled with sampling method (seining versus visual survey) might result in a variation greater than 1.75 standard deviations while still maintaining a stable or increasing trend. Therefore, we have found that this operational definition may no longer reflect the best available science. Current estimates of Okaloosa darter numbers have instead been calculated using two different methods of standardizing monitoring and survey data. Using visual survey methods in 28 20-m (66-ft) segments of stream, encompassing the six principal basins, a study areawide density estimate was then applied to the known occupied stream length for a total population estimate of 802,668 darters (Service 2007, Table 2). A population estimate based on seine samples, which transformed density estimates to local abundance estimates based upon Jordan and Jelks' (Jordan and Jelks 2004, App. 1; Jordan *et al.* 2008) comparison of seine versus visual counts and depletion sampling, calculated a 2004–2005 population estimate of 302,590 darters (Service 2007, Table 3).

The long-term trend in the average counts at each monitoring site indicates that the four smallest darter basins (Toms, Swift, Mill, and East Turkey), as well as West Long Creek and East Long Creek, are decreasing while the other watersheds of Rocky Creek and Turkey Creek are increasing. However, after restoration activities on Mill Creek in 2007, darter numbers are now increasing. Using the estimated length of occupied habitat for these creeks, darter numbers are increasing in 223.6 km (138.9 mi) or 86 percent of their range and decreasing in 37.1 km (23.1

mi) or 14 percent of their range. All of the declining trends were sampled by seining, not visual surveys, and may reflect variable sampling efficiency over time. For example, one site has become almost impossible to seine due to the exposure of tree roots resulting from stream bed degradation. Because seining detects only about 32 percent as many Okaloosa darters as visual surveys (Jordan and Jelks 2004, App.1), the long-term trends in darter counts at sites sampled by seine may be subject to error during interpretation. Furthermore, there appears to be a reduction in numbers at many of the sites beginning in 1998, prior to which counts appear to be relatively consistent or generally increasing, which may correspond to a drought which began in1998 or could reflect a difference in sampling ability as a shift in USGS personnel occurred at this time.

The range of the Okaloosa darter is represented as the cumulative stream length of occupancy in a basin. However, the annual monitoring identified in the recovery plan is not specifically designed to measure the length of a range reduction. Therefore, we are unable to determine whether part (3) of the operational definition of "stable" (A population will be considered stable if * * * (3) the range that the species inhabits is not decreased by more than a 500-meter (1,640.4-ft) stream reach within any of the six stream systems) has been met. Further, as noted previously, seining has been shown (Jordan *et al.* 2008, p. 313) to detect only about 32 percent as many darters as visual surveys, increasing the probability of incorrectly concluding that darters are absent when using this survey method. Acknowledging these limitations, we consider this downlisting criterion to be satisfied. Okaloosa darters appear to have expanded their range in two areas, one in Mill Creek following habitat restoration activities in 2007, and the other a 1- to 2-mile expansion in the southern/western tributary of Tom's Creek previously thought to be uninhabited. Annual population monitoring by USGS has detected young-of-the-year and adult fish in all six stream systems for the past 5 years (Service 2007).

Downlisting Criterion (4): The Range of the Okaloosa Darter Has Not Decreased at All Historical Monitoring Sites

As noted above, trends in the range of the Okaloosa darter are difficult to interpret. However, darters appear to have expanded their range in two tributaries: Mill's Creek and the southern/western tributary of Tom's Creek. Although Okaloosa darters appear to have decreased their range in Swift's Creek, this decrease seems to have occurred prior to 1987. The Okaloosa darter has been extirpated from only about 9 percent of the 402 km (249.8 mi) of streams that comprise its total historical range. Given that the small decrease likely occurred more than 20 years ago, and since then the species has expanded their range as noted above, we consider this criterion to be met.

Downlisting Criterion (5): No Foreseeable Threats Exist That Would Impact the Survival of the Species

At this stage of the recovery of Okaloosa darter, threats remain under Listing Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range. Resource stewardship on Eglin AFB is generally reducing the threat of habitat destruction and range reduction from sedimentation from unpaved roads and areas adjacent to poorly designed or maintained paved roads. As of 2006, about 95 percent of the erosion control projects identified in darter watersheds had been completed (USAF 2006, pp. 3–5). Eglin AFB is continuing to fund these projects to completely eliminate the threat. We will continue to work with Eglin AFB to remove remaining erosion sources or point and non point pollution sources in Okaloosa darter habitat. In addition, new projects are being considered on Eglin AFB and we will work with the AFB to ensure Okaloosa darter habitat is protected. Although water quality issues associated with the Niceville landfill and sprayfield continue to threaten the darter, they are being examined in a 3-year research project, which began in 2007. We recently worked with the city of Niceville to improve its wastewater collection system and install more appropriate culverts at a number of road crossings. In addition, as stated above, a few of the Okaloosa darter's streams have been indicated as potentially impaired due to biological indicators. We will continue to work with Eglin to determine the causes of impairment and remove them. Proposed plans to assign additional military forces to Eglin AFB may alter the military mission and could potentially impact Okaloosa darter populations. On the smaller creeks, where we noted a general long-term decline in average counts, we will continue to investigate if habitat attributes at these sites are the cause while simultaneously trying to improve survey protocols.

The Okaloosa darter was listed in 1973 as an endangered species. At the time of listing, the species faced significantly greater threats than it does today, as evidenced by the numerous recovery actions to date that have improved and restored its habitat conditions. These recovery actions include completing 95 percent of the erosion control projects identified in darter watersheds, thereby significantly reducing the most intense threat to the species (see the Summary of Factors Affecting the Species section below for further details). Now, more than 35 years after it was listed under the Act, the Okaloosa darter continues to survive and its overall status has improved. Given that the threats to the species have been significantly reduced, and that for the purposes of this proposed rule we have defined "foreseeable future" for the Okaloosa darter as a 20-year period (see the Foreseeable Future section below), we have determined that the Okaloosa darter has recovered to the point where it now better meets the definition of a threatened species—one that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." In other words, although some threats to the Okaloosa darter continue to exist, these threats are not likely to cause the species to become extinct throughout all or a significant portion of its range within the next 20 years. Data collected on the distribution and abundance of the species indicate that the species' range has expanded and overall population numbers are increasing. The Okaloosa darter has met all five downlisting criteria in its recovery plan.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from the Federal Lists of Endangered and Threatened Species. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. Those factors are: (1) Habitat modification, destruction, or curtailment; (2) overutilization of the species for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors

affecting it's continued existence. We must consider these same five factors in reclassifying or delisting a species. Listing, reclassifying, or delisting may be warranted based on any of the above threat factors, either singly or in combination.

For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

Under section 3 of the Act, a species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word "species" also includes any subspecies or, for vertebrates, distinct population segments. The word "range" in the phrase "significant portion of its range" (SPR) refers to the range in which the species currently exists, and the word "significant" refers to the value of that portion of the range being considered to the conservation of the species.

The Act does not define the term "foreseeable future." However, in a January 16, 2009, memorandum addressed to the Acting Director of the Service from the Office of the Solicitor, Department of the Interior, concluded, "* * * as used in the [Act], Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species" (U.S. Department of the Interior 2009). "Foreseeable future" is determined by the Service on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat projection timeframes, and environmental variability.

In considering the foreseeable future as it relates to the status of the Okaloosa darter, we defined the "foreseeable future" to be the extent to which, given the amount and substance of available data, events, or effects can and should be anticipated, or the threats reasonably extrapolated. We considered the historical data to identify any relevant existing threats acting on the species, ongoing conservation efforts, data on species abundance and persistence at individual sites since the time of listing, identifiable informational gaps and uncertainties regarding residual and emerging threats to the species, as well as population status and trends, its life history, and then looked to see if reliable predictions about the status of the species in response to those factors could be drawn. We considered the historical data to identify any relevant existing trends that might allow for reliable prediction of the future (in the form of extrapolating the trends). We also considered whether we could reliably predict any future events (not yet acting on the species and therefore not yet manifested in a trend) that might affect the status of the species, recognizing that our ability to make reliable predictions into the future is limited by the variable quantity and quality of available data.

The average lifespan of an Okaloosa darter is 2–4 years with a breeding season that extends from March to October, peaking in April. This lengthy breeding season is an indicator of fractional spawning (eggs develop and mature throughout the spawning season). The early results of recently funded and ongoing genetic studies of the darter indicate that the two large lineages (Turkey and Rocky Creek) are similar in size and have been relatively stable since diverging from their ancestral population (Austin 2007, pers. comm.), suggesting demographic stability over time. Therefore, a genetics consideration does not appear relevant to determination of the foreseeable future.

Threat projection timeframes are typically fairly short for Okaloosa darter and range from the 5-year planning cycle of the INRMP, to mission-specific activities that can arise at any time, to the Department of Transportation's 20-year planning projections. Lastly, because the darter's streams are mostly small, spring-fed systems, environmental variability is most simply expressed in terms of the variability in the hydrologic cycle.

The Okaloosa darter recovery plan identifies one recovery criterion, a stable or increasing population for 20 years, based on the 20-year hydrologic cycle. Therefore, for the purposes of this proposed rule, we define "foreseeable future" for the Okaloosa darter as a 20-year period, which encompasses both the variable hydrologic cycle and the long-term planning projections. Given the available data, we believe this represents a reasonable timeframe to measure demographic changes that could reflect potential threat factors to the Okaloosa darter.

The following threats analysis examines the five factors currently affecting, or that are likely to affect the listed Okaloosa darter within the foreseeable future. For the purposes of this analysis, we will first evaluate whether the currently listed species, the Okaloosa darter, should be considered threatened or endangered throughout its range. Then we will consider whether there are any portions of the species' range where it is in danger of extinction or likely to become endangered within the foreseeable future.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Okaloosa darter was listed under the Act in 1973, because of its extremely limited range and potential problems resulting from erosion, water impoundment, and competition with brown darters. The Okaloosa darter has been extirpated from only about 9 percent of the 402 km (249.8 mi) of streams that comprise its total historical range. This historic loss of range is most likely due to physical and chemical habitat degradation from sediment and pollutant loading and the urbanization of the City of Niceville. Recent surveys in a southern/western tributary of Tom's Creek, however, have established the darter's presence in a 1- to 2-mile stretch of stream previously thought to be uninhabited. All but 5 km (3.1 mi), or 1.3 percent, of the extant range is also currently within Eglin AFB.

Sediment loading is perhaps the most intense and uniform factor continuing to threaten the Okaloosa darter. A recent report (Rainer *et al.* 2005, pp. 3–13) identified the following primary sources of sediment to aquatic ecosystems on Eglin AFB: accelerated streamside erosion, borrow pits, developed areas, land test areas, silviculture, and roads. Of these, the stream crossings of unpaved roads and subsequent bank erosion probably have the greatest impact because of their distribution on Eglin AFB, relative permanence as base infrastructure, and long-term soil disturbance characteristics. The largest remaining source of sediment input to darter streams is the unpaved road network. As of 2005, 87 percent (4,348 km or 2,701.7 mi) of Eglin's road network was unpaved. However, as of 2006, Eglin AFB had completed about 95 percent of the erosion control projects identified in darter watersheds, substantially reducing runoff and sedimentation (USAF 2006, pp. 3–5). From 1995 to 2004, 317 borrow pits and non-point erosion sites (485 ac) were rehabilitated and maintained. Although most of the erosion control projects have already been completed, Eglin has a continuing objective of identifying and rehabilitating 150 soil erosion sites that

have the potential to impact threatened and endangered species like the listed Okaloosa darter. These remaining soil erosion sites pose a continuing threat to the darter and its habitat. For example, five road crossings in the Turkey Creek drainage have repeatedly exceeded state water quality standards for turbidity.

Of the 153 road crossings that previously existed in Okaloosa darter drainages, 57 have been eliminated: 28 in Boggy Bayou streams and 29 in Rocky Bayou streams. Eglin AFB estimates that these and other restoration efforts have reduced soil loss from roughly 69,000 tons/year in darter watersheds in 1994 to approximately 3,000 tons/year in 2004 (Pizzalotto 2005, pers. comm.).

Borrow pits were a major source of sediment loading to darter streams cited in the 1998 darter recovery plan. At that time, 29 of 39 borrow pits located within or immediately adjacent to Okaloosa darter drainages had been restored so that they no longer posed sedimentation threats. As of 2004, all of the remaining borrow pits within Okaloosa darter drainages have been restored and no longer pose sedimentation threats (Rainer *et al.* 2005, p. 3–18).

While sedimentation and erosion problems still exist on Eglin, they have been significantly reduced through improvements such as bottomless culverts, bridges over streams, and bank restoration and revegetation. There are other areas where sedimentation remains a higher magnitude threat to the continued existence of the Okaloosa darter. Primarily in the downstream-most portion of the darter's range, urban development and construction activity pose a threat to the darter due to poor stormwater runoff control and pollution prevention measures that degrade habitat and may pose potential barriers to movement between basins. This threat is present primarily in the 5 km (3.1 mi) of habitat located outside of Eglin AFB. With improvement and reduction of sediment erosion on Eglin (98.7 percent of the darter's range), we believe that, with lessons learned, we can continue to work with off-base partners in recovery efforts that will enable delisting of this fish.

Additionally, one road development project has surfaced as a new potential threat that may negatively impact the Okaloosa darter. The Northwest Florida Transportation Corridor Authority has proposed a new, high-speed, toll bypass road across Eglin AFB. However, the proposed bypass road would not prevent implementation of management actions for the Okaloosa darter in Eglin's INRMP, which will continue to provide a benefit to the darter. Eglin AFB has granted the Transportation Corridor Authority conceptual agreement for the proposed bypass road. Although this project may cross darter drainages, the agreement includes 19 stipulations that will minimize impacts to darter drainages. For example, road and bridge design must also address maintenance of riparian zones and stream habitat. In addition, placement of interchanges should be outside sensitive natural areas. Therefore, we do not consider the proposed bypass road to be a serious threat to Okaloosa darters. Currently, this project has yet to complete National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requirements or consultation requirements under the Act, the latter of which will require specific measures to avoid and minimize take of the darter. We are seeking additional information on proposed activities or ongoing activities like this one (see Public Comments section) during the comment period for this proposed rule.

Eglin AFB is a military training facility and as such is divided into 37 land test areas where weapons testing and training operations are conducted, 12 of which are wholly or partially within darter drainages (SAIC 2001, pp. 2 and 7). Eglin AFB maintains large portions of the test areas in an early stage of plant succession with few mature trees and varying degrees of soil disturbance as a result of maintenance or military missions. Since 1998, only one section 7 consultation with Eglin under the Act (related to test area activities) has resulted in the issuance of an incidental take statement. However, there is a proposal to increase the military personnel and use at Eglin through the 2005 Defense Base Realignment and Closure (BRAC). The BRAC action involves establishing the Joint Strike Fighter Integrated Training Center and relocating the Army 7th Special Forces Group (Airborne) to Eglin AFB, increasing the number of personnel present on base, the number of test ranges, and the amount of test area activities. The Service has provided preliminary comments on the military's Notice of Intent to Prepare an Environmental Impact Statement under NEPA and completed a formal consultation for other species but not the Okaloosa darter. We do not anticipate any increase in threats to the Okaloosa darter from this action as the new ranges have been moved outside of Okaloosa darter habitat and Eglin has agreed to provide a 300-ft. buffer along all darter streams when conducting any troop maneuvers.

While poorly designed silvicultural programs can result in accelerated soil erosion and stream sedimentation, Eglin has designed its program within darter habitat to avoid and minimize impacts to the aquatic ecosystems such that the program is not likely to adversely affect the Okaloosa darter.

Pollution other than sedimentation poses a potential threat to darters in six stream segments. While no streams in the darter's range are designated by DEP as impaired, 6 of the 13 segments sampled using three biological indicators were considered potentially impaired and are on the "3c planning list," which means that "enough data and information are present to determine that one or more designated uses may not be attained according to the Planning List methodology." One stream site has been characterized as "severely limited by pollutants from the landfill." Using comparable aquatic insect sampling methods, the Service (Thom and Herod 2005, Table 4–1) found 12 out of the 42 sites sampled within the darter's range to be impaired. An impaired water body is one where the biological integrity of the system as determined through indicators has been compromised because of pollutants, indicating that Okaloosa darter habitat is degraded.

Water withdrawals for human consumption in and around the range of the Okaloosa darter are presently served by wells that tap the Floridan Aquifer, which is declining substantially in the most populated areas near the coast. However, at this time, there is no evidence that pumping from the aquifer has reduced flows in darter streams. The darter drainages are spring-fed from the shallow sand and gravel aquifer that is not used for human consumption. Additionally, the low permeability of the Pensacola Clay confining bed probably severely limits hydraulic connectivity between the two aquifers (Fisher *et al.* 1994, p. 86). Therefore, we do not anticipate that local population growth would adversely affect water flows in the darter's drainages.

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves and the intensity of tropical cyclones (IPCC 2007b, p. 7). While continued change is certain, the magnitude and rate of change is unknown in many cases.

The currently occupied range of the darter is restricted to approximately

364.6 and 402 km (227.9 and 251.3 mi.) of streams, respectively, in Walton and Okaloosa Counties, Florida. While we acknowledge the general scientific consensus that global scale increases in temperatures have occurred, we do not have any data to indicate that climate change poses a threat to the Okaloosa darter and do not believe that climate change will adversely affect this species because the darter drainages are spring-fed. The information currently available on the effects of climate change and the available climate change models do not make sufficiently accurate estimates of location and magnitude of effects at a scale small enough to apply to the range of the Okaloosa darter. There is no evidence that climate changes observed to date have had any adverse impact on the Okaloosa darter or its habitat.

Summary of Factor A: About 51,397 hectares (127,000 acres), or 457 square kilometers (176 square miles), of the darter's drainage basins (90 percent) are managed by Eglin AFB, while 485.6 hectares or 12,000 acres (10 percent) of the drainage basins are situated within the Niceville-Valparaiso urban complex. Urban runoff continues to degrade darter habitat off Eglin through pollution and sedimentation. Additionally, there is a continued threat of further development in the darter's drainages outside of the AFB.

The military mission or mandate of Eglin AFB, which holds 98.7 percent of the darter's range and 90 percent of the drainage basins for the darter, will lead to foreseeable actions that could impact the darter's range. Impacts resulting from a road development project within the darter's range have been minimized, and it does not present a significant threat to the species. On the other hand, the growing coastline human population in Florida that is pressing into the boundaries of Eglin AFB will have foreseeable needs that could cross Eglin's boundaries and impact the darter's range.

Stream sedimentation and erosion control problems still exist on Eglin AFB and we will continue to cooperatively work with our partner to resolve these. Habitat restoration efforts done on the base to date have reduced 95 percent of the sedimentation into streams occupied by the Okaloosa darter, nearly eliminating the largest threat to the species. Okaloosa darter populations are stable or increasing in the majority of the species' range. The current rangewide population is estimated at 802,668 darters with an estimated 625,279 mature individuals (Service 2007, Table 2). We do not have any data to indicate that climate change poses a threat to the Okaloosa darter. Therefore, we believe the rangewide threat of habitat destruction, modification, or fragmentation over this large area from sources like sedimentation and pollution has been reduced to a point where the Okaloosa darter no longer meets the definition of an endangered species. We find that the present or threatened destruction, modification, or curtailment of its habitat or range is not likely to place the Okaloosa darter in danger of extinction throughout all or a significant portion of its range. However, although the threats under this factor have been reduced, they have not been entirely eliminated. Accordingly we find that the Okaloosa darter meets the definition of a threatened species because it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes is not, nor has it ever been, a significant threat to the Okaloosa darter anywhere within the species' range. Any utilization for recreational purposes is limited to the occasional mistaken use as a bait fish. Therefore, we find that this factor is not likely to cause the Okaloosa darter to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the future.

Factor C. Disease or Predation

Neither disease nor predation is considered a threat to the Okaloosa darter. The six basins of the darter's range are relatively free of introduced aquatic predators, and the native predators, such as the largemouth bass, are relatively low in numbers due to the generally low productivity of the groundwater-fed streams. We have no indications that terrestrial predation is a problem. It is possible that diseases or parasites were indirectly associated with the extirpation of the darter from various stream segments as a result of physical or chemical habitat degradation. However, apart from this potential association, we do not otherwise suspect that disease or predation unduly limits the distribution or abundance of the darter. Therefore, we find that this factor is not likely to cause the Okaloosa darter to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The State of Florida has listed the Okaloosa darter as an endangered species under its protected species statute since 1976. Recently, the FWC incorporated the IUCN Red List Criteria (*http://www.iucnredlist.org*) in its procedures for classifying species (Florida Administrative Code 68A–27.0012), but the FWC has not yet evaluated the Okaloosa darter using the new procedures (Gruver 2008, pers. comm.). Our application of the Red List Criteria classifies the darter as "near threatened" (Service 2007, p. 43).

In addition, land management on DOD lands is governed by the Sikes Act (16 U.S.C. 670a *et seq.*) and the Sikes Improvement Act, which provide for the conservation and rehabilitation of natural resources and require DOD to periodically prepare an INRMP in consultation with the Service and the applicable state wildlife agency. Because the Okaloosa darter's extant range occurs almost exclusively on Eglin AFB, the species is afforded considerable protections from large-scale habitat disturbance. Its habitat is further conserved and rehabilitated, through fish and wildlife and land management actions, consistent with the use of the military installation, as required by the Sikes Act, as amended by the Sikes Improvement Act.

Department of Defense Instruction (DODI) 4715.3, Environmental Conservation Program, is the overarching instruction for Department of Defense (DOD) natural and cultural resource management, and is the primary agent for implementing policy (including the Sikes Act), assigning responsibility, and prescribing procedures for the integrated management of natural and cultural resources on DOD properties. In compliance with these programs, Eglin AFB has taken a proactive role in the recovery of the Okaloosa darter by managing its lands to provide for the recovery of the darter and assuring that its recovery is integrated with the military training purposes of the base.

Air Force Policy Directive (AFPD) 32–70, Environmental Quality, establishes policy to: Responsibly manage natural and cultural resources on Air Force properties, clean up past environmental damage, meet current environmental standards, plan future activities to minimize impacts, and eliminate pollution from Air Force activities whenever possible. Under this

Directive, an Air Force Environmental Quality Program was developed. This program includes the following activities: cleanup, compliance, conservation, and pollution prevention. Additionally, this directive states that the Air Force will pursue adequate funding to meet environmental legal obligations. Compliance with this directive has resulted in funding and implementation of considerable erosion control measures and fish barrier removal, which has significantly reduced runoff and sedimentation in Okaloosa darter streams and expanded the range of the species.

Air Force Instruction (AFI) 32–7064, Integrated Natural Resources Management, implements AFPD 32–70 and DODI 4715.3. This instruction provides details on how to manage natural resources on Air Force installations to comply with applicable Federal, state, and local laws and regulations. The current INRMP and Threatened and Endangered Species Component Plan for Eglin AFB identify management practices to benefit the Okaloosa darter. The purpose of the INRMP for Eglin AFB is to provide interdisciplinary strategic guidance for the management of the base's natural resources, while the primary objective of the Air Force Natural Resources Program is to ensure continued access to land and air space required to accomplish the Air Force mission while maintaining these resources in a healthy condition. The INRMP for Eglin AFB facilitates compliance with Federal, state, and local environmental requirements. These requirements deal with analysis of potential environmental impacts, water and air quality, wetlands, endangered species, marine mammals, migratory birds, other wildlife, forest and fire management, and public access and recreation. Eglin AFB has a recently approved INRMP (2007) and Threatened and Endangered Species Component Plan (2006) that identifies conservation objectives for the Okaloosa darter as described under item (2) in the Recovery section above.

Summary of Factor D: We estimate that 98.7 percent of the darter's extant range is within the boundaries of Eglin AFB. The 1.3 percent of the range that is not on Eglin is in all instances downstream of the base boundary. For this reason, almost all human activities that may affect the existing darter population are Federal actions, including actions implemented, funded, or approved by the DOD. The INRMP prepared for Eglin AFB under the Sikes Act and Sikes Improvement Act requires habitat improvements that will continue to benefit the darter. Federal actions must also comply with the National Environmental Policy Act, the Clean Water Act, and applicable state law. These regulatory mechanisms will remain in place if the Okaloosa darter is downlisted to threatened. Therefore, the existing regulatory mechanisms are substantial, and they will be adequate to protect the darter and its habitat in the majority of its range now and within the foreseeable future. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Okaloosa darters were not adversely affected by the active hurricane and storm seasons of 2004 and 2005, which brought numerous severe storm events to the southern boundaries of Eglin AFB. Nor were the darters affected by the ongoing 2007–2008 drought affecting much of Florida. This is likely due to the spring-fed nature of the darter's drainages.

Two natural factors are identified in the recovery plan as possibly affecting the Okaloosa darter: the brown darter as an introduced competitor species, and the beaver as an agent adversely modifying darter habitat. In 1964, a potential competitor, the brown darter (*Etheostoma edwini*), was found in the lower reaches of Swift Creek. The brown darter is a widespread species in drainages that surround the streams containing the Okaloosa darter, but had not previously been documented in any Okaloosa darter drainages. Early indications were that the brown darter may have been introduced into darter drainages from releases from bait buckets by fishermen, dispersed from Eagle Creek along the shoreline of Choctawhatchee Bay. Otherwise, the brown darter could have simply been overlooked in early collections. Recent genetics analyses of the brown darter shows high genetic structure, and little support for introductions from eastern Florida (Austin 2007, pers. comm.), supporting the theory that they were overlooked in early collections.

Although annual monitoring (1995–2004) of Okaloosa and brown darter populations shows a weak negative correlation between the abundance of the two species, the relative abundance of Okaloosa darters at sites where both species occur has generally increased or remained constant in this timeframe, and the range of the brown darter has not expanded (Jordan and Jelks 2004, p. 3). Earlier comparisons of microhabitat use found little evidence of competitive displacement (Burkhead *et al.* 1994, p. 60). Therefore, at this time, we do not believe the brown darter is an introduced species or that it poses a significant threat to the recovery of the Okaloosa darter because it has not been shown to successfully compete with the Okaloosa darter.

Okaloosa darters do not appear to tolerate impounded conditions and are generally absent in the relatively still water upstream of manmade dams, beaver dams, culverts, and other instream obstructions that act like dams. Jordan and Jelks (2004, p. 29) observed the effects of a beaver dam and a culvert at two locations on Rogue Creek that supported Okaloosa darters before these structures were placed in the stream. Both structures had similar effects on darters and important darter habitat features, including increased water temperature, accumulation of flocculent substrate, loss of typical microhabitat features, and virtual elimination of darters in the impounded areas. However, Jordan and Jelks (2004, p. 29) also observed that darters returned to these locations within a year following removal of the beaver dam and the culvert, the former by Eglin AFB resource managers and the latter by a hurricane.

Because beavers often alter areas contrary to human intentions for those areas, and also because beaver ponds displace Okaloosa darter habitat, resource managers, with the assistance of the U.S. Department of Agriculture—Wildlife Services, control beaver numbers in some areas on Eglin AFB (USAF 2007, pp. 1–6). Although a nuisance in the urban environment, beavers are a natural feature of the landscape in the range of the Okaloosa darter. While the waters impounded behind a beaver dam do not support Okaloosa darters, darter densities in "beaver meadows" were among the highest observed in monitoring surveys. Beaver meadows occur in the vicinity of beaver ponds where the dam and pond induces the stream to assume a braided (multi-channel) form, sometimes in the pond itself following dam blowout or removal. Floodplain trees are killed by the year-round high water level maintained near the pond and by the beavers themselves, and herbaceous vegetation thrives in the resulting open canopy, which apparently creates favorable habitat conditions for the darter as aquatic macrophytes thrive under the open canopy and in higher nutrient substrates. We suspect that a beaver meadow supports as many or more darters than were displaced from the beaver pond itself.

Beaver dams are not permanent structures and may be broken by the

high flows associated with hurricanes and other major storm events. The organic matter that accumulates in a beaver pond is suddenly released when the dam blows out, which provides a pulse of nutrients in the otherwise nutrient-poor darter streams. The pond is gone immediately, of course, and over time the braided channel through the beaver meadow returns to a single channel form. This channel is eventually shaded by riparian trees and shrubs, and the concentrated patch of darter habitat that the meadow provided is also gone. Given the balance of the effects beavers have on their habitats, we do not know at this time whether their numbers pose a threat to Okaloosa darters. However, even if they do pose localized threats, we do not believe these to be significant to the overall Okaloosa darter population.

Summary of Factor E: While brown darters and beavers may pose localized threats to the Okaloosa darter, there is no evidence indicating that these threats are significantly affecting the species on a rangewide or population level because the Okaloosa darter persists in all six basins, with a minimum of 1,200 mature individuals (Service 2007, Table 2). Substantial increasing trends are evident in the two largest basins, Turkey Creek and Rocky Creek, with a minimum of 244,795 and 217,272 mature individuals respectively (Service 2007, Table 2).

At only one of the 26 monitoring sites does the multiyear disappearance of the Okaloosa darter strongly suggest a local extirpation and possible loss of range, but this potential loss is small. This site is a tributary of a tributary of Rocky Creek, and Okaloosa darters have been collected in recent years from sites both upstream and downstream in the West Long Creek watershed. As noted earlier, Okaloosa darters expanded their ranges in two areas: One in Mill Creek following habitat restoration and one in a tributary of Tom's Creek previously thought to be uninhabited. Therefore, we find that this factor is not likely to cause the Okaloosa darter to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We do not have any data to suggest that this threat will increase in any portion of the darter's range now or within the future.

Conclusion of the 5-Factor Analysis

In developing this proposed rule, we have carefully assessed the best scientific and commercial data available regarding the threats facing this species, as well as the ongoing conservation efforts. As identified above, only one of the five listing factors currently poses a known threat to the Okaloosa darter, namely, Factor A.—The present or threatened destruction, modification, or curtailment of its habitat or range. Eglin AFB manages the vast majority of the Okaloosa darter's range, 98.7 percent. We have seen substantial progress on Eglin AFB addressing threats to the darter's habitat under the base's INRMP and general ongoing habitat restoration. Resource stewardship on Eglin AFB is generally reducing the threat of habitat destruction and range reduction (for example, restoring erosive, near-stream borrow pits). Eglin AFB is addressing the threat of sedimentation from unpaved roads and from areas adjacent to poorly designed and maintained paved roads. Similarly, restoration of Mill Creek on the Eglin Golf Course, which had been substantially altered by culverts and manmade impoundments, has recently (2007) been completed. As the smallest of the six darter watersheds, the darter population in Mill Creek is probably most vulnerable to extirpation. We anticipate that restoration at Mill Creek will secure a viable population in this system. Eglin has worked diligently to generally improve habitat quality within its boundaries. Outside of Eglin's borders, we have recently been working with the City of Niceville to improve their wastewater collection system and install more appropriate culverts at a number of road crossings. However, additional improvements are necessary before this threat of sedimentation and pollution is completely removed.

Brown darters and habitat loss from beaver activity were identified as other natural and manmade factors affecting the continued existence of darters. After several years of monitoring and recent genetics work, it does not appear that the brown darter is either expanding its range or displacing Okaloosa darters in most sympatric areas. The overall effect of beaver activity on the darter is poorly understood. However, even if brown darters and habitat loss from beaver activity do pose localized threats, we do not believe these to be significant to the overall Okaloosa darter population.

Recovery plans are intended to guide and measure recovery. Recovery criteria for downlisting and delisting are developed in the recovery planning process to provide measureable goals on the path to recovery; however, precise attainment of all recovery criteria is not a prerequisite for downlisting or delisting. Rather, the decision to change the status of a listed species under the Act is based on the analysis of the 5 listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicate that a species, subspecies, or distinct population segment is no longer in danger of extinction throughout all or a significant portion of its range.

The 1998 Recovery Plan for the Okaloosa darter identifies five downlisting criteria. We believe that the intent of all five of the downlisting criteria have been fulfilled; however, the delisting criteria have not been met at this time (see the Recovery section above). While significantly reduced, sedimentation and pollution remain a threat in portions of the darter's range, as well as development.

Based on the analysis above and given the substantial reduction in threats to its habitat, we believe that the Okaloosa darter does not currently meet the definition of endangered in that it is not "in danger of extinction throughout all or a significant portion of its range." Instead, we believe it meets the definition of threatened in that it is "likely to become endangered in the foreseeable future throughout all or a significant portion of its range." Actions still needed for the Okaloosa darter to continue to recover (for example, actions to remove threats to the point that the species no longer meets the definition of threatened) include:

(1) Cooperative agreements to protect and restore habitat, water quality, and water quantity for the Okaloosa darter outside of Eglin AFB to protect the species in the foreseeable future; and

(2) Improved and maintained water quality and riparian habitat on Eglin AFB, minimizing erosion at clay pits, road crossings, and steep slopes to the extent that resembles historic, predisturbance conditions.

Significant Portion of the Range Analysis

Having determined that the Okaloosa darter is no longer endangered throughout its range as a consequence of the threats evaluated under the five threat factors in the Act, we must next consider whether there are any significant portions of its range where the species is currently endangered. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' " (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation,

resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is endangered in a significant portion of its range is to identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are not significant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is endangered there. Conversely, if the Service determines that the species is not endangered in a portion of its range, the Service need not determine if that portion is significant. If the Service determines that both a portion of the range of a species is significant and the species is endangered there, the Service will specify that portion of the range where the species is in danger of extinction pursuant to section 4(c)(1) of the Act.

The terms "resiliency," "redundancy," and "representation" are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic or occasional disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

For the Okaloosa darter, we applied the process described above to determine whether any portions of the range warranted further consideration to qualify for endangered status. We concluded through the five-factor analysis, in particular Factor A, that the existing or potential threats are consistent throughout the darter's range, and there is no portion of the range where one or more threats are geographically concentrated. We believe that there are no small geographic areas where localized threats still exist. Because the low level of threats to the species is essentially uniform throughout its range, no portion warrants further consideration as a significant portion of the range. A summary of our reasoning follows.

The quality of Okaloosa darter habitat is quite variable throughout its range. However, the basic biological components necessary for the darter to complete its life-history functions are present throughout the range in each of the six stream systems. There is no particular location or area that provides a unique or biologically significant function. The currently occupied range of the darter is restricted to approximately 364.6 and 402 km (227.9 and 251.3 mi.) of streams, respectively, in Walton and Okaloosa Counties, Florida. The threats identified above are fairly uniform throughout this range. The vast majority of the range of the darter, 98.7 percent, is managed by Eglin AFB according to the 2007 INRMP and Threatened and Endangered Species Component Plan. The Component Plan applies equally throughout the darter's range on the base. The greatest threat to the species, sediment loading mainly from stream crossings of unpaved roads, is ubiquitous throughout the darter's range on the base. While there are certain specific locations within the darter's range where pollution impacts are greater than in other locations, for example, those locations considered to be "potentially impaired" by DEP, in no circumstance is an entire stream system so affected.

An exception to the above includes the approximately 5 km (3.1 mi.) of the range that does not occur on Eglin AFB. In this small percentage of the range, several of the threats are more pronounced, including those from urban development and construction activity. However, as this more pronounced threat is only present on 1.3 percent of the range of the Okaloosa darter, it is not "significant" to the species. Therefore, we have determined that there are no portions of the range that qualify as a significant portion of the range in which the darter is in danger of extinction.

In summary, the threats to Okaloosa darter habitat have been significantly reduced as a result of Eglin implementing habitat improvement measures on the AFB. Okaloosa darter populations remain stable throughout most of their range, and have even expanded their range in some areas. Based on the darter's improved status throughout its range and the reduction in threats, we have determined that none of the threats result in the darter being in danger of extinction throughout all or a significant portion of its range.

However, several threats to the darter and its habitat remain. We have determined that, based on the status of the species and these remaining threats, the Okaloosa darter meets the definition of threatened in that it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we are proposing to reclassify the darter's status from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the Okaloosa darter, and promotes conservation actions by Federal, state, and local agencies; private organizations; and individuals. The Act provides for possible land acquisition and cooperation with the state, and provides for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the Okaloosa darter. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the Okaloosa darter or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the Okaloosa darter. Federal agency actions that may require consultation include: Eglin AFB mission activities, new construction, culvert replacements, stream restoration, sediment control projects, vegetation control, and right-of-way permitting for pipelines and cables; U.S. Army Corps of Engineers involvement in projects such as dredge and fill permits for roads, bridges, and culverts; and Federal Highway Administration road projects.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harm, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to Service agents and agents of state conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened and endangered species under certain circumstances. Regulations governing permits are codified at 50 CFR part 13 and at 50 CFR 17.32 for threatened wildlife species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Because the Okaloosa darter's extant range occurs almost exclusively on Eglin AFB, the species is afforded considerable protections from large-scale habitat disturbance. Those protections have already been discussed under Factor D. above, and are incorporated here by reference.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act and applicable regulations should be directed to Don Imm, Deputy Field Supervisor, Panama City Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345, telephone (404) 679–7217, facsimile (404) 679–7081.

Proposed Special Rule

The information presented just above generally applies to threatened species of fish and wildlife. However, the Service has the discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. Threatened species implementing regulations at 50 CFR 17.31 incorporate the prohibitions of section 9 of the Act for endangered species, except when a "special rule" is promulgated under section 4(d) of the Act for a particular threatened species. A special rule for a particular threatened species defines the specific take prohibitions and exceptions that apply for that species rather than incorporating all of the prohibitions of section 9 of the Act. The prohibitions under section 9 of the Act currently make it illegal to import, export, take, possess, deliver, receive, carry, transport, ship in interstate commerce, sell or offer for sale in interstate or foreign commerce species listed under the Act. Take, as defined in section 3 of the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Threatened species that have special rules under section 4(d) of the Act are listed in our regulations at 50 CFR 17.40 through 17.48.

Because we originally listed the Okaloosa darter as endangered, we did not promulgate a special rule. However, now that we are proposing to reclassify the darter to threatened status, we believe that a special rule is appropriate to provide for the continued conservation of the species. Therefore, a proposed special rule is included as part of this proposed reclassification from endangered to threatened status.

Although the range of the species is small, it is almost entirely (98.7 percent) on Eglin AFB Federal lands. Darter drainages comprise 24 percent of the Eglin AFB, subjecting almost all actions undertaken on 24 percent of the base to the interagency cooperation requirements of section 7 of the Act, including habitat management and restoration both specifically targeted at darter conservation and as required by the Sikes Act and SAIA through the Eglin INRMP. This proposed special rule:

(1) Recognizes the positive recovery efforts and accomplishments of Eglin AFB and the DOD in recovering the Okaloosa darter to the extent that the darter no longer meets the definition of endangered;

(2) Provides increased regulatory and mission flexibility for Eglin AFB;

(3) Will help streamline or eliminate review and permitting requirements for habitat management and restoration activities, thus providing a net benefit to the Okaloosa darter; and

(4) Will better enable the Service and Eglin AFB to target limited resources to other, more vulnerable areas or species.

Therefore, under section 4(d) of the Act, we propose, through this special rule, that it is necessary and advisable to provide for the conservation of the Okaloosa darter by allowing the take in accordance with applicable Federal, state, and local laws, during the following activities on Eglin AFB that are consistent with a Service-approved INRMP and the Threatened and Endangered Species Component Plan:

(1) Prescribed fire for land management to promote a healthy ecosystem;

(2) Instream habitat restoration;

(3) Unpaved range road stabilization;

(4) Removal or replacement of culverts for the purpose of road decommissioning, improving fish passage, or enhancing stream habitat; and

(5) Scientific research and monitoring activities consistent with an approved Okaloosa darter recovery plan, or otherwise approved by the Service, both on and off of Eglin AFB.

All other activities resulting in take of Okaloosa darter would remain prohibited.

This proposed special rule would provide for the continued conservation of Okaloosa darter by reducing the regulatory burden under the Act, and thereby encouraging further recovery efforts on DOD lands. Minor adverse impacts to the Okaloosa darter, consistent with provisions of a final 4(d) special rule, if adopted, would not appreciably diminish the likelihood of recovery of the Okaloosa darter.

Effects of This Proposed Rule

This rule, if made final, would revise our regulations at 50 CFR 17.11(h) to reclassify the Okaloosa darter from endangered to threatened throughout its range on the Federal List of Endangered and Threatened Wildlife. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. However, this reclassification would not significantly change the protection afforded this species under the Act. The regulatory protections of section 9 and section 7 of the Act would remain in place. Anyone taking, attempting to take, or otherwise possessing an Okaloosa darter, or parts thereof, in violation of section 9 of the Act would still be subject to a penalty under section 11 of the Act, unless their action is covered under a special rule under section 4(d) of the Act. Under section 7 of the Act, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Okaloosa darter.

If the Okaloosa darter is listed as threatened, recovery actions directed at the darter would continue to be implemented as outlined in the recovery plan for the Okaloosa darter (Service 1998), including:

(1) Restoring and protecting habitat in the six Okaloosa darter stream watersheds;

(2) Protecting water quality and quantity in the six Okaloosa darter streams;

(3) Monitoring and annually assessing populations and habitat conditions of Okaloosa and brown darters, and water quality and quantity in the streams; and

(4) Establishing a public information and education program and evaluating its effectiveness.

Finalization of this proposed rule would not constitute an irreversible commitment by the Service. Reclassification of the Okaloosa darter back to endangered status (uplisting) would be possible if changes occur in management, population status, and habitat or other actions that detrimentally affect the species or increase threats to the species. Federal agencies must still ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Okaloosa darter when this action is made final.

Peer Review

In accordance with our joint peer review policy with the National Marine Fisheries Service, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published in the **Federal Register** on July 1, 1994 (50 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least three appropriate and independent specialists regarding the science in this proposed rule. The purpose of this review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register.** We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed reclassification of the Okaloosa darter from endangered to threatened and our proposed special rule. The final decision on this proposed rule will take into consideration all of the comments and any additional information we receive during the comment period. Accordingly, the final decision may differ from this proposal.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866) and has not reviewed this rule. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Section 7 Consultation

A proposed special rule under section 4(d) of the Act is included in this proposed downlisting rule. The Service is not required to consult on this rule under section 7(a)(2) of the Act. The development of protective regulations for a threatened species are an inherent part of the section 4 listing process. The Service must make this determination considering only the "best scientific and commercial data available." A necessary part of this listing decision is also determining what protective regulations are "necessary and advisable to provide for the conservation of [the] species." Determining what prohibitions and authorizations are necessary to conserve the species, like the listing determination of whether the species meets the definition of threatened or endangered, is not a decision that

Congress intended to undergo section 7 consultation.

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These regulations require that Federal agencies obtain approval from OMB before collecting information from the public. The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal government are not included. The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposed rule does not contain any collections of information that require OMB approval under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of the references used to develop this proposed rule is available upon request from Don Imm, Deputy Field Supervisor, Panama City Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this document is Janet Mizzi, Chief, Species and Habitat Assessment, U.S. Fish and Wildlife Service, Southeast Regional Office, Atlanta, GA.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

We propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for "Darter, Okaloosa" under "FISHES" in the list of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Darter, Okaloosa	Etheostoma okaloosae.	U.S.A. (FL)	Entire	T	6	NA	17.44(aa)
*	*	*	*	*	*		*

3. Amend § 17.44 by adding a new paragraph (aa) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(aa) Okaloosa darter (*Etheostoma okaloosae*). (1) Except as noted in paragraphs (aa)(2) and (aa)(3) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the Okaloosa darter.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any Okaloosa darters taken in violation of this section or in violation of applicable state fish and wildlife conservation laws or regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) The following activities, which may result in incidental take of the Okaloosa darter, are allowed on Eglin Air Force Base (AFB), provided that the activities occur in accordance with applicable Federal, state and local laws, and are consistent with a Service-approved Integrated Natural Resource Management Plan by Eglin AFB and with Eglin AFB's Threatened and Endangered Species Component Plan:

(i) Prescribed fire for land management to promote a healthy ecosystem;

(ii) Instream habitat restoration;

(iii) Unpaved range road stabilization; and

(iv) Removal or replacement of culverts for the purpose of road decommissioning, improving fish passage, or enhancing stream habitat.

(3) Scientific research and monitoring activities that may result in incidental take of the Okaloosa darter are allowed, provided these activities are consistent with a Service-approved Okaloosa darter recovery plan, or otherwise approved by the Service, whether those activities occur on and off of Eglin AFB.

(4) All activities not listed in paragraph (aa)(2) and (aa)(3) of this section that result in take of the Okaloosa darter are prohibited.

Dated: January 14, 2010.

Sam D. Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. 2010–2007 Filed 2–1–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 75, No. 21

Tuesday, February 2, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sucker Creek Channel and Floodplain Restoration Project (Phase II), Rogue River—Siskiyou National Forest, Josephine County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS), to examine impacts connected with restoration of approximately a 0.5 mile section of Sucker Creek. The purpose for preparing this EIS is to analyze and disclose environmental consequences associated with a Proposed Action that includes a variety of restoration activities. Site-specific actions being proposed are designed to increase the quantity and improve the quality of fish habitat, reduce stream temperature, and reduce excessive fine sediment inputs from the project reach.

The activities are proposed within a portion of the Sucker Creek watershed, located on private lands and lands administered by the Rogue River—Siskiyou National Forest, Wild Rivers Ranger District, Josephine County, Oregon.

This proposal will tier to and be designed under the Final Environmental Impact Statement for the Siskiyou National Forest Land and Resource Management Plan (LRMP, 1989), as amended by the Northwest Forest Plan (NWFP) (USDA Forest Service and USDI Bureau of Land Management 1994), which provides guidance for land management activities.

Although this is an action having "effects primarily of local concern (40 CFR 1506.6(3))," the Forest Service is nonetheless publishing this notice in the **Federal Register** to make diligent effort at involving the public, agencies, organizations, Native American tribes and other interested parties in preparation of this EIS.

The Wild Rivers Ranger District invites written comments concerning the scope of the analysis in addition to those comments that will be solicited as a result of local public participation activities. The Forest Service will also give notice of the full environmental analysis and decision making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Issues and comments concerning the scope and analysis of this proposal must be received within 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: Submit written comments regarding this proposal to Liz Berger, Interdisciplinary Team Leader, care of USDA Forest Service, Medford Interagency Office, 3040 Biddle Road, Medford, Oregon 97504; FAX (541) 618–2149 or electronically to *eaberger@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: For technical information or questions about this proposal, contact Liz Berger, Interdisciplinary Team Leader, Rogue River—Siskiyou National Forest, phone: (541) 618–2051, FAX: (541) 618–2149, or e-mail: *eaberger@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The legal description of the area being considered is T. 39 S., R. 6 W, in section 31 and T. 39 S., R. 7 W., in section 36; W.M., Josephine County, Oregon.

Purpose and Need for Action

The purpose of the Sucker Creek Channel and Floodplain Restoration—Phase II project is to improve fish habitat and water quality in the upper Sucker Creek Watershed. The specific restoration goals associated with the Purpose and Need for this project are to:

- Increase habitat quantity and improve habitat quality for coho salmon (listed as a threatened species under the Endangered Species Act), Chinook salmon, steelhead, and Pacific lamprey,
- Reduce stream temperature, and
- Reduce excessive fine sediment inputs from the project reach.

Restoration actions are needed to address impacts to fish habitat and water quality associated with past land management activities. The Sucker Creek project reach (Sucker Creek) has changed over time due to the effects of hydraulic and placer mining activities, timber harvest, and roads. Sucker Creek has been straightened and realigned. Existing stream morphology measurements show the channel is a Rosgen F channel type which is characteristic of an entrenched and incised system. Historic aerial photos and topographic surveys examining past channel geometry show that the stream channel was more sinuous and contained a larger floodplain, characteristic of a Rosgen C channel type. Mine tailing piles confine the channel and channel instability has caused excessive erosion and steep cutbanks. Additional disturbance responses are present, including increased channel width and lack of channel depth, loss of pool habitat, loss of side channel habitat, increased channel migration, and loss of channel structure and habitat. There is a lack of large wood and the quantity is well below benchmark levels of 80 pieces per mile.

Stream temperatures are high and exceed Oregon Department of Environmental Quality (ODEQ) standards. Sucker Creek was listed for stream temperature (1994/1996 303(d) list) by ODEQ, the Total Maximum Daily Load (TMDL) was adopted, and the Water Quality Management Plan (WQMP) is being implemented. High stream temperatures are from multiple sources, including loss of stream shading and a widened channel that lacks depth.

There is a need to improve fish habitat and water quality in Sucker Creek by reconstructing portions of the channel, placing large wood structures in the stream channel and floodplain, and riparian planting.

Proposed Action

The proposed action for this project will implement restoration activities in a 0.5 mile section of Sucker Creek, including reconstruction of portions of the stream channel, placement of large wood structures in the stream channel and floodplain, and establishment of a riparian gallery forest. Further detail on the proposed restoration actions is as follows:

- Reconstruct portions of the mainstem channel—Portions of the mainstem channel will be reconstructed to create the pattern, dimension, and

profile appropriate for this stream type and valley type. This includes building bankfull benches or structures designed to restore floodplain connectivity and constructing new sections of stream channel. Stream meanders will be constructed, including pools, riffles, runs, and glides appropriate for this system. Banks will be stabilized, as needed. In addition, off-channel habitat features, such as alcoves, will be constructed. The existing channel will be plugged at reconstructed channel connection points using a combination of large wood, sediment comprised of fines, gravels, and cobbles, and slash material. The channel would be constructed using an excavator(s) and dozer.

• Placement of large wood structures—Structures will be used to: Reduce accelerated streambank erosion; provide grade control; enhance fish habitat (holding and rearing cover, spawning habitat, increase spatial habitat diversity); reintroduce and stabilize large wood for fisheries and stream channel stability; transport sediment; and provide energy dissipation. Approximately 160 large wood pieces will be placed using ground-based placement methods with excavators and other heavy equipment. Approximately 15 structures will be constructed on the mainstem portion of Sucker Creek. For these structures, key pieces will be buried into the banks and existing near-bank large riparian trees will used to buttress the instream wood and create stability. Depending on site conditions, boulders may also be used to anchor the logs in place and tree tips may be buried from 4 to 6′. Each tree will be approximately 50′ in length with an approximate DBH ranging from 16 to 36″. About 50% or more of the trees used will have intact rootwads. All key wood pieces will be Port-Orford-cedar, incense cedar, or Douglas-fir. Large wood structures will be placed with an excavator.

• Establishment of a riparian gallery forest—Approximately four acres along the mainstem channel riparian area and floodplain will be planted with a mixture of native conifer, hardwood, and shrub species. Disease-resistant Port-Orford-cedar will be included in the mix of native conifers planted.

Raw materials for the project, such as large wood, boulders, and gravels, will be obtained from Forest Service-managed land within or near the project area or from commercial sources. Trees are expected to come from Forest Service-managed lands within the Sucker Creek Watershed or from commercial sources. A team comprised of a forester, Port-Orford-cedar program manager, and a hydrologist and/or fisheries biologist will identify trees for the project. Depending on tree heights, one tree may produce up to two large wood pieces for the project. Identified trees and locations will be reviewed and analyzed by the interdisciplinary team to determine acceptable trees and sites for project materials.

The project proposes to significantly increase coho salmon spawning and rearing habitat by restoring a self-maintaining stable meander pattern, creating pools, riffles, and glides, constructing large wood complexes, reconnecting floodplains, and planting a riparian gallery forest. The project will increase stream length and spawning and summer and winter rearing habitats. In addition, the project also proposes to decrease stream temperature by reducing stream width, increasing stream depth, and increasing stream shade through planting of conifers, hardwoods, and shrubs. These restoration activities will also contribute to reducing excessive fine sediment inputs. Project work will follow Oregon Department of Fish and Wildlife instream work guidelines.

Alternatives

Alternatives to the Proposed Action will include No-Action as required by NEPA. Additional alternatives may also be considered.

This notice of intent initiates the scoping process under NEPA, which will guide the development of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by May 2010. The comment period for the draft EIS will be 45 days from the date EPA publishes the Notice of Availability in the **Federal Register**.

At the end of this period, comments submitted to the Forest Service, including names and addresses of those who responded, will be considered part of the public record for this proposal, and as such will be available for public review. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to the Objection Process the under 36 CFR Part 218.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in summer of 2010.

The Forest Service Responsible Official is Joel King, District Ranger of the Wild Rivers Ranger District, Rogue River—Siskiyou National Forest. The Responsible Official will consider the Final EIS, applicable laws, regulations, policies, and analysis files in making a decision. The Responsible Official will document the decision and rationale in the Record of Decision.

January 21, 2010.

Joel King,

District Ranger.

[FR Doc. 2010–1952 Filed 2–1–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc County Resource Advisory Committee, Alturas, California 96101, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, February 22, 2010 and March 8, 2010 in Alturas, California 96101, for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on February 22, and March 8, 2010 will begin at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California 96101. Agenda topics will include reviewing project proposals and to conduct business that meet the intent of Public Law 110–343. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Tom Hudson, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Resource Advisory Committee Coordinator, Stephen Riley at (530) 233–8771.

Tom Hudson,

Forest Supervisor.

[FR Doc. 2010–2191 Filed 2–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Intent To Hold Public Forums To Solicit Feedback From the Public Regarding the Section 523 Mutual Self-Help Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: Responding to President Obama's initiative for an open, transparent government, the Rural Housing Service, hereinafter referred to as the Agency, intends to hold public forums to solicit feedback from the public on whether the current method of delivering the self-help program is the most efficient and cost effective in terms of cost and program delivery.

Transparency encourages accountability by delivering information to the public about what the Government is doing. Participation provides the public with opportunities to contribute ideas and expertise to the Government which will enable them to make sound policy decisions that represent a wider group of diverse individuals throughout society. Collaboration improves effectiveness of the Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government and private institutions.

The Agency will use information obtained from public forums to evaluate all aspects of the self-help program. As the Agency moves forward, it will continue to encourage and solicit feedback, recommendations, and comments from all sectors of the public. All information relative to these forums will be taped, transcribed, and posted to the Agency Web site.

DATES: Public forums are scheduled for February through June 2010. All written questions and comments must be received by the Agency prior to June 30, 2010. The public forums will be held in selected states and the Washington, DC area.

ADDRESSES: Send questions and comments to: Debra S. Arnold, Program Analyst, Program Support Staff, Rural Housing Service, USDA at 1400 Independence Avenue, SW., Stop 0761, Washington, DC 20250–0761, telephone (202) 720–1366, fax: (202) 690–4335, e-mail *debra.arnold@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Debra S. Arnold, Program Analyst, Program Support Staff, Rural Housing Service, USDA at 1400 Independence Avenue, SW., Stop 0761, Washington, DC 20250–0761, telephone (202) 720–1366, fax: (202) 690–4335, e-mail *debra.arnold@wdc.usda.gov.* For participants who require a sign language interpreter or other special accommodations, please contact Debra S. Arnold as directed above.

SUPPLEMENTARY INFORMATION: One of the major areas within the Section 523 Mutual Self-Help Program that the Agency will be focusing on is the Technical and Management Assistance (T&MA) contracts. The contracts task regional non-profit organizations to provide training and technical assistance to recipients of the Section 523 grants. These recipients, referred to as Section 523 grantees, provide technical assistance to low and very low-income families to build their homes in rural areas. In addition to assisting the Section 523 grantees, the contractors are also required to market the self-help program, monitor the progress of active Section 523 grantees, and provide training to both grantees and families.

The location and time of the forums will be determined at a later date and announced locally. Registration information and deadlines will be provided, at that time. In addition, this information will be posted to the Agency Web site.

Date	State
February 18, 2010	Arkansas.
March 5, 2010	Puerto Rico.
March 12, 2010	North Carolina.
March 26, 2010	Mississippi.
April 9, 2010	Arizona.
April 23, 2010	Ohio.
May 14, 2010	Washington.
June 4, 2010	Vermont.
June 11, 2010	Iowa.
June 18, 2010	Washington, DC.

Dated: January 27, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–2067 Filed 2–1–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1648

Approval of Manufacturing Authority, Foreign–Trade Zone 26, Kia Motors Manufacturing Georgia, Inc. (Motor Vehicles), West Point, Georgia

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, has requested manufacturing authority on behalf of Kia Motors Manufacturing Georgia, Inc., within FTZ 26 Site 11, West Point, Georgia (FTZ Docket 72–2008, filed 12–16–2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 79048, 12–24–2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 26 on behalf of Kia Motors Manufacturing Georgia, Inc., as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of January 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–2176 Filed 2–1–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 32 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

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

ACTION: Notice; intent to prepare a draft environmental impact statement (DEIS); scoping; request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the Gulf of Mexico Fishery Management Council (Council) intends to prepare a DEIS to describe and analyze management alternatives to be included in an amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These alternatives will consider measures to end overfishing of gag; create a rebuilding plan for the gag stock that will restore the stock to its maximum sustainable yield level (MSY); adjust gag and red grouper annual catch limits (ACLs), annual catch targets (ACTs), and other management measures; and revise shallow-water grouper accountability measures (AMs). In addition, the DEIS will consider separating the recreational sector of the grouper component of the reef fish fishery, revising multi-use individual fishing quota (IFQ) shares, methods to reduce gag bycatch, and improving data collection and monitoring of the recreational sector. The purpose of this notice of intent (NOI) is to solicit public comments on the scope of issues to be addressed in the DEIS.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by March 4, 2010.

ADDRESSES: Requests for information packets, written comments on the scope of the DEIS, suggested alternatives and potential impacts, and requests for additional information on the amendment should be sent to Peter Hood, National Marine Fisheries Service, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701–5505; telephone (727) 824–5305; fax (727) 824–5308. Comments may also be sent by email to *Peter.Hood@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Hood; phone: (727) 824–5305; fax: (727) 824–5308; email: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: Based on the results of the 2009 stock assessment update, NMFS notified the Council on August 11, 2009, that the Gulf of Mexico (Gulf) gag stock was both overfished and undergoing overfishing. The gag stock has shown declines in indices of abundance since 2005. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), within two years of notifying the Council of a stock's condition, a plan must be developed and implemented to end overfishing and rebuild the stock.

For Gulf gag and red grouper, ACLs must be reexamined in light of new information on the stocks. To rebuild the gag stock, an ACL, and optionally an ACT, must be set at levels that will prevent overfishing from occurring while allowing the gag stock to rebuild to a biomass level capable of producing MSY in 10 years or less. Although the 2009 stock assessment update of the red grouper stock in the Gulf of Mexico indicated the stock continues to be neither overfished or undergoing overfishing, the stock has declined since 2005. The ACT currently in effect exceeds the optimum yield level for 2010 and the acceptable biological catch level set by the Scientific and Statistical Committee for 2010.

In Amendment 30B, the AMs implemented for gag and red grouper were established under a quota system and do not reflect changes that occurred in the commercial sector when the IFQ system was implemented in January of 2010, including the incorporation of tilefish into the IFQ program. In addition, the AMs do not contain the overage adjustment for overfished stocks recommended by the National Standard 1 Guidelines. Therefore, the AMs for gag and red grouper should be revisited.

Private recreational fishing vessels and for-hire (charter and headboat) vessels are currently combined for management purposes into a single recreational sector. However, if each sector had its own ACL and ACT, managers would have greater flexibility in managing the sectors. The for-hire and private recreational sectors could potentially be given different fishing seasons, bag limits, or other management measures, and could improve the net benefits of the recreational grouper component of the reef fish fishery.

The IFQ system implemented for the commercial grouper and tilefish components of the Gulf reef fish fishery in 2010 allowed for flexibility in gag and red grouper harvest by allowing for multi-use shares (valid for harvesting either red or gag grouper). However, under the reduced red grouper and gag annual catch limits expected to be implemented through Amendment 32, it is possible that the use of multi-use shares could result in commercial harvest of red grouper or gag exceeding the sector allocation. To prevent this from happening, adjustments need to be made to the provision for multi-use shares in the grouper individual fishing quota system.

The reduced gag catch limits under the initial years of the rebuilding plan require substantial reductions in both commercial and recreational harvest. The commercial harvest can be reduced through an adjustment to the commercial quota, but the recreational sector has no quota. Recreational catch levels are managed primarily through a combination of bag limits, minimum size limits and closed seasons. A combination of management measures need to be adopted that will achieve the needed reductions in the recreational fishery.

Bycatch issues need to be addressed in both the commercial and recreational grouper fisheries. With the large difference between the red grouper and gag commercial quotas, this could result in large numbers of gag discards as fishermen direct effort to catch red grouper. Specifically, ways to reduce gag bycatch are needed in both sectors of the fishery. Proposed measures have

included time and area closures to protect gag, the use of gear that does not target gag, and changes in gag size and bag limits.

Data collection and monitoring of the recreational fishery could be improved in terms of both accuracy and timeliness to enhance management of the recreational sector and application of AMs. The Council is evaluating methods such as fish tags or a fish stamp, and several proposals have been directed toward the Council to improve the monitoring and management of the recreational fishery. These recommendations could improve the quality and timeliness of information needed to assess the different reef fish fisheries.

NMFS, in collaboration with the Council, will develop a DEIS to describe and analyze management alternatives to address the management needs described above. Those alternatives include, but are not limited to, a "no action" alternative regarding each action; alternatives to end overfishing of gag and rebuild the stock to its MSY level; alternatives to adjust gag and red grouper ACLs, ACTs, management measures, and AMs; alternatives to consider recreational sector separation; alternatives to revise how multi-use IFQ shares are allocated; alternatives to reduce gag bycatch; and alternatives to improve data collection and monitoring of the recreational sector.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

Copies of an information packet will be available from NMFS (see **ADDRESSES**).

After the DEIS associated with Amendment 32 is completed, it will be filed with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS) and before adopting final management measures for the amendment. NMFS will submit both the final amendment and the supporting FEIS to the Secretary of Commerce (Secretary) for review as per the Magnuson-Stevens Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final amendment for public review during the Department of Commerce Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA and the EPA will publish a notice of availability for the FEIS in the **Federal Register**. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the amendment.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the FEIS, prior to final agency action.

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

Dated: January 27, 2010

Emily H. Menashes,

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

[FR Doc. 2010–2161 Filed 2–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 7–2010]

Foreign–Trade Zone 123 - Denver, Colorado, Application for Subzone, Vestas Nacelles America, Inc. (Wind Turbine Nacelles, Hubs, Blades and Towers), Brighton, Denver, Pueblo, and Windsor, Colorado

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the City and County of Denver, grantee of FTZ 123, requesting special–purpose subzone status for the wind turbine nacelle, hub, blade and tower manufacturing and warehousing facilities of Vestas Nacelles America, Inc. (and related entities) (Vestas) located in Brighton, Denver, Pueblo, and Windsor, Colorado. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 25, 2010.

The Vestas facilities (2,500 employees) consist of four sites: *Site 1* - manufacturing plant and warehouse nacelles, hubs and blades (664,000 sq.ft./299.1 acres) located at 1500 East Crown Prince Boulevard, Brighton, Colorado; *Site 2* - manufacturing plant blades (400,000 sq.ft./80.78 acres) located at 11140 Eastman Park Drive, Windsor, Colorado; *Site 3* - manufacturing plant towers (651,000 sq.ft./811 acres) located at 100 Tower Drive, Pueblo; and, *Site 4* - warehouse wind turbine components (119,983 sq.ft./5.6 acres) located at 5175 Joliet Street, Denver, Colorado. Activity to be conducted under FTZ procedures would include manufacturing, testing, packaging and warehousing of wind turbines and related parts (up to 1,560 nacelles and hubs, 4,200 blades, and 1,100 towers annually) for the U.S. market and export. Foreign–origin components (representing up to 50% of total material inputs, by value) that would be used in the manufacturing activity would include grease, oils, epoxy/resins, paint, filler, sealant tape, adhesives, self–adhesive plates/sheets/film of plastics, gaskets/washers/seals of plastics, dampeners, balsa/birch kits, plywood, boxes and pallets of wood, glass fiber roving and yarn, steel columns/posts/pillars/towers, lattice masts, wire and cable, fasteners, aluminum cloth/grill/mesh, root joints, slewing rings, blade bearings, transport fixtures (of steel), rope, brackets, fittings, flanges, base metal mountings, tubes, pipes, doors/gates, linear–acting cylinders, electrical equipment, motors, generators, batteries, profile projectors and parts, ducts, clamps, roller chain, control valves, gears, transmission shafts, flywheels, pulleys, springs, pumps, air/water coolers, filters, balancing weights, plates, controllers, accumulators, bearings, housings, brake parts, heaters, measuring instruments, and wind vanes (duty rate range: free - 13.6%). The application indicates that Vestas will admit all foreign–origin components "classified within textile import categories" to the proposed subzone under privileged foreign status (19 CFR § 146.41).

FTZ procedures could exempt Vestas from customs duty payments on the foreign components and materials used in export production (about 25% of annual shipments). On domestic shipments, the company would be able to elect the duty rate that applies to finished wind turbine nacelles, hubs, blades and towers (duty free) for the foreign production inputs noted above.

Vestas would also be exempt from duty payments on any foreign–origin inputs that become scrap or waste during manufacturing. Subzone status would further allow Vestas to realize logistical benefits through the use of weekly customs entry procedures. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is April 5, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 19, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482–1378.

Dated: January 25, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–2178 Filed 2–1–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU13

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). This will be the first meeting to be held in the calendar year 2010. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. All full Committee sessions will be open to the public.

DATES: The meetings will be held February 23–25, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Sheraton Waikiki, 2255 Kalakaua Avenue in Honolulu, HI 96815; 808–922–4422.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 713–2239 x–120; e-mail: *Mark.Holliday@noaa.gov*.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, State, consumer, academic, tribal, governmental and other national interests. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/*.

Matters To Be Considered

This agenda is subject to change.

The meeting is primarily convened to hear presentations and discuss policies and guidance on the draft NOAA catch share policy and the Fiscal Year 2010–2012 budget process for NOAA. The meeting will also include: an update on NOAA aquaculture program activities; an update on the Interagency Ocean Policy Task Force activities; discussion of various MAFAC administrative and organizational matters including approval of the revised charter and establishment of the new recreational fishing work group; and meetings of the standing subcommittees including development of their work plans for this year.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Holliday, MAFAC Executive Director; (301) 713–2239 x120 by 5 p.m. on February 10, 2010.

Dated: January 27, 2010

Samuel D. Rauch III,

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

[FR Doc. 2010–2159 Filed 2–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU18

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the South Atlantic Fishery Management Council's (Council) Shrimp Review Panel via conference call.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Shrimp Review Panel via conference call.

DATES: The call will take place February 19, 2010, beginning at 2 p.m. (EDT).

ADDRESSES: The call will be facilitated at the office of the South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520. Persons interested in listening to the discussions may call (877) 774–6707, PIN # 294.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The meeting is being convened to discuss: (1) a potential closure of Exclusive Economic Zone (EEZ) waters adjacent to South Carolina and Georgia to protect overwintering penaeid shrimp and, (2) the condition of the pink shrimp stock in the South Atlantic Region.

The Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP) allows for concurrent closure of the EEZ adjacent to those South Atlantic states that have closed their waters to the harvest of penaeid shrimp to protect overwintering stocks when they have been depleted by cold weather. South Carolina and

Georgia have closed their waters to shrimp harvest and may request that the Council recommend concurrent closure of the EEZ off those states. The Review Panel will review available data to assess whether a recommendation to close EEZ waters is warranted.

Amendment 6 to the Shrimp FMP established a proxy for a minimum stock size threshold (MSST) as a parent stock size capable of producing maximum sustainable yield (MSY) the following year. Sampling data indicate that the stock is again below the MSST. A recommendation from the Review Panel is needed as to whether management action is necessary to bring the pink shrimp stock back above the MSST level.

The Panel will prepare a report regarding its recommendations and forward it to the Council's Shrimp Committee to determine if further action is needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: January 28, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–2151 Filed 2–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Franchise Trade Mission to Mexico; March 3–5, 2010

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Mexico City, March 3–5, 2010, with an optional spin-off visit to Monterrey. The mission will focus on assisting U.S. franchise companies to launch or increase their business in the Mexican market. The mission will help participating firms gain market insight, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. business in Mexico. The mission will include business-to-business matchmaking appointments with potential local and regional investors at Mexico's International Franchise Fair—the Feria Internacional de Franquicias. The delegation will be comprised of U.S. franchise representatives in various industry sectors with potential in Mexico.

Commercial Setting

Today there are nearly 1,000 franchises in Mexico—ranking the nation seventh in franchises in 2008 by the World Franchise Council—due to market maturity, strong legal framework, support from the government, and franchise certification programs.

Mexico's franchise industry has proven to be one of the most important sectors for the country's economic growth, generating more than $7.25 billion in 2008, which represents 6 percent of total GDP. Franchising currently provides over 600,000 jobs and 55,000 points of sale throughout Mexico. The franchise sector has maintained constant growth between 14 and 17 percent over the last 5 years, claiming 15 percent of every peso spent in Mexico.

Its strong commercial ties to the United States and recognition and acceptance of U.S. brands make Mexico a natural path for expansion into Latin America. Mexico's strong legal framework and large and diverse market offer numerous opportunities for U.S. firms looking to expand abroad. Sixty-eight percent of Mexican franchises are domestic and 21 percent U.S., making the United States by far the largest international provider of franchises. The International FranCorp ranked Mexico as the 10th best country in the world in 2008 for penetration through franchises, with one franchise for every 800 citizens.

Traditionally, large cities in Mexico have provided the primary markets for franchises. Eighty-three percent of franchised businesses in Mexico are in Mexico City, Monterrey and Guadalajara. However, several franchises have expanded into smaller cities this year. While a non-franchise business in Mexico has only a 40 percent chance of surviving more than 2 years, 95 percent of franchised businesses in Mexico are still operating after five years, demonstrating the strength of the industry.

The Mexican Franchise Association (AMF) worked very closely with the Ministry of the Economy to develop the National Franchise Program (PNF) in 2007. This program promotes the development of international franchise concepts in Mexico with the goal of increasing employment and investment in the country. It provides opportunities to Mexican entrepreneurs to create or re-engineer a franchise concept, which not only supports growth and modernization of existing franchises, but provides support to investors looking to acquire international franchise concepts. So far in 2009, the Mexican government, through the PNF, has distributed nearly $15.3 million of the $27 million budgeted for 2009. Specifically, about $4 million was given to new entrepreneurs looking to acquire franchises. This program offers an extraordinary opportunity for U.S. brands looking to either enter or expand their presence in the Mexican market.

Mexico offers numerous opportunities for a wide variety of firms looking to expand into a new market. Training, automotive services, pawn shops, senior care, child care, fitness programs, and gyms account for 24 percent of the franchise market, followed by the restaurant sector with 23 percent, retail 21 percent, education 14 percent, personal care 8 percent, and entertainment 5 percent. The remaining 5 percent is a mix of other sectors, including cleaning, laundry, dry cleaning, and tailoring. In terms of best opportunities for U.S. firms, food concepts lead the industry, with fast food restaurants and casual dining the most attractive to Mexican investors. However, there are many other sectors that are growing rapidly and successfully in the Mexican market, including education/entertainment services for children and personal care services (spas, beauty shops, and health care).

Due to the economic downturn, the franchise industry expects reduced growth during 2009 and 2010, specifically for concepts that require large investments and big operational requirements. However, because the current economic crisis has led to increased unemployment, many

Mexicans are looking to self-employment options to assure their future income, which provides more franchise opportunities. In order to make franchise concepts more attractive to new investors, many large companies looking for increased market presence in Mexico have developed a micro-franchise model packaging stores in smaller units in order to decrease investment requirements.

Both Mexico in general, as the gateway to Latin America, and the Feria Internacional de Franquicias (FIF) in particular attract prospective investors from Central and South America, as well as the Caribbean, all in search of opportunities to develop in their respective markets. With the franchise sector still demonstrating 10 percent growth in 2009 and the AMF prediction that the size of the Mexican economy will still allow for double the number of current franchises, Mexico offers numerous economic opportunities for U.S. franchisors looking to expand internationally.

Mission Goals

The Franchise Trade Mission to Mexico will help U.S. firms initiate or expand their business to Mexico by providing business-to-business introductions and market access information.

Mission Scenario

The mission will begin in Mexico City, where participants will attend market briefings by Embassy officials, meet with government and industry contacts at networking events, and participate in one-on-one business matchmaking meetings with potential local and regional investors at FIF. Scheduled for March 4–6, 2010, FIF is Latin America's definitive franchise expo, typically hosting more than 20,000 visitors and recognized by franchisors as an effective gateway to international expansion. A presence at FIF is expected to enhance opportunities for the trade mission participants. (U.S. companies seeking to exhibit at FIF can visit the show Web site at *http://www.fif.com.mx*). The mission will continue with an optional spin-off visit to Monterrey, where additional matchmaking will take place.

PROPOSED MISSION TIMETABLE

Wednesday, March 3, 2010	Participants arrive in Mexico City. Evening Market briefing.
Thursday, March 4, 2010 Friday, March 5, 2010	Business matchmaking meetings at the International Franchise Fair in designated Commercial Service area.
Monday, March 8, 2010	Matchmaking in Monterrey (spin-off option).

Participation Requirements

All parties interested in participating in the Commercial Service Franchise Trade Mission to Mexico City (and Monterrey) must complete and submit an application package for consideration by the Department of Commerce. A minimum of 8 and a maximum of 12 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Mexico as well as U.S. companies seeking to enter Mexico for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Mexico City portion of the mission will be $2,305 for large firms and $2,265 for a small or medium-sized enterprise (SME).[1] Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. Mission participants will have the opportunity to take advantage of additional business matchmaking in Monterrey, available to large firms for $1,400 and $1,369 for SMEs.

Conditions for Participation

- Applicants must submit a completed and signed mission application and supplemental application materials, including information on the company's products and/or services, primary market objectives, and goals for participation.
- Each applicant must certify that the products (if any) and/or services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content of the combined value of the finished product or service.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services in the Mexican market;
- Applicant's potential for business in Mexico, including likelihood of exports resulting from the mission;
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, conferences, and trade shows. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for the mission will begin immediately and close February 12, 2010. Applications will be available online on the mission Web site at *http://www.buyusa.gov/mexico/en.* They can also be obtained by contacting the mission contacts listed below. The mission will open on a first come first served basis. Applications received after February 12, 2010, will be considered only if space and scheduling constraints permit.

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Contacts

Martha Sánchez, U.S. Commercial Service Mexico City, Tel: 011 52 55 5140–2621, E-mail: *martha.sanchez@mail.doc.gov.*

Kristin Houston, U.S. Commercial Service California, Tel: 949–660–1688, ext. 314, E-mail: *kristin.houston@mail.doc.gov.*

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–2115 Filed 2–1–10; 8:45 am]

BILLING CODE P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 February 2010, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington DC, 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing *staffcfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: January 22, 2010, in Washington DC.

Thomas Luebke,

Secretary, AIA.

[FR Doc. 2010–1899 Filed 2–1–10; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents; Charter Modification

AGENCY: Department of Defense (DoD).

ACTION: Charter modification.

SUMMARY: Pursuant to section 1082 of Public Law 110–181 (122 Stat. 337), the Federal Advisory Committee Act of 1972, (5 U.S.C., Appendix), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.65, the Department of Defense established the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents (hereafter referred to as the Panel) on November 14, 2008. The Panel was established to carry out an assessment of the Department's capabilities to provide support to U.S. civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive incident. While the Panel's mission remains unchanged, section 1034 of Public Law 111–84 added additional tasks to be performed by the Panel: The Department intends to modify the Panel's existing charter to reflect this change directed by Congress.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION:

Charter Modification

The Panel is non-discretionary federal advisory committee that was established to assess the Department's capabilities to provide support to U.S. civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive incident. While the Panel's mission remains unchanged, section 1034 of Public Law 111–84 added the following tasks to be performed by the Panel:

1. Assess the adequacy of the process and methodology by which the Department of Defense establishes, maintains, and resources forces to provide support to civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive incident.

2. Assess the adequacy of the resources planned and programmed by the Department to ensure the preparedness and capability of its forces to provide such support.

The Department of Defense intends to modify the Panel's existing charter to reflect this change directed by Congress.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations are reminded that they may submit written statements to the Panel membership about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Panel.

All written statements shall be submitted to the Panel's Designated Federal Officer. This individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer may be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: January 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2163 Filed 2–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Western Hemisphere Institute for Security Cooperation Board of Visitors; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Renewal of federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Western Hemisphere Institute for Security Cooperation Board of Visitors (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a non-discretionary federal advisory committee and shall examine and advise on overall management and governance of the Department of Defense.

The Board shall provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the operations and management of the Institute. Under the provisions of 10 U.S.C. 2166(e), the Board shall:

a. Inquire into the curriculum instructions, physical equipment, fiscal affairs, and academic methods of the

Institute that the Board decides to consider, and any other matter that the Secretary of Defense determines appropriate.

b. Review the curriculum to determine whether it adheres to U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward the Western Hemisphere.

c. Determine whether the Institute emphasizes human rights, including the rule of law, due process, civilian control of the military, and the role of the military in a democratic society.

As prescribed by 10 U.S.C. 2166(e)(1), as amended, the Board will be composed of no less than 14 members:

a. Two Members of the Senate (the Chair and Ranking Member of the Armed Services Committee or their designees);

b. Two Members of the House of Representatives (the Chair and Ranking Member of the Armed Services Committee or their designees);

c. One person designated by the Secretary of State; the senior military officer responsible for training and education in the U.S. Army (or designee); the commanders of the combatant commands with geographic responsibility for the Western Hemisphere (or designee); and

d. Six persons designated by the Secretary of Defense, including, to the extent practicable, persons from academia, religious institutions, and human rights communities.

Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Board members appointed by the Secretary of Defense shall be appointed for a 2-year term, which may be extended for an additional term of 2 years. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. With the exception of travel and per diem for official travel, Board Members shall serve without compensation.

Whenever possible, appointments shall be staggered to avoid complete turnover of Board's Members at any one time. In addition, the Board may be assisted by non-voting subject matter experts or consultants. These consultants are designated at the request of the Board by the Secretary of the Army with the concurrence of the Secretary of Defense.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meetings of the Board.

All written statements shall be submitted to the Board's Designated Federal Officer, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: January 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2162 Filed 2–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001, at 10 a.m. on Tuesday, March 9, 2010. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–0001, telephone (202) 761–1448.

Dated: January 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2127 Filed 2–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense (DOD).

ACTION: Notice.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The Scientific Advisory Board will meet on March 2–4, 2010, to review new start research requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements

with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: The meeting will be held:

Tuesday, March 2, 2010 from 8:30 a.m. to 5 p.m.

Wednesday, March 3, 2010 from 9 a.m. to 5 p.m.

Thursday, March 4, 2010 from 8 a.m. to 10 a.m.

ADDRESSES: The meeting will be held at the Estancia La Jolla Hotel, 9700 N. Torrey Pines Road, La Jolla, CA 92037.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: January 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2049 Filed 2–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces that the Defense Health Board (DHB or Board) will meet on March 1–2, 2010, to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

DATES: The meetings will be held on March 1 from 7 a.m. to 5 p.m. and on March 2 from 7 a.m. to 2 p.m.

The meeting is open to the public on March 1 from 9:15 a.m. to 12:30 p.m. and from 1:45 p.m. to 5 p.m.

The Board will hold closed Administrative Working Meetings on March 1 from 9:15 a.m. to 12:30 p.m. and from 1:45 p.m. to 5 p.m. and on March 2 from 7 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel Cocoa Beach, 2080 North Atlantic Avenue, Cocoa Beach, Florida 32931.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, EXT. 1228, Fax: (703) 681–3317, *edmond.feeks@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Agenda

On March 1, 2010, the DHB will receive briefings on military health needs and priorities. The following Defense Health Board Subcommittees will present updates to the Board: National Capital Region Base Realignment and Closure, Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, Military/Occupational Health and Medical Surveillance, and the Psychological Health External Advisory Subcommittee. Additionally, the Board will receive a brief regarding Electronic Medical Records. The Board will also vote on new battlefield burn care guidelines in the Tactical Combat Casualty Care Curriculum.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 9:15 a.m. to 12:30 p.m. and from 1:45 p.m. to 5 p.m. on March 1 is open to the public.

The Board will conduct administrative sessions in concert with the meeting on March 1, 2010, and on March 2, 2010 (see **DATES**). Pursuant to 41 CFR 102–3.160, the administrative working meetings are closed to the public.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register for the meeting.

Written Statements

Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be no longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (see **ADDRESSES**). If the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 EXT. 1280 by February 22, 2010.

Dated: January 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2164 Filed 2–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Ultratrace Detection, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Ultratrace Detection, LLC a revocable, nonassignable, exclusive license to practice the field of use of a Pre-concentrator Device for sampling, collecting, analyzing, and detecting chemicals, warfare agents, or drugs in the United States, the Government-owned inventions described in U.S. Patent Application No. 11/542,453 entitled "Micro Scale Flow Through Sorbent Plate Collection Device", Navy Case No. 100,203 and U.S. Patent Application No. 12/406,756 entitled "Actively Cooled Vapor

Preconcentrator", Navy Case No. 99,832 and any continuations, divisionals or re-issues thereof. The inventions are jointly owned with the University of Louisville Research Foundation, Inc. and the University of Louisville will jointly execute the license.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 17, 2010.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: January 26, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–2119 Filed 2–1–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Applied Minerals, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Applied Minerals, Inc., a revocable, nonassignable, exclusive license to practice the field of use of building materials which means the use of Halloysite Microtubules for the elution of any and all substances from them as a biocide in building materials including but not limited to, grouts, cements, parging materials, stuccos, and mortars; and wallboards, and cellulose-based materials such as particleboard, paneling, medium density fiberboard (MDF) paneling, plywood, lumber, chipboard, and ceiling tile; and caulks, sealants and adhesives; and high pressure laminates, wall, counter top and floor coverings or components thereof; and ceramics, cultured marbles, and tiles; and non-cellulose (*i.e.* polymer) based wallpapers, paneling, and other wall, counter top, and floor coverings or components; and insulations; and the field of use of paint which means the use of Halloysite Microtubules for the elution of any and all substances in paints, sealers, fillers, varnishes, shellac, polyurethane coatings, and any and all "paint-like" coatings applied in liquid form to any and all surfaces for the beautification or protection of surfaces in structures or components thereof, including but not limited to, buildings, marine structures (including boats), furniture and other normally "painted" materials in the United States, the Government-owned inventions described in U.S. Patent No. 5,492,696: Controlled Release Microstructures, Navy Case No. 76,896.//U.S. Patent No. 5,651,976: Controlled Release of Active Agents Using Inorganic Tubules, Navy Case No. 76,652.//U.S. Patent No. 5,705,191: Sustained Delivery of Active Compounds from Tubules with Rational Control, Navy Case No. 77,037.//U.S. Patent No. 6,280,759: Method of Controlled Release and Controlled Release Microstructures, Navy Case No. 78,215 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 17, 2010.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 22, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–2120 Filed 2–1–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of the Record of Decision for the United States Marine Corps Grow the Force at Marine Corps Base Camp Lejeune, Marine Corps Air Station New River, and Marine Corps Air Station Cherry Point, NC

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Record of Decision.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 United States Code (U.S.C.) Section 4332(2)(c), the regulations of the Council on Environmental Quality (CEQ) for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy NEPA regulations (32 CFR part 775), and the Marine Corps Environmental Compliance and Protection Manual, which is Marine Corps Order P5090.2A w/change 2 (MCO P5090.2A), the Department of the Navy (DON) announces its decision to implement the permanent incremental increase in personnel at Marine Corps Base (MCB) Camp Lejeune, Marine Corps Air Station (MCAS) New River, and MCAS Cherry Point, North Carolina.

More specifically, this action includes: (1) New infrastructure construction (e.g. buildings, roads, utility lines); (2) demolition and/or upgrades to existing infrastructure; and (3) relocating existing units and personnel to consolidate and better support the combat missions. Implementation of this action will be accomplished as set out in the Preferred Alternative and described in the Final Environmental Impact Statement (Final EIS) of December 11, 2009.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision is available for public viewing on the project Web site at *http://www.growtheforcenc.com* along with copies of the Final EIS and supporting documents. For further information, contact Grow the Force in North Carolina EIS Project Manager, Naval Facilities Engineering Command, Mid-Atlantic, Building C Room 3012, 6505 Hampton Blvd., Norfolk, VA 23508–1278. Telephone: 757–322–4942.

Dated: January 22, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–2118 Filed 2–1–10; 8:45 am]

BILLING CODE 3810–FF–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 4, 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 Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 28, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Regulations for Equity in Athletics Disclosure Act (EADA).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,000.

Burden Hours: 11,000.

Abstract: The EADA amended the Higher Education Act of 1965 as amended (HEA) to require coeducational institutions of higher education that participate in any program under Title IV of the HEA and have an intercollegiate athletic program annually to make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics. The HEA of 1993 amended the EADA to require additional disclosures, to require that an institution submit its report to the Department of Education, and to require the Department to make the institutions' EADA reports publicly available.

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 4211. 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. 2010–2157 Filed 2–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327A.

Note: This notice includes one absolute priority with two phases, and funding information for each phase of the competition.

Dates:

Applications Available: February 2, 2010.

Deadline for Transmittal of Applications: See the chart in the *Award Information* section of this notice (Chart).

Deadline for Intergovernmental Review: See Chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities

Background

The Department has made Steppingstones of Technology Innovation for Children with

Disabilities awards for several years under the Technology and Media Services for Individuals with Disabilities program. Awards are made in two phases: (1) Development and (2) research on effectiveness. Abstracts of projects funded under these two phases can be found at *http://publicddb.tadnet.org/.*

Priority

The Steppingstones of Technology Innovation for Children with Disabilities absolute priority requires grantees to develop, implement, and evaluate innovative technology approaches designed to improve results for children with disabilities. Phase 1 projects must develop, refine, and test the feasibility of specific technology-based approaches. Phase 2 projects must subject technology-based approaches to rigorous field-based research to determine their effectiveness.

To be considered for funding under the Steppingstones of Technology Innovation for Children with Disabilities absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. The application, programmatic, and administrative requirements are as follows:

(a) In the application, an applicant must—

(1) Describe a technology-based approach for improving the results of (a) early intervention programs, (b) response-to-intervention (RTI) assessment techniques, or (c) preschool, elementary school, middle school, or high school educational programs for children with disabilities. The technology-based approach must be an innovative combination of new technology and additional materials and methodologies that enable the technology to improve early intervention programs, RTI assessment techniques, or educational results for children with disabilities;

(2) Present a justification, based on scientifically rigorous research or theory, that supports the potential effectiveness of the technology-based approach described pursuant to paragraph (a)(1) of this priority for improving results for children with disabilities. The approach must have the potential to improve child outcomes, not just parent or provider outcomes. Child outcomes may include improved academic or pre-academic skills, improved behavioral or social functioning, and improved functional performance, provided that valid and reliable measurement instruments are employed to assess the outcomes. Technology-based approaches intended for use by providers or parents may not be funded under this priority unless child-level benefits are clearly demonstrated. Technology-based approaches for professional development will not be funded under this priority;

(3) Provide a detailed plan for conducting work in one of the following two phases:

(i) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with children with disabilities. Activities under Phase 1 of the priority may include development, adaptation, and refinement of technology, materials, or methodologies. Activities under Phase 1 of the priority must include a formative evaluation of the technology-based approach's usability and feasibility for use with children with disabilities. Each project funded under Phase 1 must be designed to develop, as its primary product, a promising technology-based approach that is suitable for field-based evaluation of its effectiveness in improving results for children with disabilities.

(ii) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with the criteria for activities funded under Phase 1, and subject the approach to rigorous field-based research to determine its effectiveness in educational or early intervention settings. Approaches studied under Phase 2 may have been developed with previous funding under Phase 1 of this priority or with funding from other sources. Phase 2 of this priority is primarily intended to produce sound research-based evidence demonstrating that the technology-based approach can improve educational or early intervention results for children with disabilities in a defined range of real world contexts.

Projects funded under Phase 2 of this priority must conduct research that poses a causal question and must seek to answer that question through randomized assignment to treatment and comparison conditions, unless a strong justification is made for why a randomized trial is not possible. If a randomized trial is not possible, the applicant must employ alternatives that substantially minimize selection bias or allow the selection bias to be modeled. These alternatives include appropriately structured regression-discontinuity designs and natural experiments in which naturally occurring circumstances or institutions (perhaps unintentionally) divide people into treatment and comparison groups in a manner akin to purposeful random assignment. In their applications, applicants proposing to use an alternative system must (1) make a compelling case that randomization is not possible, and (2) describe in detail how the procedures will result in substantially minimizing the effects of selection bias on estimates of effect size. Choice of randomizing unit or units (*e.g.,* students, classrooms, schools) must be grounded in a theoretical framework. Observational, survey, or qualitative methodologies may complement experimental methodologies to assist in the identification of factors that may explain the effectiveness or ineffectiveness of the technology-based approach being evaluated. Applicants must propose research designs that permit the identification and assessment of factors that may have an impact on the fidelity of implementation. Mediating and moderating variables that are both measured in the practice or model condition and are likely to affect outcomes in the comparison condition must be measured in the comparison condition (*e.g.,* student time-on-task, teacher experience, or time in position).

Projects funded under Phase 2 of this priority must conduct comprehensive research in order to provide convincing evidence of the effectiveness or ineffectiveness of the technology-based approach under study, at least within a defined range of settings. Applicants must provide documentation that available sample sizes, methodologies, and treatment effects are likely to result in conclusive findings regarding the effectiveness of the technology-based approach;

(4) Provide a plan for forming collaborative relationships with vendors, other dissemination or marketing resources, or both to ensure that the technology-based approach can be made widely available if sufficient evidence of effectiveness is obtained. Applicants should document the availability and willingness of dissemination or marketing resources to participate. Applicants are encouraged to plan these collaborative relationships early in their projects, even in Phase 1 (if applicable), but should refrain from widespread dissemination of the technology-based approach to practitioners until evidence of its effectiveness is obtained in Phase 2; and

(5) Budget for the project director to attend an annual three-day Project

Directors' meeting in Washington, DC, and another annual two-day trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority to share information, and to discuss findings and methods of dissemination.

(b) The project also must conduct the following activities:

(1) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

(2) If the project produces instructional materials for dissemination, produce them in accessible formats (*e.g.,* with captioning, with video description, or complying with the National Instructional Materials Accessibility Standard (NIMAS), as appropriate).

Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(1) Projects led by a project director or principal investigator who is in the initial phase of his or her career. For purpose of this invitational priority, the initial phase of an individual's career is considered to be the first three years after the individual completes and graduates from a doctoral program (*i.e.,* for FY 2010 awards, projects may support individuals who completed and graduated from a doctoral program no earlier than the 2006–2007 academic year).

(2) Projects focusing on technology-based approaches for children with disabilities, ages birth to age three.

(3) Projects focusing on technology-based approaches to response-to-intervention assessment techniques.

(4) Projects focusing on technology-based approaches for instruction in science, mathematics, or both for children with disabilities.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,400,000. Please refer to the "Estimated Range of Awards" column in the Chart for the estimated dollar amounts for the two phases of this competition.

Estimated Range of Awards: See Chart.

Estimated Average Size of Awards: See Chart.

Maximum Award: Phase 1: $200,000, per year and Phase 2: $300,000, per year. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: See Chart.

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 36 months. We will reject any application that proposes a project period exceeding 24 months for Phase 1 or 36 months for Phase 2.

STEPPINGSTONES OF TECHNOLOGY INNOVATION FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2010

CFDA number and name	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.327A—Steppingstones of Technology Innovation for Children with Disabilities:						
Phase 1—Development	March 19, 2010.	May 18, 2010	$1,200,000	$100,000–$200,000	$200,000	6
Phase 2—Research on Effectiveness	March 19, 2010.	May 18, 2010	1,200,000	200,000–300,000	300,000	4

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this

competition as follows: CFDA number 84.327A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages using the following standards:

• A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 2, 2010.

Deadline for Transmittal of Applications: See Chart.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: See Chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an

electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to improving outcomes of

children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Terry Jackson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4081, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–6039.

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 28, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–2182 Filed 2–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; National Resource Centers (NRC) Program for Foreign Language and Area Studies or Foreign Language and International Studies Program and Foreign Language and Area Studies (FLAS) Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.015A and 84.015B.

Dates:

Applications Available: February 2, 2010.

Deadline for Transmittal of Applications: March 23, 2010.

Deadline for Intergovernmental Review: May 24, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The NRC Program makes awards to institutions of higher education or consortia of institutions of higher education to establish or strengthen nationally recognized foreign language and area or international studies centers or programs. NRC awards are used to support undergraduate centers or comprehensive centers, which include undergraduate, graduate, and professional school components.

The FLAS Fellowships Program provides allocations of fellowships to institutions of higher education or consortia of institutions of higher education to assist meritorious undergraduate and graduate students undergoing training in modern foreign languages and related area or international studies.

Priorities: This notice includes one absolute priority, one competitive preference priority, and five invitational priorities.

NRC Program Absolute Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for the NRC program (34 CFR 656.23(a)(4)). For FY 2010, this priority is an absolute priority for the NRC program. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Applications that provide for teacher training activities on the language, languages, area studies, or thematic focus of the center. Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

NRC Program Invitational Priorities: For FY 2010, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

NRC Invitational Priority 1

Applications that propose activities designed to coordinate with other programs in title VI of the Higher Education Act of 1965, as amended (HEA) with the objective of increasing the Nation's capacity to train and produce Americans with advanced proficiency in the less and least commonly taught languages along with an understanding of the societies in which those languages are spoken.

NRC Invitational Priority 2

Applications that propose collaborative activities with institutions of higher education that are eligible to receive assistance under part A or B of Title III or under Title V of the HEA or community colleges designed to internationalize curriculum and improve foreign language and area and international studies instruction at these institutions.

NRC Invitational Priority 3

Applications that propose collaborative activities with professional schools such as Business, Law, Public Health, Public Policy, Environmental Science, Communication, Journalism and Schools of Education in order to strengthen international components of study in those fields and to promote foreign language study by students in professional schools.

NRC Invitational Priority 4

Programs or projects that develop, maintain, or enhance linkages with overseas institutions of higher education or other educational organizations in areas with substantial Muslim populations in order to improve understanding of these societies and provide for greater engagement with institutions in these areas.

FLAS Program Competitive Preference Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for the FLAS program (34 CFR 657.22(a)(2)). For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This FLAS Competitive Preference Priority is:

Applications that propose to make at least 25% of their academic year fellowships in any of the 78 priority languages listed below that were

selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

FLAS Program Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose recruitment activities and collaboration with professional schools designed to increase quality fellowship applications for advanced level language study for professional studies students in fields such as Business, Law, Public Health, Public Policy, Environmental Science, Communication, Journalism, or Education.

Program Authority: 20 U.S.C. 1122.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99. (b) The regulations in 34 CFR part 655. (c) The regulations for the NRC program in 34 CFR part 656. (d) The regulations for the FLAS program in 34 CFR part 657.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Areas of National Need: In accordance with section 601(c) of the HEA, 20 U.S.C. 1121(c), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on the following Web sites: *http://www.ed.gov/about/offices/list/ope/policy.html; http://www.ed.gov/programs/iegpsnrc/legislation.html; http://www.ed.gov/programs/iegpsflasf/legislation.html.*

Also included on these Web sites are the specific recommendations the Secretary received from Federal agencies.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $34,041,000 for new awards for the NRC Program and $35,400,000 for new awards for the FLAS Program.

Estimated NRC Program Funding Levels by Area: Africa, ($3,200,000); Canada, ($541,000); East Asia, ($5,075,000); International, ($2,650,000); Latin America, ($5,075,000); Middle East, ($5,075,000); Russia, East Europe, and Eurasia ($5,075,000); South Asia, ($2,675,000); Southeast Asia, ($2,025,000); and Western Europe, ($2,650,000).

Estimated FLAS Program Funding Levels by Area: Africa, ($3,550,000); Canada, ($320,000); East Asia, ($5,780,000); International, ($1,920,000); Latin America, ($4,800,000); Middle East, ($5,240,000); Russia, East Europe, and Eurasia ($5,780,000); South Asia, ($3,200,000); Southeast Asia, ($2,460,000); and Western Europe, ($2,350,000).

Estimated Range of Awards: $200,000–$349,000 per year for the NRC Program; $86,500–$376,000 per year for the FLAS Program.

Estimated Average Size of Awards: $270,000 per year for the NRC Program; $281,000 per year for the FLAS Program.

Estimated FLAS Program Subsistence Allowance: The subsistence allowance for an academic year 2010–2011 fellowship is $15,000 for a graduate student and $5,000 for an undergraduate student. The subsistence allowance for a summer 2011 fellowship is $2,500 for graduate and undergraduate students.

Estimated FLAS Program Institutional Payment: The institutional payment for an academic year 2010–2011 fellowship is $18,000 for a graduate student and $10,000 for an undergraduate student. The institutional payment for a summer 2011 fellowship is $5,000 for graduate and undergraduate students.

Estimated Number of Awards: 126 NRC awards; 126 FLAS awards. We estimate that the 126 FLAS awards will yield 950 academic year fellowships and 900 summer fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* An institution of higher education or consortia of institutions of higher education.

2. *Cost Sharing or Matching:* These programs do not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Carla White, U.S. Department of Education, 1990 K Street, NW., room 6084, Washington, DC 20006–8521. Telephone: (202) 502–7631 or by e-mail: *carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for these programs.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to no more than 45 pages for a single institution application or no more than 55 pages for a consortium application, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs. Charts, tables, figures, and graphs in the project narrative count toward the page limit.
- Use a font that is either 12-point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

Section C of the application package provides instructions about the application narrative. The narrative must include your complete response to the selection criteria.

The page limit does not apply to the cover sheet; the budget section, including the budget forms and budget detail (costs and descriptions); the assurances and certifications; the one-page abstract; the appendices including the four-page timeline, the biographical information, the course list, and the table of project objectives; the world area selection sheet; the FLAS approved languages list; the GEPA statement; or the application information to meet statutory requirements (description of diverse perspectives and wide range of views in funded activities and description of government service in areas of national need and in other employment sectors).

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: February 2, 2010.

Deadline for Transmittal of Applications: March 23, 2010.

Applications for grants under this competition must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV.—*Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 24, 2010.

4. *Intergovernmental Review:* These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these programs.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under these programs must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.015A and 84.015B), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. *Submission of Applications by Hand Delivery.*

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.015A and 84.015B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* All NRC and FLAS grant applications are categorized based on their focus on a single country or on a world area, such as Africa, East Asia, or the Middle East, or on international studies. For FY 2010, all NRC and FLAS applications will be assigned to a geographic or international studies reader panel, based on the designation that you, the applicant, have specified on the world area selection sheet in your grant application. For the competition, each distinct geographic or international studies reader panel will separately review, score, and rank its assigned NRC and FLAS grant applications. For the NRC Program and for the FLAS Program, the Department will select applications for funding consideration from each distinct reader panel based on their ranking from highest to lowest within that panel.

2. *Selection Criteria:* The selection criteria for the NRC and FLAS Programs are in 34 CFR 656.21 and 656.22, and 657.21, respectively, and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For the NRC and FLAS Programs, final and annual reports must be submitted into the International Resource Information System (IRIS) online data and reporting system. For specific requirements on reporting, please go to: *http://iris.ed.gov/iris/pdfs/NRC.pdf; http://iris.ed.gov/iris/pdfs/FLAS_director.pdf; http://iris.ed.gov/iris/pdfs/FLAS_fellow.pdf.*

4. *Performance Measures:* The objective of the NRC Program is to provide grants to institutions of higher education or consortia of institutions of higher education to establish, strengthen, and operate comprehensive and undergraduate language and area or international studies centers. The Department will use the following measures to determine the success of the NRC Program.

NRC Performance Measure 1: Percentage of less and least commonly taught languages as defined by the Secretary of Education taught at Title VI National Resource Centers.

NRC Performance Measure 2: Percentage of priority languages (formerly referred to as critical need languages) as defined by the Secretary of Education taught at National Resource Centers.

NRC Performance Measure 3: Percentage of NRC grants teaching intermediate or advanced courses in priority languages (formerly referred to as critical need languages) as defined by the Secretary of Education.

The objective of the FLAS Program is to provide academic year and summer fellowships to institutions of higher education to assist undergraduate and graduate students studying foreign languages and either area or international studies. The Department will use the following measures to evaluate the success of the FLAS Program.

FLAS Performance Measure 1: The average competency score of FLAS recipients at the end of one full year of instruction minus the average score at the beginning of the year.

FLAS Performance Measure 2: Percentage of FLAS master's and doctoral graduates that studied priority languages (formerly referred to as critical need languages) as defined by the Secretary of Education.

FLAS Performance Measure 3: Percentage of FLAS participants who report that they found employment that utilizes their language and area skills.

FLAS Efficiency Measure: Cost per FLAS Fellowship Program fellow increasing average language competency by at least one level.

VII. Agency Contact

For Further Information Contact: Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6084, Washington, DC 20006–8521. Telephone: (202) 502–7631 or, by e-mail: *carla.white@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: January 28, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–2185 Filed 2–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Enhancing the Health and Wellness of Individuals With Arthritis; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–7.

Dates: Applications Available: February 2, 2010.

Date of Pre-Application Meeting: February 24, 2010.

Deadline for Transmittal of Applications: April 5, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: NIDRR has established two absolute priorities and one invitational priority for this competition. *Absolute Priorities:* The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Enhancing the Health and Wellness of Individuals With Arthritis* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on July 21, 2009 (74 FR 35858). None of the applications we received for this priority were successful. NIDRR is recompeting this priority. NIDRR is seeking applications that address all elements of the priority and that propose appropriate, quality research methodologies.

Accordingly, through this notice, we are inviting applications for another competition using the *General Rehabilitation Research and Training Centers (RRTC) Requirements* and the *Enhancing the Health and Wellness of Individuals With Arthritis* priorities.

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Enhancing the Health and Wellness of Individuals With Arthritis*.

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the applicable application package.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications. Under this competition we are particularly interested in applications that address the following priority.

This priority is:

Projects that are designed to contribute to improved rehabilitation interventions to reduce the symptoms, functional limitations, and barriers to employment associated with osteoarthritis among working-age adults with pre-existing disabilities. We are particularly interested in projects that focus on one or more of the following interventions recommended by the joint Arthritis-CDC Osteoarthritis Intervention Working Group: Physical activity, muscle strengthening, self-management education, weight management and nutrition, and injury prevention.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on July 21, 2009 (74 FR 35858).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $800,000.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *http://edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–7.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 2, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on February 24, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Deadline for Transmittal of Applications: April 5, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–7 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–7) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–7) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V. 2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of

grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 28, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–2184 Filed 2–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education (NRS)

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the tests determined to be suitable for use in the NRS.

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., room 11152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7828 or via Internet: *Mike.Dean@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

On January 14, 2008, the Secretary published final regulations for 34 CFR part 462, Measuring Educational Gain in the National Reporting System for Adult Education, in the **Federal Register** (73 FR 2306) (NRS regulations). The NRS regulations established the process the Secretary uses to determine the suitability of tests for use in the NRS. On April 16, 2008, (73 FR 20616), the Secretary published a notice in the **Federal Register** providing test publishers an opportunity to submit tests for review under the regulations.

As a result of the Secretary's review of the tests submitted in response to the April 16, 2008 **Federal Register** notice, the following tests have been determined to be suitable for use in the NRS for a period of either seven or three years. A seven year approval requires no additional action on the part of the publisher, unless the information the publisher submitted as a basis for the Secretary's review was inaccurate or unless the test is substantially revised. A three year approval is issued with a set of conditions that must be met by the completion of the three year time period. If these conditions are met the test is approved for continued use in the NRS.

Tests Determined To Be Suitable for Use in the NRS for Seven Years

(a) The following test is determined to be suitable for use at all Adult Basic Education (ABE) and Adult Secondary Education (ASE) levels and at all English-as-a-Second-Language (ESL) levels of the NRS for a period of seven years from the date of publication of this notice:

Comprehensive Adult Student Assessment Systems (CASAS) Reading Assessments (Life and Work, Life Skills, Reading for Citizenship, Reading for Language Arts—Secondary Level). Forms 27, 28, 81, 82, 81X, 82X, 83, 84, 85, 86, 185, 186, 187, 188, 310, 311, 513, 514, 951, 952, 951X, 952X. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(b) The following tests are determined to be suitable for use at all ABE and ASE levels of the NRS for a period of seven years from the date of publication of this notice:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Life Skills Math Assessments—Application of Mathematics (Secondary Level).* Forms 31, 32, 33, 34, 35, 36, 37, 38, 505, 506. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(2) *Massachusetts Adult Proficiency Test (MAPT) for Math.* Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, School of Education, 156 Hills South, University of Massachusetts, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *http://www.sabes.org/assessment/mapt.htm.*

(3) *Massachusetts Adult Proficiency Test (MAPT) for Reading.* Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, School of Education, 156 Hills South, University of Massachusetts, Amherst, MA 01003. Telephone: (413)

545–0564. Internet: *http://www.sabes.org/assessment/mapt.htm.*

(4) *Tests of Adult Basic Education (TABE 9/10).* Forms 9 and 10. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *http://www.ctb.com.*

(5) *Tests of Adult Basic Education Survey (TABE Survey).* Forms 9 and 10. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *http://www.ctb.com.*

(c) The following tests are determined to be suitable for use at all ESL levels of the NRS for a period of seven years from the date of publication of this notice:

(1) *BEST (Basic English Skills Test) Literacy.* Forms B, C, and D. Publisher: Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *http://www.cal.org.*

(2) *Tests of Adult Basic Education Complete Language Assessment System—English (TABE/CLAS–E).* Forms A and B. Publisher: CTB/McGraw Hill, 20 Ryan Ranch Road, Monterey, CA 93940. Telephone: (800) 538–9547. Internet: *http://www.ctb.com.*

Tests Determined To Be Suitable for Use in the NRS for Three Years

(a) The following tests are determined to be suitable for use at all ABE and ASE levels and at all ESL levels of the NRS for a period of three years from the date of publication of this notice:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Reading Assessments—Workforce Learning Systems (WLS).* Forms 11, 12, 13, 14, 15, 16, 17, 18, 114, 116, 213, 214, 215, 216. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Functional Writing Assessments.* Forms 460, 461, 462, 463, 464, 465, 466. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(b) The following tests are determined to be suitable for use at all ABE and ASE levels of the NRS for a period of three years from the date of publication of this notice:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Math Assessments—Workforce Learning Systems (WLS).* Forms 11, 12, 13, 14, 15, 16, 17, 18, 213, 214, 215, 216. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

(2) *General Assessment of Instructional Needs (GAIN)—Test of English Skills.* Forms A and B. Publisher: Wonderlic Inc., 1795 N. Butterfield Road, Suite 200, Libertyville, IL 60048–1212. Telephone: (888) 397–8519. Internet: *http://www.wonderlic.com.*

(3) *General Assessment of Instructional Needs (GAIN)—Test of Math Skills.* Forms A and B. Publisher: Wonderlic Inc., 1795 N. Butterfield Road, Suite 200, Libertyville, IL 60048–1212. Telephone: (888) 397–8519. Internet: *http://www.wonderlic.com.*

(c) The following tests are determined to be suitable for use at the High Intermediate, Low Adult Secondary, and High Adult Secondary levels of the NRS for a period of three years from the date of publication of this notice:

(1) *WorkKeys: Applied Mathematics.* Forms 210 and 220. Publisher: ACT, 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168. Telephone: (800) 967–5539. Internet: *http://www.act.org.*

(2) *WorkKeys: Reading for Information.* Forms 110 and 120. Publisher: ACT, 500 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168. Telephone: (800) 967–5539. Internet: *http://www.act.org.*

(d) The following tests are determined to be suitable for use at all ESL levels of the NRS for a period of three years from the date of publication of this notice:

(1) *Basic English Skills Test (BEST) Plus.* Publisher: Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *http://www.cal.org.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Employability Competency System (ECS) Listening Assessments—Life Skills (LS).* Forms 51, 52, 53, 54, 55, 56, 63, 64, 65, 66. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *http://www.casas.org.*

Revocation of Tests

The Secretary's determination regarding the suitability of a test may be revoked under certain circumstances (see 34 CFR 462.12(e)). If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the **Federal Register** and posts on the Internet at *http://www.nrsweb.org* a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

Authority: 20 U.S.C. 9212.

Dated: January 28, 2010.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2010–2181 Filed 2–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must

be received on or before April 5, 2010. If you anticipate difficulty in submitting comments within that period, contact Mr. Dennis A. Smith as listed below.

ADDRESSES: Written comments may be sent to Mr. Dennis A. Smith, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–2G, 1000 Independence Avenue, SW., Washington, DC 20585–0121, by phone at 202–586–1791, or by fax at 202–586–2476, or by e-mail at *dennis.a.smith@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mr. Dennis Smith using the contact information listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* New; (2) *Information Collection Request Title:* Test of Potential Fuel Economy Benefits of In-Vehicle Driver Feedback Devices; (3) *Type of Request:* New Collection; (4) *Purpose:* The In-Vehicle Driver Feedback study will establish a rigorous scientific basis for informing consumers about the potential fuel economy benefits of in-vehicle fuel economy feedback devices. If the test confirms that fuel economy feedback devices can enable drivers to achieve measurable improvements in fuel economy, this information will be made available to the general public via the joint Department of Energy and Environmental Protection Web site, *http://www.fueleconomy.gov;* (5) *Estimated Number of Respondents:* 150 (not an annual collection); (6) *Estimated Number of Total Responses:* 150; (7) *Estimated Number of Burden Hours:* 300 hours; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* N/A—Not an annual collection.

Statutory Authority: 42 U.S.C. 16191; 49 U.S.C. 32908 (c)–(3) and (g)–(2)–(A).

Issued in Washington, DC, on January 21, 2010.

Dennis A. Smith,

National Clean Cities Director, Office of Vehicle Technologies, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–2171 Filed 2–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Inventions Available for License

AGENCY: Department of Energy.

ACTION: Notice of inventions available for license.

SUMMARY: The Department of Energy hereby announces that the following invention is available for license, in accordance with 35 U.S.C. 207–209: U.S. Patent Application No. 12/401,033, entitled "Ground Potential Rise Monitor."

FOR FURTHER INFORMATION CONTACT: Annette R. Reimers, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–3815.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of government owned inventions. Implementing regulations are contained in 37 CFR 404.

Issued in Washington, DC, on January 27, 2010.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 2010–2173 Filed 2–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 25, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–41–000.
Applicants: Wolverine Power Supply Cooperative, Inc., FirstEnergy Generation Corp.
Description: Application of Wolverine Power Supply Cooperative, Inc. and FirstEnergy Generation Corp. for Order Authorizing Transaction Under Section 203 of the Federal Power Act, and Request for Waivers and Confidential Treatment.
Filed Date: 01/21/2010.
Accession Number: 2010.0121–5067.
Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3427–000.
Applicants: SOWEGA Power LLC.
Description: SOWEGA Power LLC submits notice of non-material change in status etc.
Filed Date: 01/20/2010.
Accession Number: 2010.0120–0019.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER02–556–012; ER06–1280–005.
Applicants: Hess Corporation, Select Energy New York, Inc.
Description: Supplement to Notice of Change in Status Filing of Hess Corporation.
Filed Date: 01/22/2010.
Accession Number: 2010.0122–5147.
Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER07–844–006; ER07–845–006; ER07–846–006; ER07–847–006; ER09–629–005; ER99–4160–021.
Applicants: Dynegy Power Marketing, Inc., Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, Dynegy Oakland, LLC, Dynegy South Bay, LLC, Dynegy Marketing and Trade, LLC.
Description: Notice of Change in Status of South Bay, LLC, et al.
Filed Date: 01/25/2010.
Accession Number: 2010.0125–5110.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Docket Numbers: ER08–580–002.
Applicants: Ontario Power Generation Energy Trading.
Description: Supplemental Information/Request of Ontario Power Generation Energy Trading, Inc.
Filed Date: 01/22/2010.
Accession Number: 2010.0122–5109.
Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER08–1443–004.
Applicants: Noble Great Plains Windpark, LLC.
Description: Notice of Non-Material Change in Status of Noble Great Plains Windpark, LLC.
Filed Date: 01/21/2010.
Accession Number: 2010.0121–5120.
Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER09–832–004; ER00–2391–011; ER00–3068–010; ER02–1903–012; ER02–2120–008; ER02–2166–010; ER02–2559–011; ER02–256–003; ER03–1375–007; ER04–187–008; ER04–290–006; ER05–236–008; ER05–661–004; ER05–714–005; ER09–990–003; ER98–3511–014; ER98–3563–014; ER98–3564–015; ER99–2917–012.
Applicants: NextEra Energy Power Marketing, LLC; Doswell Limited Partnership; FPL Energy Cape, LLC; FPL Energy Marcus Hook, L.P.; FPLE Rhode Island State Energy, LP; Pennsylvania Windfarms, Inc.; Backbone Mountain Windpower LLC; Mill Run Windpower, LLC; Waymart Wind Farm L.P.; North Jersey Energy Associates, a L.P.; Meyersdale Windpower, LLC; Northeast Energy Associates, LP; Somerset Windpower LLC; Gexa Energy LLC; NextEra Energy SeaBrook, LLC; FPLE Maine Hydro, LLC; FPL Energy Wyman,

LLC; FPL Energy Wyman IV LLC; FPL ENERGY MH50, LP.

Description: NextEra Companies Notice of Change in Status.

Filed Date: 01/21/2010.

Accession Number: 2010.0121–5092.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–104–001.

Applicants: Cleco Power LLC, Acadia Power Partners, LLC.

Description: Acadia Power Partners, LLC submits a compliance filing of Second Revised Sheet No. 2.

Filed Date: 01/21/2010.

Accession Number: 2010.0121–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–128–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operate, Inc submits a compliance filing regarding the procedures for requesting and scheduling outages for Generation Resources, etc.

Filed Date: 01/22/2010.

Accession Number: 2010.0125–0208.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–286–000.

Applicants: Cleco Power LLC, Acadia Power Partners, LLC.

Description: Cleco Power, LLC et al submits joint applications issuing an Order Authorizing the Acquisition and Disposition of Jurisdictional Facilities under Section 203 et al.

Filed Date: 01/22/2010.

Accession Number: 2010.0122–0017.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–379–001.

Applicants: Just Energy (U.S.) Corp.

Description: Just Energy (US) Corp submits a supplement to the application for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 01/21/2010.

Accession Number: 2010.0121–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–421–001.

Applicants: Crystal Lake Wind, LLC.

Description: Crystal Lake Wind, LLC submits an Amended and Restated Shared Facilities Agreement.

Filed Date: 01/21/2010.

Accession Number: 2010.0121–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–626–000.

Applicants: Idaho Power Company.

Description: Idaho Power submits a cancellation of Service Agreement No. 127.

Filed Date: 01/21/2010.

Accession Number: 2010.0121–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–627–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits an amendment to the Electric System Interconnection Agreement.

Filed Date: 01/21/2010.

Accession Number: 2010.0121–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–630–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits First Revised Sheet 82 *et al* to the FERC Electric Tariff, First Revised Volume 5 Service Agreement 186 to be effective 3/24/10.

Filed Date: 01/22/2010.

Accession Number: 2010.0125–0202.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–631–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits letter agreement between SCE and the City of Riverside, Riverside Public Utilities Department.

Filed Date: 01/22/2010.

Accession Number: 20100125–0203.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–632–000.

Applicants: Majestic Wind Power LLC.

Description: Majestic Wind Power LLC submits Notice of Cancellation of its market-based rate tariff—FERC Electric Tariff, Original Volume 1—currently on file with the Commission.

Filed Date: 01/22/2010.

Accession Number: 20100125–0204.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–633–000.

Applicants: Butler Ridge, LLC.

Description: Butler Ridge, LLC submits a Notice of Cancellation of its market-based rate tariff—FERC Electric Tariff, Original Volume 1.

Filed Date: 01/22/2010.

Accession Number: 20100125–0205.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–634–000.

Applicants: Wessington Wind I LLC.

Description: Wessington Wind, LLC submits a Notice of Cancellation of its marked based rate tariff—FERC Electric Tariff, Original Volume 1 to be effective 3/23/10.

Filed Date: 01/22/2010.

Accession Number: 20100125–0206.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–635–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc submits FERC First Revised Rate Schedule No 27.

Filed Date: 01/22/2010.

Accession Number: 20100125–0207.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–637–000.

Applicants: New England Independent Transmission Com.

Description: New England Independent Transmission Company, LLC *et al* submits the Operating Agreement with New England ITC under ER10–637.

Filed Date: 01/22/2010.

Accession Number: 20100125–0217.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–2083 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 26, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–325–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Millennium Pipeline Company, LLC submits Second Revised Sheet No 11 *et al.* to FERC Gas Tariff, Original Volume No 1, to be effective 2/18/2010.
Filed Date: 01/19/2010.
Accession Number: 20100120–0201.
Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–326–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits Sixth Revised Sheet 24 to its FERC Gas tariff, Fourth Revised Volume 1.
Filed Date: 01/20/2010.
Accession Number: 20100120–0235.
Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–327–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Twelfth Revised Sheet 2A to FERC Gas Tariff, Second Revised Volume 1A, Rate Schedule FT–1 transportation service agreement and an update to a previously accepted Rate Schedule.
Filed Date: 01/20/2010.
Accession Number: 20100120–0234.
Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–328–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits a negotiated rate agreement, First Revised Sheet No. 686.
Filed Date: 01/21/2010.
Accession Number: 20100121–0207.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 02, 2010.

Docket Numbers: RP10–329–000.
Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits First Revised Sheet 204–C *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 01/22/2010.
Accession Number: 20100125–0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 03, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–2085 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 26, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–845–019.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc.'s Notice of Closing and Notice of Non-Material Change in Status Regarding Acquisition of Fredonia Units 3&4.
Filed Date: 01/26/2010.
Accession Number: 20100126–5018.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Docket Numbers: ER01–138–007.
Applicants: Delta Person Limited Partnership.
Description: Notice of Non-Material Change in Facts of Delta Person Limited Partnership.
Filed Date: 01/25/2010.
Accession Number: 20100125–5170.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Docket Numbers: ER05–516–002; ER05–911–002; ER05–1264–001; ER06–95–003; ER06–948–001; ER06–1306–001; ER07–114–001; ER07–812–002.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits filing and acceptance a compliance filing in response to and in accordance with the directives in the Order Conditionally Approving Uncontested Settlement *etc.*
Filed Date: 01/25/2010.
Accession Number: 20100125–0220.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Docket Numbers: ER08–912–009; ER05–365–022.
Applicants: Iberdrola Renewables, Inc., Elk River Windfarm, LLC.

Description: Iberdrola Renewables et al. submits supplemental filing to indicate their classification as a Category 1 or Category 2 Seller *etc.*

Filed Date: 01/22/2010.

Accession Number: 20100125–0024.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER09–1364–002.

Applicants: Michigan Power Limited Partnership.

Description: Michigan Power Limited Partnership Notice of Market-Based Rate Non-Material Change In Facts.

Filed Date: 01/25/2010.

Accession Number: 20100125–5173.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Docket Numbers: ER10–43–000.

Applicants: E.ON U.S. LLC.

Description: E.ON U.S, LLC submits Supplement to Filing Response to Deficiency Notice.

Filed Date: 1/20/2010.

Accession Number: 20100121–0008.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 1, 2010.

Docket Numbers: ER10–397–001.

Applicants: Cesarie, Inc.

Description: Cesarie, Inc submits the amended petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 01/22/2010.

Accession Number: 20100125–0209.

Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

Docket Numbers: ER10–550–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a request for an effective date of 3/1/10 for the December 31 filing of an Open Access Transmission Tariff.

Filed Date: 01/21/2010.

Accession Number: 20100122–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–621–000.

Applicants: Noble Energy Marketing and Trading Corp.

Description: Application of Noble Energy Marketing and Trade Corp for expedited order accepting initial rate schedule, waiving regulations, and granting blanket approvals.

Filed Date: 01/21/2010.

Accession Number: 20100122–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–628–000.

Applicants: Peetz Logan Interconnect, LLC.

Description: Peetz Logan Interconnect, LLC submits an Amended and Restated Transmission Service Agreement with Northern Colorado Wind Energy, LLC, *et al.*

Filed Date: 01/21/2010.

Accession Number: 20100122–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–629–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Operating Companies submits amendments to the First Amended Joint Operating Agreements, FERC Electric Tariff, First Revised No 1.

Filed Date: 01/21/2010.

Accession Number: 20100122–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ER10–638–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits Twenty First Revised Interconnection and Local Delivery Service Agreement between AEP and Buckeye Power, Inc.

Filed Date: 01/25/2010.

Accession Number: 20100125–0219.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM10–2–002.

Applicants: The Detroit Edison Company.

Description: Response of The Detroit Edison Company to Deficiency Letter.

Filed Date: 01/22/2010.

Accession Number: 20100122–5092.

Comment Date: 5 p.m. Eastern Time on Friday, February 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–2082 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

January 19, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–431–001.

Applicants: Vector Pipeline L.P.

Description: Vector Pipeline, LP submits Eleventh Revised Sheet No. 20 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 01/05/2010.

Accession Number: 20100105–0215.

Comment Date: 5 p.m. Eastern Time on Friday, January 22, 2010.

Docket Numbers: RP10–204–001.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits Substitute Seventeenth Revised Sheet No 87.

Filed Date: 01/15/2010.

Accession Number: 20100115–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–205–002.

Applicants: OkTex Pipeline Company, L.L.C.

Description: OkTex Pipeline Company, LLC submits Substitute First Revised Sheet No 40L.
Filed Date: 01/15/2010.
Accession Number: 20100115–0203.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–208–001.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits Substitute Sixth Revised Sheet No 272.
Filed Date: 01/15/2010.
Accession Number: 20100115–0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–212–001.
Applicants: Guardian Pipeline, LLC.
Description: Guardian Pipeline, LLC submits Substitute First Revised Sheet No 217A.
Filed Date: 01/15/2010.
Accession Number: 20100115–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP91–203–077; RP92–132–065.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Co submits Thirteenth Revised Sheet No. 407 *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1.
Filed Date: 12/31/2009.
Accession Number: 20100106–0207.
Comment Date: 5 p.m. Eastern Time on Friday, January 22, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern Time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–2086 Filed 2–1–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

January 19, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–311–000.
Applicants: Potomac—Appalachian Transmission Pipeline.
Description: TransCanada Corporation Refund Report for Coyote Springs Lateral Interruptible Transportation.
Filed Date: 01/15/2010.
Accession Number: 20100115–5025.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–312–000.
Applicants: Black Marlin Pipeline Company.
Description: Black Marlin Pipeline Company Petition for Extension of Temporary Exemptions from Tariff Provisions.
Filed Date: 01/15/2010.
Accession Number: 20100115–5052.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–313–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits Original Sheet 35C.09 to FERC Gas Tariff, Seventh Revised Volume 2, to be effective 2/1/10.
Filed Date: 01/15/2010.
Accession Number: 20100114–0215.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–2088 Filed 2–1–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 20, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–314–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, Ltd submits Fifteenth Revised Sheet 1 to its FERC Gas Tariff,

Second Revised Volume 2 to be effective 2/15/10.

Filed Date: 01/15/2010.

Accession Number: 20100119–0218.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–315–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits First Revised Sheet 237 to its FERC Gas Tariff, Second Revised Volume 1 to be effective 2/15/10.

Filed Date: 01/15/2010.

Accession Number: 20100119–0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–316–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits Third Revised Sheet 32 *et al.* to its FERC Gas Tariff, Second Revised Volume 1A, to be effective 2/15/10.

Filed Date: 01/15/2010.

Accession Number: 20100119–0217.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–317–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits report on the refund of penalty revenues.

Filed Date: 01/15/2010.

Accession Number: 20100119–0216.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–318–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company, LLC submits Second Revised Sheet 300 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 2/19/10.

Filed Date: 01/19/2010.

Accession Number: 20100119–0214.

Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–319–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits Sixth Revised Sheet No 2400 *et al.* to FERC Gas Tariff, Sixth Revised Volume No 1.

Filed Date: 01/19/2010.

Accession Number: 20100119–0213.

Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–320–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Second Revised Sheet 1300 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 2/19/10.

Filed Date: 01/19/2010.

Accession Number: 20100119–0211.

Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–321–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthurst Pipeline Company submits First Revised Sheet 7 and 8 to its FERC Gas Tariff, Second Revised Volume 1–A, to be effective 1/1/10.

Filed Date: 01/19/2010.

Accession Number: 20100119–0212.

Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: RP10–322–000.

Applicants: Granite State Gas Transmission, Inc.

Description: Granite State Gas Transmission, Inc submits a new Fourth Revised Volume 1 of Granite State's FERC Gas Tariff.

Filed Date: 01/15/2010.

Accession Number: 20100119–0226.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–323–000.

Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Company, Ltd. Operational Purchases and Sales Annual Report.

Filed Date: 01/15/2010.

Accession Number: 20100115–5120.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: RP10–324–000.

Applicants: North Baja Pipeline LLC.

Description: North Baja Pipeline, LLC submits Original Sheet 239 *et al.* to its FERC Gas Tariff, Original Volume 1.

Filed Date: 01/19/2010.

Accession Number: 20100119–0228.

Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–2087 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 22, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–40–000.

Applicants: BlackRock, Inc.

Description: Request for Authorization to Acquire Securities Under Section 203(a)(2) of the Federal Power Act of BlackRock, Inc.

Filed Date: 01/20/2010.

Accession Number: 20100120–5116.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010

Docket Numbers: EC10–41–000.

Applicants: Wolverine Power Supply Cooperative, Inc., FirstEnergy Generation Corp.

Description: Application of Wolverine Power Supply Cooperative, Inc. and FirstEnergy Generation Corp. for Order Authorizing Transaction Under Section 203 of the Federal Power Act, and Request for Waivers.
Filed Date: 01/21/2010.
Accession Number: 20100121–5067.
Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1113–007.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits filing in compliance with the FERC 12/17/09 Order on Rehearing etc.
Filed Date: 01/19/2010.
Accession Number: 20100120–0213.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER09–88–004.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Company et al. submits Sixth Revised Sheet 1 et al. to FERC Electric Tariff, Second Revised Volume 4.
Filed Date: 01/19/2010.
Accession Number: 20100120–0210.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER09–1254–002.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits compliance filing.
Filed Date: 01/19/2010.
Accession Number: 20100120–0212.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–35–001.
Applicants: Xcel Energy Services Inc.
Description: Public Service Company of Colorado et al. submit various executed nonconfirming Service Agreements.
Filed Date: 01/15/2010.
Accession Number: 20100120–0220.
Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER10–47–003.
Applicants: Geodyne Energy, L.L.C.
Description: Geodyne Energy, LLC submits the Petition for Acceptance of Rate Schedule, Waivers and Blanket Authority for Geodyne.
Filed Date: 01/20/2010.
Accession Number: 20100120–0226.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER10–86–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits compliance filing addressing the directives in the Commission's Dec. 18 Order and providing the associated revisions to the Midwest ISO etc.
Filed Date: 01/19/2010.
Accession Number: 20100120–0211.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–377–001.
Applicants: Elm Creek Wind II LLC.
Description: Elm Creek Wind II LLC submits a substitute original sheet 1 to FERC electric tariff, original volume 1.
Filed Date: 01/19/2010.
Accession Number: 20100120–0215.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–378–001.
Applicants: Buffalo Ridge II LLC.
Description: Buffalo Ridge II LLC submits a substitute original sheet 1 to FERC electric tariff, original volume 1.
Filed Date: 01/19/2010.
Accession Number: 20100120–0214.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–434–001.
Applicants: CPI USA North Carolina LLC.
Description: CPI USA North Carolina LLC submits Original Sheet 1 *et al.* to FERC Electric Tariff, First revised Volume 1.
Filed Date: 01/19/2010.
Accession Number: 20100120–0216.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–435–001.
Applicants: CPIDC, Inc.
Description: CPIDC resubmits Original Sheet 1 *et al.* to FERC Electric Tariff, Second Revised Volume 1.
Filed Date: 01/19/2010.
Accession Number: 20100120–0218.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–436–001.
Applicants: CPI Energy Services (US) LLC.
Description: CPI Energy Services, LLC submits Notice of Name Change and Succession.
Filed Date: 01/19/2010.
Accession Number: 20100120–0217.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–441–001.
Applicants: PacifiCorp.
Description: PacifiCorp submits an Amended and Restated Interconnection Agreement dated 11/16/09 etc.
Filed Date: 01/20/2010.
Accession Number: 20100120–0225.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER10–468–001.
Applicants: Google Energy LLC.
Description: Clarifying amendments to Google Energy LLC's Application for market based rate authority and granting of waiver and blanket authorizations.
Filed Date: 01/19/2010.
Accession Number: 20100120–0219.
Comment Date: 5 p.m. Eastern Time on Friday, January 29, 2010.

Docket Numbers: ER10–580–001.
Applicants: Silverhill Investments Corp.
Description: Silverhill Investments Corp submits corrected application for market-based rate authorization for related waiver and request for blanket authorization.
Filed Date: 01/13/2010.
Accession Number: 20100113–0220.
Comment Date: 5 p.m. Eastern Time on Monday, February 01, 2010.

Docket Numbers: ER10–607–000; ER10–608–000; ER10–609–000; ER10–610–000; ER10–611–000; ER10–612–000.
Applicants: Coalinga Cogeneration Company; Kern River Cogeneration Company; Salinas River Cogeneration Company; Mid-Set Cogeneration Company; Sycamore Cogeneration Company; Sargent Canyon Cogeneration Company.
Description: Coalinga Cogeneration Company submits a Petition for Order Accepting Market-Based Rate Tariff and for Waivers and Blankets Approvals.
Filed Date: 01/20/2010.
Accession Number: 20100120–0237.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER10–620–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits a Memorandum of Understanding between PacifiCorp and Helper City under PacifiCorp FERC Electric Tariff First Revised Volume 6.
Filed Date: 01/20/2010.
Accession Number: 20100120–0224.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER10–622–000.
Applicants: Macquarie Energy LLC.
Description: Macquarie Energy, LLC submits a notice of succession to Macquarie Cook Power Inc.
Filed Date: 01/20/2010.
Accession Number: 20100120–0239.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER10–623–000; ER10–624–000; ER10–625–000.
Applicants: Puget Sound Energy, Inc.; Portland General Electric Company; Avista Corporation.
Description: Puget Sound Energy Inc et al. submits revisions to Section 13.8

and 14.6 of their respective Open Access Transmission Tariffs.

Filed Date: 01/20/2010.

Accession Number: 20100120–0238.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–18–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Supplement to Application for Authorization of the Assumption of Liabilities and the Issuance of Securities Under Section 204 of the Federal Power Act by Wolverine Power Supply Cooperative, Inc.

Filed Date: 01/21/2010.

Accession Number: 20100121–5074.

Comment Date: 5 p.m. Eastern Time on Monday, February 1, 2010.

Docket Numbers: ES10–22–000.

Applicants: Rochester Gas & Electric Corporation.

Description: Rochester Gas and Electric Corporation's Supplemental to its Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.

Filed Date: 01/21/2010.

Accession Number: 20100121–5077.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ES10–23–000.

Applicants: New York State Electric & Gas Corp.

Description: New York State Electric & Gas Corporation's Supplemental to its Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.

Filed Date: 01/21/2010.

Accession Number: 20100121–5076.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ES10–24–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company's Supplemental to its Application for Authorization to Issue Short-Term Debt Under Section 204 of the Federal Power Act.

Filed Date: 01/21/2010.

Accession Number: 20100121–5073.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Docket Numbers: ES10–25–000.

Applicants: Allegheny Generating Company.

Description: Application of Allegheny Generating Company for Authorization Under Section 204.

Filed Date: 01/19/2010.

Accession Number: 20100119–5208.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–23–001.

Applicants: Boralex Inc.

Description: Form FERC 65A of Boralex Inc.

Filed Date: 01/21/2010.

Accession Number: 20100121–5085.

Comment Date: 5 p.m. Eastern Time on Thursday, February 11, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–2084 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–460–000]

ETC Tiger Pipeline Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed ETC Tiger Pipeline Project

January 26, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the ETC Tiger Pipeline Project (Project) proposed by ETC Tiger Pipeline Company, LLC (ETC Tiger) in the above referenced docket. ETC Tiger requests authorization to construct, own, operate, and maintain the proposed Project, which consists of an interstate natural gas pipeline and associated ancillary facilities. The proposed Project would transport about 2.0 billion cubic feet of natural gas per day from east Texas and northwest Louisiana to the Midwest, Northeastern, and Southeastern markets.

The EA assesses the potential environmental effects of the construction and operation of the proposed ETC Tiger Pipeline Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

This EA was prepared in cooperation with U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, the Texas Parks and Wildlife Department and the Louisiana Department of Wildlife and Fisheries.

The proposed ETC Tiger Pipeline Project includes the following proposed facilities:

- About 175.0 miles of 42-inch-diameter natural gas pipeline in Panola County, Texas, and Caddo, DeSoto, Red River, Bienville, Jackson, Ouachita, Richland, and Franklin Parishes, Louisiana;
- About 0.4 mile of 42-inch-diameter interconnecting station pipeline in Richland Parish, Louisiana;

• Four compressor stations: the Carthage, Cannisnia, Bienville, and Chatham Compressor Stations, located in Panola County, Texas; Red River Parish, Louisiana; Bienville Parish, Louisiana; and Jackson Parish, Louisiana, respectively;

• One bidirectional meter and regulator station at a receipt/delivery point with an intrastate pipeline, the Houston Pipe Line Meter/Regulator (M/R) Station in Panola County, Texas;

• Eight new meter and regulator stations at receipt points with four pipeline systems, including:

—Two Chesapeake Energy Marketing, Inc. (Chesapeake) M/R Stations in DeSoto Parish, Louisiana;
—EnCana Marketing (USA) (EnCana) M/R Station in DeSoto Parish, Louisiana;
—Questar Exploration and Production Company (Questar) M/R Station in Red River Parish, Louisiana;
—EnCana M/R Station in Red River Parish, Louisiana;
—Tristate North Louisiana Midstream, LLC (Tristate) M/R Station in Red River Parish, Louisiana;
—Questar M/R Station in Bienville Parish, Louisiana; and
—EnCana M/R Station in Bienville Parish, Louisiana;

• Interconnects with seven existing interstate pipelines at delivery points including:

—Texas Eastern Transmission, L.P. (TETCO) M/R Station in Bienville Parish, Louisiana;
—Tennessee Gas Pipeline Company (Tennessee Gas) M/R Station in Jackson Parish, Louisiana;
—Texas Gas Transmission, LLC (Texas Gas) M/R Station in Ouachita Parish, Louisiana;
—Trunkline Gas Company, LLC (Trunkline) M/R Station in Richland Parish, Louisiana;
—ANR Pipeline Company (ANR) M/R Station in Richland Parish, Louisiana;
—Columbia Gulf Transmission Company (CGT) M/R Station in Richland Parish, Louisiana; and
—Southeast Supply Header, LLC (SESH) M/R Station in Richland Parish, Louisiana;

• Fifteen mainline valves; and

• Three pig launcher/receiver facilities associated with the Carthage and Bienville Compressor Stations, to be located within the permanent right-of-way at the terminus of the pipeline.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies; interested groups and individuals; newspapers and libraries in the Project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that we receive your comments in Washington, DC on or before February 26, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP09–460–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "*Sign up*" or "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments on paper at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 Code of Federal Regulations (CFR) 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–460). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2108 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–35–000]

T.E.S. Filer City Station Limited Partnership; Notice of Filing

January 26, 2010.

Take notice that on January 20, 2010, T.E.S. City Station Limited Partnership, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, 31 U.S.C. 9701, 42 U.S.C. 7101–7352, and Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35, filed a revenue requirement pursuant to which they will provide Reactive Power and Voltage Control from Generation Sources under Schedule 2 of the Open Access Transmission Tariff of the Midwest Independent System Transmission Operator, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 10, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2106 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–34–000]

Medical Area Total Energy Plant, Inc., New MATEP, Inc.; Notice of Filing

January 26, 2010.

Take notice that on January 15, 2010, Medical Area Total Energy Plant, Inc. and New MATEP, Inc. (Petitioners), pursuant to 18 CFR 366.7(b) and 385.207(a) (2009), filed a petition for a declaratory order requesting a Commission determination that each Petitioner is, or will be, an exempt wholesale generator, as defined in section 366.1 of the Commission's regulations, 18 CFR 366.1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2105 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR10–5–000]

Suncor Energy Marketing Inc.; Notice of Filing

January 26, 2010.

Take notice that on January 13, 2010, Suncor Energy Marketing Inc. (Petitioner) filed a petition for declaratory order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2009), requesting that the Commission declare that due to dramatically changed circumstances, the long-term rate methodology for the United States portion of the Alberta Clipper Project will not result in just and reasonable rates in the near-term and cannot be put into effect. Petitioner also seeks an order by the Commission establishing a near-term rate treatment for Alberta Clipper costs that will be effective from the Alberta Clipper Project's in-service date until such time as the United States portion of the Project is needed and the Commission determines that the long-term rate methodology is just and reasonable under the circumstances prevailing at the time.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2103 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–580–000; ER10–580–001]

Silverhill Investments Corp.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 26, 2010.

This is a supplemental notice in the above-referenced proceeding of Silverhill Investments Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is February 16, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2107 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Rate Order No. WAPA–150

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Extension of Rate-Setting Formula and Adjustment to Base Charge and Rates.

SUMMARY: This action is a proposal to extend the existing Boulder Canyon Project (BCP) rate-setting formula and approve the proposed base charge and rates for FY 2011. Publication of this **Federal Register** notice begins the formal process to extend the existing rate-setting formula and the proposed base charge and rates. The proposed base charge and rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The consultation and comment period begins today and will end May 3, 2010. Western will present a detailed explanation of the proposed base charge and rates at a public information forum on April 7, 2010, beginning at 10:30 a.m. MST, Phoenix, Arizona. Western will accept oral and written comments at a public comment forum on April 21, 2010, beginning at 10:30 a.m. MST, Phoenix, Arizona. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Regional Customer Service Office, located at 615 South 43rd Avenue, Phoenix, Arizona, on the dates cited above. Written comments should be sent to Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *MOE@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.* Western will post official comments received via letter, fax, and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western at least 45 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: Annual base charge and rates adjustments are required by Western's existing BCP rate-setting formula methodology. That methodology was originally approved on an interim basis by the Deputy Secretary of Energy on October 31,

1995,[1] and confirmed by the Federal Energy Regulatory Commission (FERC) on April 19, 1996,[2] for a five year period through 2000. The rate-setting formula was subsequently extended for additional five year periods in 2001[3] and 2006.[4] Western proposes to extend the existing rate-setting formula through September 30, 2015, under Rate Order No. WAPA–150 and Rate Schedule BCP–F8, and approve the proposed base charge and rates for FY 2011. The proposed base charge and rates for BCP electric service are designed under the existing rate-setting formula to recover an annual revenue requirement that includes investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating program payments. The total costs are offset by the projected revenue from water sales, visitor center, water pump energy sales, facilities use charges, regulation, reactive supply and voltage control, spinning reserve, miscellaneous leases, and late fees. The annual revenue requirement is the annual base charge for electric service divided equally between capacity and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of Energy (DOE) approved the extension of the existing rate-setting formula and Rate Schedule BCP–F7, under Rate Order No. 120, effective on October 1, 2005, for the period ending September 30, 2010.[5]

The base charge for fiscal year (FY) 2010 is $70,681,340, the forecasted energy rate is 9.47 mills per kilowatthour (mills/kWh), the forecasted capacity rate is $1.76 per kilowattmonth (kWmonth), and the composite rate is 18.93 mills/kWh.

Under Rate Order No. WAPA–150 and Rate Schedule BCP–F8, the proposed base charge for FY 2011 will result in an overall composite rate increase of about 3 percent. The proposed base charge will increase about 3.22 percent, the proposed forecasted energy rate will increase about 2.53 percent, and the proposed forecasted capacity rate will increase about 0.57 percent. The proposed base charge and rates for BCP electric service are listed in the following table.

TABLE 1—ELECTRIC SERVICE BASE CHARGE AND RATES

	Existing base charge and rates October 1, 2009	Proposed base charge and rates October 1, 2010	Percent change
Composite (mills/kWh)	18.93	19.43	2.64
Base Charge ($)	$70,681,340	$72,959,824	3.22
Energy Rate (mills/kWh)	9.47	9.71	2.53
Capacity Rate ($/kWmonth)	$1.76	$1.77	0.57

Legal Authority

Western will hold both a public information forum and a public comment forum. After review of public comments, Western will take further action on the proposed base charge and rates and the extension of rate-setting methodology consistent with 10 CFR part 903.

Western is establishing the electric service base charge and rates for BCP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing Department of Energy procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed base charge and rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona. Many of these documents and supporting information are also available on Western's Web site at: *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347 *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 15, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–2170 Filed 2–1–10; 8:45 am]

BILLING CODE 6450–01–P

[1] 60 FR 57859 (November 22, 1995).

[2] 75 FERC ¶ 62,050.

[3] 96 FERC ¶ 61,171 (July 31, 2001).

[4] 115 FERC ¶ 61,362 (June 22, 2006).

[5] FERC confirmed and approved Rate Order No. WAPA–120 in Docket EF05–5091–000. See United States Department of Energy, Western Area Power Administration, Boulder Canyon Project, 115 FERC ¶ 61,362 (June 22, 2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–45–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

January 26, 2010.

Take notice that on January 25, 2010, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP10–45–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) for authority to abandon in place an inactive offshore supply lateral (Line 509A–3600) and associated meter and appurtenances located in West Cameron Blocks 617 and 630 of the offshore continental shelf, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Tennessee proposes to abandon in place Line 509A–3600 and appurtenances. Tennessee states that Line 509A–3600 extends for approximately 4.26 miles from a subsea tie-in with Tennessee's Line 509A–3500 in West Cameron Block 617 to a production platform owned and operated by Maritech Resources, Inc. (Maritech), located in West Cameron Block 630. Tennessee avers that the subject facilities have been out of service since the downstream pipelines were damaged by Hurricane Ike in September 2008. Additionally, Tennessee asserts that Maritech has notified Tennessee that it intends to abandon its platform in 2010. Tennessee states that it has not provided transportation service to any shippers through Line 509A–3600 for more than twelve months and no firm contracts are tied to the receipt meter located on the Maritech platform. Tennessee asserts that the estimated cost to construct similar facilities today is approximately $17.8 million.

Any questions regarding the application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420–5751 or (713) 420–1601 (facsimile) or Debbie Kalisek, Analyst, Certificates & Regulatory Compliance, at (713) 420–3292 or (713) 420–1605 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2104 Filed 2–1–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9108–5; Docket ID No. EPA–HQ–ORD–2009–0613]

Exposure Factors Handbook: 2009 Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer-Review Workshop.

SUMMARY: EPA is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop on March 3–4, 2010, to review the external review draft document titled, "Exposure Factors Handbook 2009 Update" (EPA/600/R–09/052A). EPA previously announced the 60-day public comment period (ending December 7, 2009) for the draft document in the **Federal Register** on October 7, 2009 (74 FR 51592). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. The Exposure Factors Handbook provides information on various physiological and behavioral factors commonly used in assessing exposure to environmental chemicals. The handbook was first published in 1989 and was updated in 1997. This updated version incorporates data available since 1997 up to June 2009. It also reflects the revisions made to the Child-Specific Exposure Factors Handbook, which was updated and published in 2008. Each chapter in the revised Exposure Factors Handbook presents recommended values for the exposure factors covered in the chapter as well as a discussion of the underlying data used in developing the recommendations.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the October 7, 2009, **Federal Register** notice (74 FR 51592) to ERG, for consideration by the external peer-review panel prior to the workshop. EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

ERG invites the public to register to attend this workshop as observers. In addition, ERG invites the public to give oral comments at the workshop regarding the draft document under review. Members of the public interested in making oral comments at the workshop should also provide ERG with an electronic copy of their comments. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's peer-review charge are only available via the Internet on NCEA's home page under the Recent Additions menu at *http://www.epa.gov/ncea*. In preparing a final report, EPA will consider ERG's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA received.

DATES: The peer-review panel workshop will begin on Wednesday, March 3, 2010, at 8 a.m., and will end on Thursday, March 4, 2010, at

approximately 12 p.m. Eastern Standard Time.

ADDRESSES: The peer-review workshop will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The EPA contractor, ERG, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by February 24, 2010, by calling ERG at 781–674–7374 or toll free at 800–803–2833 (ask for the EFH peer-review coordinator, Laurie Waite). You may register via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-efh.htm,* or by sending a facsimile to 781–674–2906 (please reference: "EFH peer-review workshop" and include your name, title, affiliation, full address, and contact information). Please indicate if you would like to make oral comments at the workshop. You may also register by sending an e-mail to *meetings@erg.com* (subject line: "EFH peer-review workshop" and include your name, title, affiliation, full address, and contact information). Please indicate if you would like to make oral comments at the workshop. The draft "Exposure Factors Handbook: 2009 Update" is only available via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions menu at *http://www.epa.gov/ncea.* No printed copies are available because of the size of the document.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the "Exposure Factors Handbook: 2009 Update" peer-review workshop and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7374; facsimile: 781–674–2906; or e-mail: *meetings@erg.com* (subject line: EFH peer-review workshop), preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7374; facsimile: 781–674–2906; or e-mail: *meetings@erg.com* (subject line: EFH peer-review workshop). To request accommodation of a disability, please contact Laurie Waite at ERG (contact information above), preferably at least 10 days prior to the workshop, to give as much time as possible to process your request. If you have questions about the document, please contact Jacqueline Moya, National Center for Environmental Assessment (NCEA), 1200 Pennsylvania Ave, NW., 8601P, Washington, DC 20460; telephone: 703–347–8539; facsimile: 703–347–8496; or e-mail: *moya.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

The Exposure Factors Handbook provides a summary of the available statistical data on various factors used in assessing human exposure. This Handbook is aimed at exposure assessors inside the Agency as well as those outside who use data on standard factors to calculate human exposure to toxic chemicals. These factors include: Drinking water consumption; mouthing behavior; soil ingestion rates; inhalation rates; dermal factors, including skin area and soil adherence factors; consumption of fruits and vegetables, fish, meats, dairy products, and homegrown foods; breast milk intake; human activity factors; consumer product use; and residential characteristics. Recommended values are for the general population and also for various segments of the population who may have characteristics different from the general population.

Dated: January 26, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–2155 Filed 2–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0684; FRL–8809–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by or March 4, 2010 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than March 4, 2010, whichever is applicable. Comments must be received on or before March 4, 2010, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2009–0684 by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0684. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Daniel Peacock, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5407; e-mail address: *peacock.daniel@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. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel one pesticide product with several registrations under section 3 or 24(c) of FIFRA. This product is listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
NE-060001	Rozol Prairie Dog Bait	Chlorophacinone
CO-060009	Rozol Prairie Dog Bait	Chlorophacinone
KS-070003	Rozol Prairie Dog Bait	Chlorophacinone
WY-070005	Rozol Prairie Dog Bait	Chlorophacinone
TX-070008	Rozol Prairie Dog Bait	Chlorophacinone
OK-080002	Rozol Prairie Dog Bait	Chlorophacinone

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of this pesticide or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the name and address of record for all registrants of the product in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
7173	Liphatech 3600 West Elm St., Milwaukee, WI 53209

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 2, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 26, 2010

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs

[FR Doc. 2010–2143 Filed 2–1–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, February 2, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Judith Ingram, Press Officer Telephone: (202) 694–1220.

Darlene Harris,

Deputy Secretary of the Commission.

[FR Doc. 2010–1905 Filed 2–1–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 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 April 5, 2010.

ADDRESSES: You may submit comments, identified by FR 4004, FR MSD–4, FR MSD–5, FR G–FIN, or FR G–FINW, 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 the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

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).

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Written Security Program for State Member Banks.

Agency form number: FR 4004.

OMB control number: 7100–0112.

Frequency: On occasion.

Reporters: State member banks.

Estimated annual reporting hours: 22 hours.

Estimated average hours per response: 0.5 hours.

Number of respondents: 43.

General description of report: This recordkeeping requirement is mandatory pursuant to section 3 of the Bank Protection Act [12 U.S.C. 1882(a)] and Regulation H [12 CFR 208.61]. Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of the Freedom of Information Act [5 U.S.C. 552(b)(8)].

Abstract: Each state member bank must develop and implement a written security program and maintain it in the bank's records. This program should include a requirement to install security devices and should establish procedures that satisfy minimum standards in the regulation, with the security officer determining the need for additional security devices and procedures based on the location of the banking office. There is no formal reporting form and the information is not submitted to the Federal Reserve.

2. *Report title:* Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.

Agency form number: FR MSD–4 and FR MSD–5.

OMB control number: 7100–0100 and 7100–0101.

Frequency: On occasion.

Reporters: State member banks and foreign dealer banks engaging in activities as municipal securities dealers.

Estimated annual reporting hours: FR MSD–4, 48 hours; and FR MSD–5, 36 hours.

Estimated average hours per response: FR MSD–4, 1 hour; and FR MSD–5, 0.25 hours.

Number of respondents: FR MSD–4, 48; and FR MSD–5, 144.

General description of report: These information collections are mandatory pursuant to the Federal Reserve Act: (12 U.S.C. 248(a)(1)) for state member banks and (12 U.S.C. 3105(c)(2)) for foreign bank branches and agencies and are given confidential treatment (5 U.S.C. 552(b)(6)).

Abstract: The FR MSD–4 collects information, such as personal history and professional qualifications, on an employee whom the bank wishes to assume the duties of a municipal securities principal or representative. The FR MSD–5 collects the date of, and reason for, termination of such an employee.

3. *Report title:* Notice By Financial Institutions of Government Securities Broker or Government Securities Dealer Activities; Notice By Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer.

Agency form number: FR G–FIN and FR G–FINW.

OMB control number: 7100–0224.

Frequency: On occasion.

Reporters: State member banks, foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge corporations.

Estimated annual reporting hours: FR G–FIN, 10 hours; and FR G–FINW, 2 hours.

Estimated average hours per response: FR G–FIN, 1 hour; and FR G–FINW, 0.25 hours.

Number of respondents: FR G–FIN, 10; and FR G–FINW, 8.

General description of report: These information collections are mandatory pursuant to the Securities and Exchange Act of 1934 (15 U.S.C. 78o–5(a)(1)(B)) and are not given confidential treatment.

Abstract: The Government Securities Act of 1986 (the Act) requires financial institutions to notify their appropriate regulatory authority of their intent to engage in government securities broker or dealer activity, to amend information submitted previously, and to record their termination of such activity. The Federal Reserve Board uses the information in its supervisory capacity to measure compliance with the Act.

Board of Governors of the Federal Reserve System, January 28, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–2132 Filed 2–1–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Charles H. Burke III, Pierre, South Dakota; as an individual, to acquire voting shares of South Dakota Bancshares Inc., and thereby indirectly acquire voting shares of BankWest Inc., both of Pierre, South Dakota.

Board of Governors of the Federal Reserve System, January 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–2154 Filed 2–01–10; 8:45 am]

BILLING CODE 6210–01–S

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 26, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Treetops Acquisition Group LP, Treetops Acquisition Group II LP, Treetops Acquisition Group Ltd., Treetops Acquisition Group II Ltd., CAM Discount Ltd. and the Edgar M. Bronfman Trusts A, B, C, D, E, F, G, all of New York, New York; to acquire additional voting shares, for a total of up to 28.5 percent of the outstanding voting shares of Israel Discount Bank, Ltd., Tel Aviv, Israel, and thereby indirectly acquire additional voting shares of Discount Bancorp Inc., and Israel Discount Bank of New York, both of New York, New York.

Board of Governors of the Federal Reserve System, January 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–2153 Filed 2–1–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, February 8, 2010.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–2226 Filed 1ndash;29–10; 11:15 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3159]

Indoor Tanning Association; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Indoor Tanning Assoc., File No. 082 3159" to facilitate the organization of comments. Please note that your comment —

including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/indoortanningassoc*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/indoortanningassoc.*) If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Indoor Tanning Assoc., File No. 082 3159" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Janet Evans (202-326-2125), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 26, 2010), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from the Indoor Tanning Association ("respondent"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of indoor tanning products and facilities. According to the FTC complaint, respondent represented, in various advertisements, that tanning, including indoor tanning, does not increase the risk of skin cancer. The complaint alleges that this claim is false and unsubstantiated because tanning, including indoor tanning, increases the risk of skin cancer, including squamous cell and melanoma skin cancers. Also, according to the complaint, respondent represented that: tanning, including indoor tanning, poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because, in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. The FTC complaint alleges that these claims are false and unsubstantiated.

The FTC complaint further charges that respondent represented that research shows that vitamin D supplements may harm the body's ability to fight disease; and that a recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer, that getting a healthy tan produces vitamin D, and that increased vitamin D has been linked to significantly decreasing your risk of contracting internal cancers, such as lung, kidney, or liver cancer. The complaint alleges that these claims are false and misleading. The FTC complaint also alleges that respondent represented that tanning causes the skin to generate vitamin D and has health benefits, but that respondent failed to disclose facts that would be material to

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

consumers in their purchase and use of indoor tanning services, specifically, that consumers can increase their vitamin D levels through ultraviolet levels lower than the amount needed to get a tan, and that ultraviolet radiation can injure the eyes and increases the risk of skin cancer. The complaint alleges that respondent's failure to disclose these facts, in light of the representation made, is a deceptive practice. Finally, the complaint alleges that respondent provided to others the means and instrumentalities to engage in deceptive acts or practices.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. The order covers representations made in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce. It does not cover representations made in non-commercial settings or contexts, such as communications to legislative or executive bodies. The order defines a covered product or service as any ultraviolet lamp or sunlamp product, as defined in federal regulation 21 C.F.R. § 1040.20, or any commercial facility where consumers may use ultraviolet lamps or sunlamp products.

Part I of the order prohibits respondent from making the following representations: tanning, including indoor tanning, does not increase the risk of skin cancer; tanning, including indoor tanning, is safe or poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. The ban on representations that tanning, including indoor tanning, is safe, is fencing-in relief. Part II of the order prohibits respondent from misrepresenting (1) that research shows that vitamin D supplements may harm the body's ability to fight disease and (2) that a study in the Proceedings of the National Academy of Sciences determined: (a) that sun exposure does not cause skin cancer or melanoma, or that the risk of such cancer is only hypothetical; (b) that getting a tan is healthy; (c) that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer; or (d) that vitamin D has been linked to significantly decreasing the risk of contracting lung, kidney, or liver cancer.

Part III prohibits respondent from making any representation about the safety, health-related efficacy or performance, or health-related risks or benefits, of any covered product or service; or about the sources, performance, efficacy, or health-related risks or benefits of vitamin D; unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields to substantiate that the representation is true. For the purposes of the order, competent and reliable scientific evidence is defined as tests, analyses, research, studies, or other evidence that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and whose results are consistent with the body of reliable scientific evidence relevant to the representation. Part IV of the order prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

Part V of the order is a disclosure provision. It prohibits respondent from making any representation about the safety or health benefits of any covered product or service unless it makes the following disclosure, clearly and conspicuously, and in close proximity to the representation: "**NOTICE:** Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury." In the event, however, that respondent represents that exposure to ultraviolet radiation produces vitamin D in the body, or otherwise about the effectiveness or usefulness of such product for generation of vitamin D, the required disclosure shall be as follows: "**NOTICE:** You do not need to become tan for your skin to make vitamin D. Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury."

Part VI of the order prohibits respondent from providing to any other person or entity any means or instrumentalities that contain any representation prohibited by the order. Part VII requires respondent to send a notice about the FTC's law enforcement action to all of its members, and all other entities to which it provided point-of-sale advertising on or after January 1, 2008; the required notice is attached to the order as Attachment A.

Parts VIII, IX, X, and XI of the consent order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010–2129 Filed 2–1–10; 2:45 pm]

BILLING CODE 6750–01–S

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for an Unmodified OGE Form 201 Ethics Act Access Form

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After publication of this second round notice, OGE plans to submit an unmodified OGE Form 201 Ethics Act Access Form to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by March 4, 2010.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Office of Government Ethics, by either of the following methods within 30 days from the date of publication in this **Federal Register**:

Fax: 202–395–6974, Attn: Ms. Sharon Mar, OMB Desk Officer for the Office of Government Ethics;

E-mail: smar@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Paul Ledvina at the Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; E-mail: *paul.ledvina@oge.gov.* An electronic copy of the OGE Form 201 is available in the Forms Library section of

OGE's Web site at *http://www.usoge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION:

Title: Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records.

Agency Form Number: OGE Form 201.

OMB Control Number: 3209–0002.

Type of Information Collection: Extension without change of a currently approved collection.

Type of Review Request: Regular.

Respondents: Individuals requesting access to executive branch public financial disclosure reports and other covered records.

Estimated Annual Number of Respondents: 450.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 75 hours.

Abstract: The OGE Form 201 collects information from, and provides certain information to, persons who seek access to SF 278 Public Financial Disclosure Reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information collected about the identity of the requester, as well as any other person on whose behalf a record is sought, and notification of prohibited uses of SF 278 reports. See section 105 (b) and (c) of the Ethics Act, 5 U.S.C. appendix § 105 (b) and (c), and 5 CFR 2634.603 (c) and (f) of OGE's executive branchwide regulations. Executive branch departments and agencies are encouraged to utilize the OGE Form 201. OGE permits departments and agencies to use or develop their own forms as long as the forms collect and provide all of the required information.

Request for Comments: OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified OGE Form 201 Ethics Act Access Form. See 74 FR 59185–59186. OGE received no responses to that notice. Agency and public comment is again invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: January 27, 2010.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. 2010–2172 Filed 2–1–10; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009 for Adjustments to the First Quarter of Fiscal Year 2010 Federal Medical Assistance Percentage Rates for Federal Matching Shares for Medicaid and Title IV–E Foster Care, Adoption Assistance and Guardianship Assistance Programs

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: This notice provides the adjusted Federal Medical Assistance Percentage (FMAP) rates for the first quarter of Fiscal Year 2010 (FY10) as required under Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA). Section 5001 of the ARRA provides for temporary increases in the FMAP rates to provide fiscal relief to states and to protect and maintain state Medicaid and certain other assistance programs in a period of economic downturn. The increased FMAP rates apply during a recession adjustment period that is defined in ARRA as the period beginning October 1, 2008 and ending December 31, 2010.

DATES *Effective Date:* These percentages are effective for the quarter beginning October 1, 2009 through December 31, 2009.

A. Background

The FMAP is used to determine the amount of federal matching for specified state expenditures for assistance payments under programs under the Social Security Act. Sections 1905(b) and 1101(a)(8)(B) of the Social Security Act ("the Act") require the Secretary of Health and Human Services to publish the FMAP rates each year. The Secretary calculates the percentages using formulas set forth in sections 1905(b) and 1101(a)(8)(B), and from the Department of Commerce's statistics of average income per person in each state and for the nation as a whole. The percentages must be within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified separately in the Act, and thus are not based on the statutory formula that determines the percentages for the 50 states.

Section 1905(b) of the Act specifies the formula for calculating the FMAP as follows:

> The FMAP for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the FMAP shall in no case be less than 50 per centum or more than 83 per centum, and (2) the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia for purposes of titles XIX (Medicaid) and XXI (CHIP) shall be 70 percent. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) amended the FMAP applied to the District of Columbia for maintenance payments under title IV–E programs to make it consistent with the 70 percent Medicaid match rate.

Section 5001 of Division B of the ARRA provides for a temporary increase in FMAP rates for Medicaid and title IV–E Foster Care, Adoption Assistance and Guardianship Assistance programs. The purpose of the increases to the FMAP rates is to provide fiscal relief to states and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn, referred to as the "recession adjustment period." The recession adjustment period is defined as the period beginning October 1, 2008 and ending December 31, 2010.

B. Calculation of the Increased FMAP Rates Under ARRA

Section 5001 of the ARRA specifies that the FMAP rates shall be temporarily increased for the following: (1) Maintenance of FMAP rates for FY09, FY10, and first quarter of FY11, so that the FMAP rate will not decrease from the prior year, determined by using as the FMAP rate for the current year the greater of any prior fiscal year FMAP rates between 2008–2010 or the rate calculated for the current fiscal year; (2) in addition to any maintenance increase, the application of an increase in each state's FMAP of 6.2 percentage

points; and (3) an additional percentage point increase based on the state's increase in unemployment during the recession adjustment period. The resulting increased FMAP cannot exceed 100 percent. Each state's FMAP will be recalculated each fiscal quarter beginning October 2008. Availability of certain components of the increased FMAP is conditioned on states meeting statutory programmatic requirements, such as the maintenance of effort requirement, which are not part of the calculation process.

Expenditures for which the increased FMAP is not available under title XIX include expenditures for disproportionate share hospital payments, certain eligibility expansions, services received through an IHS or tribal facility (which are already paid at a rate of 100 percent and therefore not subject to increase), and expenditures that are paid at an enhanced FMAP rate. The increased FMAP is available for expenditures under part E of title IV (including Foster Care, Adoption Assistance and Guardianship Assistance programs) only to the extent of a maintenance increase (hold harmless), if any, and the 6.2 percentage point increase. The increased FMAP does not apply to other parts of title IV, including part D (Child Support Enforcement Program).

For title XIX purposes only, for each qualifying state with an unemployment rate that has increased at a rate above the statutory threshold percentage, ARRA provides additional relief above the general 6.2 percentage point increase in FMAP through application of a separate increase calculation. For those states, the FMAP for each qualifying state is increased by the number of percentage points equal to the product of the state matching percentage (as calculated under section 1905(b) and adjusted if necessary for the maintenance of FMAP without reduction from the prior year, and after applying half of the 6.2 percentage point general increase in the federal percentage) and the applicable percent determined from the state unemployment increase percentage for the quarter.

The unemployment increase percentage for a calendar quarter is equal to the number of percentage points (if any) by which the average monthly unemployment rate for the state in the most recent previous 3-consecutive-month period for which data are available exceeds the lowest average monthly unemployment rate for the state for any 3-consecutive-month period beginning on or after January 1, 2006. A state qualifies for additional relief based on an increase in unemployment if that state's unemployment increase percentage is at least 1.5 percentage points.

The applicable percent is: (1) 5.5 percent if the state unemployment increase percentage is at least 1.5 percentage points but less than 2.5 percentage points; (2) 8.5 percent if the state unemployment increase percentage is at least 2.5 percentage points but less than 3.5 percentage points; and (3) 11.5 percent if the state unemployment increase percentage is at least 3.5 percentage points.

If the state's applicable percent is less than the applicable percent for the preceding quarter, then the higher applicable percent shall continue in effect for any calendar quarter beginning on January 1, 2009 and ending before July 1, 2010.

Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and America Samoa made a one-time election between (1) a 30 percent increase in their cap on Medicaid payments (as determined under subsections (f) and (g) of section 1108 of the Social Security Act), or (2) applying the increase of 6.2 percentage points in the FMAP plus a 15 percent increase in the cap on Medicaid payments. There is no quarterly unemployment adjustment for Territories. All territories and the Commonwealth of the Northern Mariana Islands elected the 30 percent increase in their spending cap on Medicaid payments; therefore there is no recalculation of their FMAP rate.

C. Adjusted FMAPs for the First Quarter of 2010

ARRA adjustments to FMAPs are shown by state in the accompanying table. The hold harmless FY10 FMAP is the higher of the original FY08, FY09, or FY10 FMAP. The 6.2 percentage point increase is added to the hold harmless FY10 FMAP. The unemployment tier is determined by comparing the average unemployment rate for the three consecutive months preceding the start of each fiscal quarter to the lowest consecutive 3-month average unemployment rate beginning January 1, 2006. The unemployment adjustment is calculated according to the unemployment tier and added to the hold harmless FY10 FMAP with the 6.2 percentage point increase.

FOR FURTHER INFORMATION CONTACT: Carrie Shelton or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93–596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care; 93.659: Adoption Assistance; 93.090: Guardianship Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act)

Dated: December 22, 2009.

Kathleen Sebelius,

Secretary of Health and Human Services.

ARRA ADJUSTMENTS TO FMAP Q1 FY10

State	FY08 original FMAP	FY09 original FMAP	FY10 original FMAP	Hold harmless FY10	Hold harmless FY10 FMAP with 6.2% point increase	3-month average unemployment ending Sept 2009	Minimum unemployment	Unemployment difference	Unemployment tier	Unemployment adjustment Q1 FY10	1st Quarter FY10 FMAP unemployment adjustment	1st Quarter FY10 FMAP unemployment hold harmless
Alabama	67.62	67.98	68.01	68.01	74.21	10.4	3.3	7.1	11.5	3.32	77.53	77.53
Alaska	52.48	50.53	51.43	52.48	58.68	8.2	6.0	2.2	5.5	2.44	61.12	61.12
Arizona	66.20	65.77	65.75	66.20	72.40	9.1	3.6	5.5	11.5	3.53	75.93	75.93
Arkansas	72.94	72.81	72.78	72.94	79.14	7.2	4.8	2.4	5.5	1.32	80.46	80.46
California	50.00	50.00	50.00	50.00	56.20	12.2	4.8	7.4	11.5	5.39	61.59	61.59
Colorado	50.00	50.00	50.00	50.00	56.20	7.4	3.6	3.8	11.5	5.39	61.59	61.59
Connecticut	50.00	50.00	50.00	50.00	56.20	8.1	4.3	3.8	11.5	5.39	61.59	61.59
Delaware	50.00	50.00	50.21	50.21	56.41	8.1	3.3	4.8	11.5	5.37	61.78	61.78
District of Columbia	70.00	70.00	70.00	70.00	76.20	11.0	5.4	5.6	11.5	3.09	79.29	79.29
Florida	56.83	55.40	54.98	56.83	63.03	10.9	3.3	7.6	11.5	4.61	67.64	67.64
Georgia	63.10	64.49	65.10	65.10	71.30	10.1	4.3	5.8	11.5	3.66	74.96	74.96
Hawaii	56.50	55.11	54.24	56.50	62.70	7.1	2.2	4.9	11.5	4.65	67.35	67.35
Idaho	69.87	69.77	69.40	69.87	76.07	8.8	2.8	6.0	11.5	3.11	79.18	79.18
Illinois	50.00	50.32	50.17	50.32	56.52	10.3	4.4	5.9	11.5	5.36	61.88	61.88
Indiana	62.69	64.26	65.93	65.93	72.13	10.0	4.4	5.6	11.5	3.56	75.69	75.69
Iowa	61.73	62.62	63.51	63.51	69.71	6.6	3.7	2.9	8.5	2.84	72.55	72.55
Kansas	59.43	60.08	60.38	60.38	66.58	7.2	4.0	3.2	8.5	3.10	69.68	69.68
Kentucky	69.78	70.13	70.96	70.96	77.16	11.0	5.4	5.6	11.5	2.98	80.14	80.14
Louisiana	72.47	71.31	67.61	72.47	78.67	7.5	3.5	4.0	11.5	2.81	81.48	81.48
Maine	63.31	64.41	64.99	64.99	71.19	8.5	4.4	4.1	11.5	3.67	74.86	74.86
Maryland	50.00	50.00	50.00	50.00	56.20	7.2	3.4	3.8	11.5	5.39	61.59	61.59
Massachusetts	50.00	50.00	50.00	50.00	56.20	9.0	4.4	4.6	11.5	5.39	61.59	61.59
Michigan	58.10	60.27	63.19	63.19	69.39	15.2	6.7	8.5	11.5	3.88	73.27	73.27
Minnesota	50.00	50.00	50.00	50.00	56.20	7.8	3.9	3.9	11.5	5.39	61.59	61.59
Mississippi	76.29	75.84	75.67	76.29	82.49	9.6	6.0	3.6	11.5	2.37	84.86	84.86
Missouri	62.42	63.19	64.51	64.51	70.71	9.4	4.7	4.7	11.5	3.72	74.43	74.43
Montana	68.53	68.04	67.42	68.53	74.73	6.7	3.2	3.5	11.5	3.26	77.99	77.99
Nebraska	58.02	59.54	60.56	60.56	66.76	5.0	2.8	2.2	5.5	2.00	68.76	68.76
Nevada	52.64	50.00	50.16	52.64	58.84	13.0	4.2	8.8	11.5	5.09	63.93	63.93
New Hampshire	50.00	50.00	50.00	50.00	56.20	7.0	3.4	3.6	11.5	5.39	61.59	61.59
New Jersey	50.00	50.00	50.00	50.00	56.20	9.6	4.2	5.4	11.5	5.39	61.59	61.59
New Mexico	71.04	70.88	71.35	71.35	77.55	7.4	3.5	3.9	11.5	2.94	80.49	80.49
New York	50.00	50.00	50.00	50.00	56.20	8.8	4.3	4.5	11.5	5.39	61.59	61.59
North Carolina	64.05	64.60	65.13	65.13	71.33	10.9	4.5	6.4	11.5	3.65	74.98	74.98
North Dakota	63.75	63.15	63.01	63.75	69.95	4.2	3.0	1.2	0	0.00	69.95	69.95
Ohio	60.79	62.14	63.42	63.42	69.62	10.7	5.3	5.4	11.5	3.85	73.47	73.47
Oklahoma	67.10	65.90	64.43	67.10	73.30	6.7	3.3	3.4	8.5	2.53	75.83	75.83
Oregon	60.86	62.45	62.74	62.74	68.94	11.7	5.0	6.7	11.5	3.93	72.87	72.87
Pennsylvania	54.08	54.52	54.81	54.81	61.01	8.6	4.3	4.3	11.5	4.84	65.85	65.85
Rhode Island	52.51	52.59	52.63	52.63	58.83	12.8	4.8	8.0	11.5	5.09	63.92	63.92
South Carolina	69.79	70.07	70.32	70.32	76.52	11.6	5.5	6.1	11.5	3.06	79.58	79.58
South Dakota	60.03	62.55	62.72	62.72	68.92	4.9	2.7	2.2	5.5	1.88	70.80	70.80
Tennessee	63.71	64.28	65.57	65.57	71.77	10.7	4.5	6.2	11.5	3.60	75.37	75.37
Texas	60.56	59.44	58.73	60.56	66.76	8.0	4.4	3.6	11.5	4.18	70.94	70.94
Utah	71.63	70.71	71.68	71.68	77.88	6.1	2.5	3.6	11.5	2.90	80.78	80.78
Vermont	59.03	59.45	58.73	59.45	65.65	6.8	3.5	3.3	8.5	3.18	68.83	69.96
Virginia	50.00	50.00	50.00	50.00	56.20	6.7	2.8	3.9	11.5	5.39	61.59	61.59
Washington	51.52	50.94	50.12	51.52	57.72	9.0	4.4	4.6	11.5	5.22	62.94	62.94
West Virginia	74.25	73.73	74.04	74.25	80.45	8.9	4.2	4.7	11.5	2.60	83.05	83.05
Wisconsin	57.62	59.38	60.21	60.21	66.41	8.7	4.4	4.3	11.5	4.22	70.63	70.63
Wyoming	50.00	50.00	50.00	50.00	56.20	6.6	2.8	3.8	11.5	5.39	61.59	61.59

[FR Doc. 2010–2177 Filed 2–1–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0339]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: State Health Information Exchange Cooperative Agreement Program—OMB No. 0990–0339—Extension—Office of the National Coordinator for Health Information Technology.

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act is to provide grants to States and Qualified State Designated Entities for planning and implementation of interoperable health information technology. As part of that project, States and Qualified State Designated Entities are required to provide quarterly program reports and also complete a project evaluation annually. This request is for those two data gathering requirements and is to last four years which is the duration of the project.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (If necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Project Report	State government or a Qualified State Designated Entity.	56	4	4	896
Project Evaluation	State government or a Qualified State Designated Entity.	56	1	100	5,600
Total					6,496

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–2122 Filed 2–1–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0340]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: ARRA Section 3012 Health Information Technology Extension Program: Regional Centers Cooperative Agreement Program OMB # 0990–0340—Extension–Office of the National Coordinator for Health Information Technology.

Abstract: The first set of regional extension center awards will be made in February 2010. At this point each regional extension center (REC) will be provided with a customer relationship management (CRM) software tool, which they will use to help manage the work associated with the cooperative agreement. This tool will also assist the program to generate quarterly reports with will be submitted to project officers for review. In addition to tracking the key milestones identified in the FOA, the tool will also assist programs to provide information that is required for their ARRA reporting. The REC program is in the process of selecting a CRM vendor. Once this is completed it will submit the specific reports for clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Quarterly Status report (format TBA)	REC applicant (not-for-profit organization).	60	4	20	4,800
Program evaluation	REC applicant (not-for-profit organization).	60	1	100	6,000
Total					10,800

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–2126 Filed 2–1–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Patient Perceptions of the Delivery of Health Care Through the Use of an Electronic Health Record (New)—OMB No. 0990–NEW—Office of the National Coordinator for Health Information Technology.

Abstract: Recognizing the potential of health information technology (IT), Congress incorporated the Health Information Technology for Economic and Clinical Health (HITECH) Act as part of the American Recovery and Reinvestment Act of 2009, and allocated $19.2 billion to meet the goal of meaningful use of certified EHRs for each person in the United States by 2014. The HITECH Act builds on existing federal efforts to encourage health IT adoption and use, and contains provisions that are expected to promote the widespread adoption of health IT among health care providers. Health IT experts agree that HITECH stimulus funds are likely to improve how physicians practice medicine for Medicare and Medicaid beneficiaries and, ultimately, for advancing patient-centered medical care for all Americans. However, there is an evidence gap about patients' preferences and perceptions of delivery of health care services by providers who have adopted EHR systems in their practices.

The goal of the Patient Perceptions of the Delivery of Health Care through the Use of an Electronic Health Record (Patient Perceptions of EHR) Study is to help policymakers understand how primary care practices' use of electronic health records (EHRs) affects consumers' satisfaction with (1) their medical care, (2) communication with their doctor, and (3) coordination of care. The research questions for the proposed Patient Perceptions of EHR Study are motivated by a concern that patients may have negative experiences as practices begin to use EHRs.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Screening and Recruitment Form for Primary Care Practices.	Staff at Primary Care Practices	84	1	15/60	21
Patient Survey	Patients at Primary Care Practices	1,680	1	15/60	420
Patient Focus Group	Patients at Primary Care Practices	40	1	1.5	60
Total		1,804	1		501

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–2125 Filed 2–1–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0344 Extension]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of an information collection request 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be must be received within 60-days and directed to the OS Paperwork Clearance Officer at the above e-mail address.

Proposed Project: HAvBED Assessment for 2009–H1N1 Influenza Serious Illness, OMB No. 0990–0344 Extension HHS Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency Operations (OPEO).

Abstract: The Office of the Secretary (OS) is requesting clearance by the Office of Management and Budget to extend data collection regarding the status of the health care system. ASPR/OPEO received expedited clearance for data collection during the 2009–H1N1 pandemic. Since September 2009 HHS has collected data on bed availability, health care system resource needs such as ventilators and health care system stress such as implementation of surge strategies. These data have proven useful to ASPR in fulfilling its responsibilities for preparedness and response.

Pursuant to section 2811 of the PHS Act, the ASPR serves as the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies. In addition to other tasks, the ASPR coordinates with State, local, and tribal public health officials and healthcare systems to ensure effective integration of Federal public health and medical assets during an emergency. ASPR's National Hospital Preparedness Program (HPP) awards cooperative agreements to each of the 50 states, the Pacific Islands, and U.S. territories (for a total of 62 awardees) to improve surge capacity and enhance community and hospital preparedness for public health emergencies. These 62 awardees are responsible for enhancing the preparedness of the nation's nearly 6,000 hospitals. These awards are authorized under section 391C–2 of the Public Health Service (PHS) Act.

For this data collection the situation will dictate how often the data will be collected using the Web-based interface known as HAvBED. For a large scale emergency data will be collected nationally from all 62 HPP awardees to include all 6,000 hospitals in HAvBED system. For smaller scale events data collection will be targeted to individual states or regions. Data may also be gathered during exercises. Notifications for data collection are sent to the affected states through the HPP program staff. The data gathered from the hospitals are reported to the HHS Secretary's Operations Center to inform situational awareness and national preparedness. During the 2009–H1N1 response nation-wide data were collected weekly for 3 months and then twice monthly for 3 months. Since the HAvBED data collection is activated in response to emergencies it is impossible to predict the exact frequency of data collection. It is anticipated that the minimal data request will be a national data call of all awardees and hospitals once per month throughout the year. If the seriousness of the stress on the hospitals increases up to daily reporting may be requested.

Depending on the nature of the existing systems at the hospitals, the data may be obtained manually or readily available electronically through existing systems. States would have their own procedures for training staff on how to use their existing systems, so there would not be an additional training burden for learning those systems. For manual data collection using the HAvBED system, personnel have already been trained for the 2009–H1N1 data collection. Only newly hired personnel would require training. The system is easy to use and intuitive. There is a user guide that provides information to help people quickly understand how to use the system. Based on the experience of the system administrator in working with users, training time to learn the HAvBED data entry procedures is no more than one hour. On average it takes 40 minutes of explanation and 20 minutes of hands on practice with the training site.

The actual data collection time for the hospitals is approximately 1 hour and the states will spend approximately 3 hours compiling the information from all of the hospitals in their state/territory. For automated systems the time would be less. The frequency of data collection will depend on the number of emergencies and exercises throughout the year. It is not possible to predict the exact number, but it is estimated that data collection will range from 12 per year (once per month) to a maximum of 102 times per year (daily for 3 months, twice monthly for 3 months and monthly for 6 months). The cost model assumes the maximal annual estimated burden, but is likely to be much less than the estimate.

ANNUAL ESTIMATED BURDEN HOURS

Type of respondent	Number of respondents	No. of responses/respondent	Average burden hours per response	Total burden hours
Hospital staff (training)	6,000	1	1	6,000
Hospital staff (data collection)	6,000	102	1	612,000
State/Territory Preparedness staff (training)	62	1	1	62

ANNUAL ESTIMATED BURDEN HOURS—Continued

Type of respondent	Number of respondents	No. of responses/ respondent	Average burden hours per response	Total burden hours
State/Territory Preparedness staff (data collection)	62	306	3	56,916
Total		408		674,978

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–2124 Filed 2–1–10; 8:45 am]

BILLING CODE 4150–37–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.

Time and Date: Tuesday, February 9th, Times TBD.

Place: Meeting will be held in person at the White House Conference Center, The White House, Washington, DC. Please contact Mara Vanderslice for information on times and to RSVP to attend at meeting: *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 attend the meeting.

Agenda: Topics to be discussed include presentation of final Council report.

Dated: January 24, 2010.

Jamison Citron,

Special Assistant.

[FR Doc. 2010–2187 Filed 2–1–10; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tax Refund Offset Program and Administrative Offset Program (TROP/ADOP).

OMB No.: 0970–0161.

Description: The Tax Refund Offset and Administration Offset Programs collect past-due child support by intercepting certain Federal payments, including Federal tax refunds, of parents who have been ordered to pay child support and who are behind in paying the debt. The program is a cooperative effort among the Department of Treasury's Financial Management Service (FMS), the Federal Office of Child Support Enforcement (OCSE), and State Child Support Enforcement (CSE) agencies. The Passport Denial program reports non-custodial parents who owe arrears above a threshold to the Department of State (DOS), which will then deny passports to these individuals. On an ongoing basis, CSE agencies submit to OCSE the names, Social Security numbers (SSNs), and the amount(s) of past-due child support of people who are delinquent in making child support payments.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Input Record	54	52	0.30	842.40
Output Record	54	52	0.46	1,291.68
Payment File	54	52	0.14	393.12
Certification Letter	54	1	0.40	21.60
Federal Offset Processing Menu Screens—State Workers	176	17	0.02	59.84

Estimated Total Annual Burden Hours: 2,608.64

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: January 27, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–2034 Filed 2–1–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0420]

Brian Ullom: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Brian Ullom from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Mr. Ullom was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Ullom was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of December 2, 2009, Mr. Ullom failed to respond. Mr. Ullom's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective February 2, 2010.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

On August 17, 2009, the U.S. District Court for the Western District of Kentucky entered judgment against Brian Ullom for one count of participation in a scheme to defraud health care benefit programs by billing patients and patients' health care benefit programs, including Medicare and Medicaid, for prescription drug samples and for prescriptions that were never filled, in violation of 18 U.S.C. 1347; and one count of knowingly selling, purchasing and trading prescription drug samples with the intent to defraud, in violation of sections 301(t) and 503(c)(1) of the act (21 U.S.C. 331(t) and 353(c)(1)).

FDA's finding that debarment is appropriate is based on the felony conviction related to the sale of drug samples. The factual basis for this conviction is as follows: Beginning in or about 2002 and continuing until on or about October 12, 2006, Mr. Ullom, with the intent to defraud, knowingly sold, purchased, and traded prescription drug samples. During that time period, Mr. Ullom obtained prescription drug samples by purchasing the drug samples from others, including a local physician and a pharmaceutical sales representative. After obtaining the samples, he removed the drugs from their original sample packaging and sold them to the public through his pharmacy. At the time of sale, he knew the drugs were samples, and he resold them with the intent to defraud and mislead the purchaser by selling the sample drugs as drugs properly obtained and dispensed.

As a result of this conviction, FDA sent Mr. Ullom by certified mail on October 27, 2009, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the act that Brian Ullom was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. In accordance with section 306(i) of the act and part 12 (21 CFR part 12), the proposal also offered Mr. Ullom an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Accordingly, Mr. Ullom had to request a hearing by December 2, 2009. As of December 2, 2009, Mr. Ullom had not responded to the notice. Mr. Ullom thus failed to respond within the timeframe prescribed by regulation and as a result has waived both his opportunity for a hearing and waived any contentions concerning his debarment (21 U.S.C. 335(a)(i); part 12)).

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the act, under authority delegated to the Acting Director (Staff Manual Guide 1410.35), finds that Brian Ullom has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Mr. Ullom is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see sections 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Brian Ullom, in any capacity, during Mr. Ullom's debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Ullom, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Ullom during his period of debarment (section 306(c)(1)(B) of the act).

Any application by Mr. Ullom for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2009–N–0420 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 8, 2010.

Brenda Holman,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2010–2135 Filed 2–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

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 committee:

Times and Dates:

8 a.m.–5 p.m., February 17, 2010. (Closed)

8 a.m.–5 p.m., February 18, 2010. (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone (703) 684–5900, Fax (703) 684–1403.

Status: These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92–463.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (404) 498–2511, Fax (404) 498–2571.

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 CDC 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. 2010–2117 Filed 2–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Endocrinologic and Metabolic Drugs Advisory Committee scheduled for February 24, 2010, is cancelled. This meeting was announced in the **Federal Register** of January 19, 2010 (75 FR 2875). This meeting has been cancelled due to unexpected delays in the preparation of materials for the meeting. The agency will reschedule this meeting and announce a future meeting date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting.

Dated: January 26, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–2096 Filed 2–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 9, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd, Silver Spring, MD, 301–589–5200.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kristine.Khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 9, 2010, the committee will discuss new drug application (NDA) 22–535, pirfenidone, by InterMune. The proposed indication (purpose) of this drug is the treatment of patients with idiopathic pulmonary fibrosis (scarring of the lungs without a known cause) to decrease the decline in lung function associated with this condition.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background

material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 23, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 12, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 16, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 25, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–2054 Filed 2–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 10 and 11, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kristine.Khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 10 and 11, 2010, the committee will discuss the design of medical research studies (known as "clinical trial design") to evaluate serious asthma outcomes (such as hospitalizations, a procedure using a breathing tube known as intubation, or death) with the use of the class of asthma medications known as long acting beta-2 adrenergic agonists in the treatment of asthma in adults, adolescents, and children.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 23, 2010. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on March 11, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 12, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 16, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/*

ucm111462.htm for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 26, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–2097 Filed 2–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 25, 2010, from 8 a.m. to 5 p.m. and February 26, 2010, from 8 a.m. to 2 p.m.

Location: The Hilton Hotel, 8727 Coleville Rd, Silver Spring, MD 20910

Contact Person: Lee L. Zwanziger, Office of the Commissioner, rm. 14–90, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2895, FAX: 301–827–4050, e-mail: *RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 25 and 26, 2010, the committee will discuss strategies and lessons from a selection of the FDA's previously issued communications, emphasizing communications challenges. Examples, selected for illustrative purposes only, will be drawn from communications about issues in broad areas such as biologics, drugs, medical devices, regulatory actions, and veterinary products. For more specific agenda information, please visit the following Web site and scroll down to the appropriate advisory committee link (*http://www.fda.gov/Advisory Committees/Calendar/default.htm*), or call the FDA Advisory Committee Information Line as detailed in the previous paragraph. FDA intends to make agenda information available at both these locations no later than 15 days before the meeting.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 17, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on February 25, 2010, and 10:30 to 11:30 a.m. on February 26, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 17, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 18, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/Advisory Committees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 25, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–2053 Filed 2–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Workshop on Pediatric Neurological and Neurocognitive Assessments for Cardiovascular Devices; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Workshop on Pediatric Neurological and Neurocognitive Assessments for Cardiovascular Devices." The purpose of the public workshop is to solicit information from clinicians, academia, professional societies, other government agencies, and industry on various neurological and neurocognitive assessments for pediatric patients implanted with cardiovascular devices. The information gathered in this and future workshops will help to develop future guidance for the administration of these assessments.

Date and Time: The public workshop will be held on March 25, 2010, from 8 a.m. to 5 p.m. Participants are encouraged to arrive early to ensure time for parking and security screening before the meeting. Security screening will begin at 7:30 a.m. and check-in will begin at 8 a.m.

Location: The public workshop will be held at the Food and Drug Administration, White Oak Campus, Bldg. 2, Central Shared Use Building, rm. 2047, 10903 New Hampshire Ave., Silver Spring, MD 20903.

Contact Person: Sonna Patel-Raman, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, rm. 1255, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–6335, FAX: 301–847–8115, e-mail: *sonna.patel@fda.hhs.gov*.

Registration: Registration and seating will be on a first-come, first-served basis and discussion preference will be afforded to clinical research investigators involved in pediatric clinical device trials, health care givers, and patient advocates. E-mail your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by February 25, 2010. There is no registration fee to attend the public workshop. Early registration is recommended because seating is limited. There will be no onsite registration.

Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. If you need special accommodations due to a disability, please contact Sonna Patel-Raman by February 25, 2010.

SUPPLEMENTARY INFORMATION: The goal of the workshop is to understand and review the current clinical practices for these assessments in the pediatric population and to discuss options for standardized practices that may be used and validated during pediatric device trials. There are several neurological and neurocognitive assessments used in adults and pediatric patients. However a lack of sufficient data and validated measures, due to the limited pediatric population, has restricted growth in the field. Several peer-reviewed journal articles acknowledge that there are no standards for the type of test administered or the frequency of the assessments. A standardized practice for evaluating this critical area will benefit the pediatric cardiovascular device community by providing a clear understanding of safety and effectiveness of these devices in the pediatric population. Assessments that demonstrate a real clinical benefit can provide useful information to patients, their families, and the clinical communities when weighing the risk involved. Invited experts will address the types of pediatric cardiovascular devices being developed, with a particular focus on mechanical circulatory support, current types of clinical assessments used in the pediatric population, and challenges that face this community. After each presentation, there will be a short question and answer session allowing workshop participants to interact with the speaker. A concluding session will allow for additional interactions with speakers.

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

Transcripts: Please be advised that as soon as a transcript is available, it can be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

Dated: January 21, 2010.

Jeffrey Shuren,

Director, Center for Devices and Radiological Health.

[FR Doc. 2010–2110 Filed 2–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5379–N–01]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Multiclass Securities Program Documents (Forms and Electronic Data Submissions)

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), 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:* April 5, 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: Leroy McKinney, Jr., QDAM, Information Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410; e-mail *Leroy.McKinney.jr@hud.gov;* telephone (202) 708–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. McKinney.

FOR FURTHER INFORMATION CONTACT: Victoria Vargas, Ginnie Mae, 451 7th Street, SW., Room B–133, Washington, DC 20410; e-mail—*Victoria_Vargas@hud.gov;* telephone—(202) 475–6752; fax—(202) 485–0225 (this is not a toll-free number); the Ginnie Mae Web site at *http://www.ginniemae.gov* for other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Multiclass Securities Program Documents. (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: 2503–0017.

Description of the need for the information and proposed use: This information collection is required in connection with the operation of the Ginnie Mae Multiclass Securities program. Ginnie Mae's authority to guarantee multiclass instruments is contained in 306(g)(1) of the National Housing Act ("NHA") (12 U.S.C.

1721(g)(1)), which authorizes Ginnie Mae to guarantee "securities * * * based on or backed by a trust or pool composed of mortgages. * * *" Multiclass securities are backed by Ginnie Mae securities, which are backed by government insured or guaranteed mortgages. Ginnie Mae's authority to operate a Multiclass Securities program is recognized in Section 3004 of the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), which amended 306(g)(3) of the NHA (12 U.S.C. 1271(g)(3)) to provide Ginnie Mae with greater flexibility for the Multiclass Securities program regarding fee structure, contracting, industry consultation, and program implementation. Congress annually sets Ginnie Mae's commitment authority to guarantee mortgage-backed ("MBS") pursuant to 306(G)(2) of the NHA (12 U.S.C. 1271(g)(2)). Since the multiclass are backed by Ginnie Mae Single Class MBS, Ginnie Mae has already guaranteed the collateral for the multiclass instruments.

The Ginnie Mae Multiclass Securities Program consists of Ginnie Mae Real Estate Mortgage Investment Conduit ("REMIC") securities, Stripped Mortgage-Backed Securities ("SMBS"), and Platinum securities. The Multiclass Securities program provides an important adjunct to Ginnie Mae's secondary mortgage market activities, allowing the private sector to combine and restructure cash flows from Ginnie Mae Single Class MBS into securities that meet unique investor requirements in connection with yield, maturity, and call-option protection. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed loans. Under this program, Ginnie Mae guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on Ginnie Mae REMIC, SMBS and Platinum securities.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, *etc.*).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Type of information collection	(Prepared by)	Number of potential sponsors	Estimated annual frequency per respondent	Total annual responses	Est. average hrly burden	Est. annual burden hrs
REMIC Securities						
OID/Prices Letter	Sponsor	15	8	120	0.5	60
Final Structure Sheet	Sponsor	15	8	120	3	360
Trust (REMIC) Agreement.	Attorney for Sponsor	15	8	120	1	120
Trust Opinion	Attorney for Sponsor	15	8	120	4	480
MX Trust Agreement	Attorney for Sponsor	15	8	120	0.16	19.2
MX Trust Opinion	Attorney for Sponsor	15	8	120	4	480
RR Certificate	Attorney for Sponsor	15	8	120	0.08	9.6
Sponsor Agreement	Attorney for Sponsor	15	8	120	0.05	6
Table of Contents	Attorney for Sponsor	15	8	120	0.33	39.6
Issuance Statement	Attorney for Sponsor	15	8	120	0.5	60
Tax Opinion	Attorney for Sponsor	15	8	120	4	480
Transfer Affidavit	Attorney for Sponsor	15	8	120	0.08	9.6
Supplemental Statement	Attorney for Sponsor	15	0.25	3.75	1	3.75
Final Data Statements (attached to closing letter).	Accountant for Sponsor	15	8	120	32	3,840
Accountants' Closing Letter.	Accountant	15	8	120	8	960
Accountants' OCS Letter	Accountant	15	8	120	8	960
Structuring Data	Accountant	15	8	120	8	960
Financial Statements	Accountant	15	8	120	1	120
Principal and Interest Factor File Specifications.	Trustee	15	8	120	16	1,920
Distribution Dates and Statement.	Trustee	15	8	120	0.42	50.4
Term Sheet	Accountant for Sponsor	15	8	120	2	240
New Issue File Layout	Trustee	15	8	120	4	480
Flow of Funds	Attorney for Sponsor	15	8	120	0.16	19.2
Trustee Receipt	Attorney for Sponsor	15	8	120	2	240
Total				2,763.75		11,917.35
SMBS Securities						
OID/Prices Letter	Sponsor	10	1	10	0.5	5
Final Structure Sheet	Sponsor	10	1	10	3	30
Trust (REMIC) Agreement.	Attorney for Sponsor	10	1	10	1	10
Trust Opinion	Attorney for Sponsor	10	1	10	4	40
MX Trust Agreement	Attorney for Sponsor	10	1	10	0.16	1.6
MX Trust Opinion	Attorney for Sponsor	10	1	10	4	40
RR Certificate	Attorney for Sponsor	10	1	10	0.08	0.8
Sponsor Agreement	Attorney for Sponsor	10	1	10	0.05	0.5

Type of information collection	(Prepared by)	Number of potential sponsors	Estimated annual frequency per respondent	Total annual responses	Est. average hrly burden	Est. annual burden hrs
Table of Contents	Attorney for Sponsor	10	1	10	0.33	3.3
Issuance Statement	Attorney for Sponsor	10	1	10	0.5	5
Tax Opinion	Attorney for Sponsor	10	1	10	4	40
Transfer Affidavit	Attorney for Sponsor	10	1	10	0.08	0.8
Supplemental Statement	Attorney for Sponsor	10	0.25	2.5	1	2.5
Final Data Statements (attached to closing letter).	Accountant for Sponsor	10	1	10	32	320
Accountants' Closing Letter.	Accountant	10	1	10	8	80
Accountants' OCS Letter	Accountant	10	1	10	8	80
Structuring Data	Accountant	10	1	10	8	80
Financial Statements	Accountant	10	1	10	1	10
Principal and Interest Factor File Specifications.	Trustee	10	1	10	16	160
Distribution Dates and Statement.	Trustee	10	1	10	0.42	4.2
Term Sheet	Sponsor	10	1	10	2	20
New Issue File Layout	Trustee	10	1	10	4	40
Flow of Funds	Attorney for Sponsor	10	1	10	0.16	1.6
Trustee Receipt	Attorney for Sponsor	10	1	10	2	20
Total				232.5		995.3
Platinum Securities						
Deposit Agreement	Depositor	19	10	190	1	190
MBS Schedule	Depositor	19	10	190	0.16	30.4
New Issue File Layout	Depositor	19	10	190	4	760
Principal and Interest Factor File Specifications.	Trustee	19	10	190	16	3,040
Total				760		4,020.4
Total Burden Hours.						16,933.05

Calculation of Burden Hours:

Sponsors × Frequency per Year = Estimated Annual Frequency.

Estimated Annual Frequency × Estimated Average Completion Time = Estimated Annual Burden Hours.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: January 26, 2010.

Mary K. Kinney,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 2010–2111 Filed 2–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–12]

Announcement of Funding Awards for the Section 4 Capacity Building for Community Development and Affordable Housing Program Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the 2009 Notice of Funding Availability (NOFA) for the Section 4 Capacity Building for Community Development and Affordable Housing grants program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Karen E. Daly, Director, Office of Policy Development and Coordination, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7240, Washington, DC 20410–7000; telephone (202) 402–5552 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, call Community Connections at (800) 998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: HUD's Capacity Building for Community Development and Affordable Housing program is authorized by Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148, 42 U.S.C. 9816 note), as amended, and the), as amended, and the Omnibus Appropriations Act, 2009 (Pub. L. 11–8,

approved February 25, 2009). The Section 4 Capacity Building program provides grants to national community development intermediaries to enhance the capacity and ability of community development corporations and community housing development organizations to carry out community development and affordable housing activities that benefit low-income families and persons. Capacity Building funds support activities such as training, education, support, loans, grants, and development assistance.

The Fiscal Year 2009 competition was announced on *http://www.hud.gov* on June 15, 2009. The NOFA provided $34 million for Section 4 Capacity Building grants For the Fiscal Year 2009 competition, HUD awarded three competitive Section 4 Capacity Building grants totaling $34,000,000.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: December 18, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

Appendix A

Fiscal Year 2009 Funding Awards for the Section 4 Capacity Building for Community Development and Affordable Housing Program

Recipient	State	Amount
Enterprise Community Partners, Inc	MD	$14,836,263
Local Initiatives Support Corporation	NY	14,836,263
Habitat for Humanity International	GA	4,327,474
Total		34,000,000

[FR Doc. 2010–2112 Filed 2–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5389–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2010, is 3⅜ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2010, is 4¼ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2010, is 4¼ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4¼ percent for the 6-month period beginning January 1, 2010. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2010.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1987	Jan. 1, 1987

Effective interest rate	on or after	prior to
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1989	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1992	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1997	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅛	July 1, 1998	Jan. 1, 1998
6⅜	Jan. 1, 1998	July 1, 1998
6⅛	July 1, 1999	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅛	July 1, 2000	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2001	Jan. 1, 2001
6	Jan. 1, 2001	July 1, 2001
5⅞	July 1, 2002	Jan. 1, 2002
5¼	Jan. 1, 2002	July 1, 2002
5¾	July 1, 2003	Jan. 1, 2003
5	Jan. 1, 2003	July 1, 2003
4½	July 1, 2004	Jan. 1, 2004
5⅛	Jan. 1, 2004	July 1, 2004
5½	July 1, 2005	Jan. 1, 2005
4⅞	Jan. 1, 2005	July 1, 2005
4½	July 1, 2006	Jan. 1, 2006
4⅞	Jan. 1, 2006	July 1, 2006
5⅜	July 1, 2007	Jan. 1, 2007
4¾	Jan. 1, 2007	July 1, 2007
5	July 1, 2007	Jan. 1, 2008
4½	Jan. 1, 2008	July 1, 2008
4⅝	July 1, 2009	Jan. 1, 2009
4⅛	Jan. 1, 2009	July 1, 2009
4⅛	July 1, 2010	Jan. 1, 2010
4¼	Jan. 1, 2010	July 1, 2010

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2010, is 3⅜ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: January 6, 2010.

David H. Stevens,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2010–2114 Filed 2–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-R-2010-N023; 93261-99CS-0000-4A]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; Survey of National Wildlife Refuge Visitors

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. We 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.

DATES: You must send comments on or before March 4, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-NEW. This is a new collection.

Title: Survey of National Wildlife Refuge Visitors.

Service Form Number(s): None.

Type of Request: New.

Affected Public: Visitors to national wildlife refuges.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Initial Contact Onsite	12,500	12,500	2 minutes	417
Visitor Survey	10,000	10,000	25 minutes	4,167
Nonresponse Bias Check Survey	750	750	5 minutes	63
Totals	23,250	23,250		4,647

Abstract: We have contracted with the U.S. Geological Survey (USGS) to conduct a survey of national wildlife refuge visitors so that we can better understand their recreational, educational, and information experiences. The Policy Analysis and Science Assistance Branch of the USGS will conduct the survey onsite at approximately 75 national wildlife refuges nationwide. Respondents will have the option to return the survey by mail or to complete it online.

We will use this survey to measure visitor satisfaction with current visitor services and facilities and their desire for future services and facilities. Information from this survey will provide refuge managers, planners, and visitor services professionals with scientifically sound data that can be used to:

• Prepare conservation planning documents,

• Improve the design of visitor facilities,

• Tailor visitor services and facilities to match visitor interests and needs,

• Better protect refuge resources by combining this data with biological data, and

• Understand the economic impact of visitors to the local community. Additionally, this survey can target public access and transportation planning issues related to wildlife-oriented recreational opportunities such as automobile tour routes, trails, parking lots, and roads.

Comments: On February 3, 2009, we published in the **Federal Register** (74 FR 5940) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 6, 2009. We received three comments and addressed them as follows:

Comment: One commenter requested that the survey include questions on:

• Whether the visitor is a consumptive or nonconsumptive wildlife user,

• What activities visitors do on national wildlife refuges,

• Whether or not visitors are aware that hunting and trapping are allowed on national wildlife refuges,

• Appropriateness of allowing sport hunting and trapping on national wildlife refuges, and

• Compatibility of sport hunting and trapping to the purpose of national wildlife refuges.

Response: The survey contains questions that directly address the first two issues. Measuring public understanding or perceptions about the appropriateness of hunting on national wildlife refuges is not an objective of this study. However, the survey asks visitors to rate the importance of and their satisfaction with a list of uses and services provided on refuges, including hunting. The survey also provides an opportunity for visitors to express their opinions or concerns concerning national wildlife refuge policies (such as hunting and trapping on refuges).

Comment: The commenter stated that we have conducted this survey every 5 years and that is enough. The commenter also stated opposition to hunting.

Response: We believe the commenter is referring to the National Survey of Fishing, Hunting and Wildlife-Associated Recreation. That survey is of the general public and asks questions about activities on all types of lands (Federal, State, local, and private). The proposed survey is of visitors to national wildlife refuges only. Responses to questions on the proposed survey will help us better manage national wildlife refuges.

Comment: We received a request for a copy of the survey instrument and information on sampling frames.

Response: The USGS provided a copy of the draft survey instrument and a description of the sampling frames.

We again invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

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 publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: January 26, 2010

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. 2010–2165 Filed 2–1–10; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–65757; LLORB06000; L14300000.FR0000; HAG–09–0326]

Classification and Conveyance for Recreation and Public Purposes Act of Public Lands in Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification and conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended, approximately 2.5 acres of public land in Harney County, Oregon. South Harney County School District #33 in Fields, Oregon, applied to purchase 2.5 acres of the land for hazardous material storage and a parking lot for the school.

DATES: Interested parties may submit written comments regarding the conveyance or classification of the lands by close of business on March 4, 2010.

ADDRESSES: Mail written comments to Joan M. Suther, Andrews/Steens Field Manager, BLM, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Holly M. Orr, Realty Specialist, (541) 573–4501.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f) and Executive Order No. 6910, the following described public land in Harney County, Oregon, has been examined and found suitable for classification conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Willamette Meridian, Oregon

T. 38 S., R. 34 E.,
Section 24, SW¼SW¼NW¼NE¼.

The area described contains 2.5 acres, more or less, in Harney County.

In accordance with the R&PP Act, South Harney County School District #33 filed an application for the above-described 2.5 acres of public land to store hazardous materials and develop a parking area for the school. Additional detailed information pertaining to this application and site plan can be reviewed in case file OR–65757 located in the BLM Burns District Office at the above address.

Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental

Response, Compensation and Liability Act, 42 U.S.C. 9620(h), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the property.

The conveyance of this parcel is consistent with the BLM Andrews Management Unit Resource Management Plan and Record of Decision (August 2005), page RMP–61, which states that the land may be disposed of by R&PP sale for community expansion purposes not to exceed 10 acres per transaction and that such disposal would be in the public interest. The conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and applicable regulations of the Secretary of the Interior;

2. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

3. Valid existing rights. Subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the land sale area will be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable;

4. The United States maintains ownership of all minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

5. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operation of the premises will be included; and

6. Any other terms and conditions deemed necessary or appropriate by the Authorized Officer.

On February 2, 2010, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit comments involving the suitability of the land for a school and related facilities. Comments on the classification should be limited to whether the land is physically suited for the proposals, whether the use will maximize future uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with state and Federal programs.

Interested parties may also submit comments regarding other proposed decisions for the R&PP application and site plan, whether the BLM followed proper administrative procedures in reaching the decision to convey the land under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Only written comments submitted via the U.S. Postal Service or other delivery services, or hand-delivered to the Andrews/Steens Field Manager, BLM Burns District Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. Comments, including names and addresses of respondents, will be available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised 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.

Any adverse comments will be reviewed by the BLM Oregon State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective on April 5, 2010. The land will not be available for conveyance until after the classification becomes effective.

Authority: 43 CFR 2741.5.

Cathie Jensen,

Acting Chief, Branch of Land and Mineral Resources.

[FR Doc. 2010–2130 Filed 2–1–10; 8:45 am]

BILLING CODE 4310–33–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.060% (.00060) for tier 2 for calendar year 2010. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2010 shall be one-half of the annual fee rate, which is 0.030% (.00030).

FOR FURTHER INFORMATION CONTACT: Chris White, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a semi-annual basis.

The regulations of the Commission and the preliminary rate being adopted today are effective for calendar year 2010. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by June 30, 2010.

Dated: January 28, 2010.

George Skibine,

Acting Chairman, National Indian Gaming Commission.

[FR Doc. 2010–2183 Filed 2–1–10; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–09–L19100000–BJ0000–LRCM08RS4045]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, thirty (30) days from the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5121 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Superintendent, Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine boundaries of trust or tribal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 51 E.

The plat, in 11 sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, a portion of the subdivision of sections 10, 14, 16, 21, 23, 26, and 27, the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 10, 11, 14, 15, 16, 21, 22, 24, 25, 26, and 27, and the subdivision of sections 10, 14, 16, 23, and 26, and the survey of the present meanders and the informative traverse of the present left bank of the Missouri River, downstream, through sections 21, 22, 23, 24, 25, 26, and 27, the limits of erosion in section 16, the left bank and informative traverse of the left bank of an abandoned channel of the Missouri River, downstream, through sections 10, 11, 14, 15, 16, 21, and 22, the informative traverse of the right bank of an abandoned channel of the Missouri River, downstream, through sections 15 and 22, the informative traverse of the 1911 left bank of the Missouri River subsequent to avulsion, the medial line of an abandoned channel of the Missouri River, downstream, through sections 10, 11, 14, 15, 16, 21, and 22, certain division of accretion lines, the left bank and medial line of a relicted channel of the Missouri River, in front of section 21, the left bank of a relicted channel of the Missouri River, in front of sections 22, 23, and 26, certain partition lines, and certain tracts, Township 27 North, Range 51 East, Principal Meridian, Montana, was accepted January 25, 2010. We will place a copy of the plat, in 11 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on this plat, in 11 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 11 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. chap. 3

Dated: January 27, 2010.

Michael T. Birtles,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–2188 Filed 2–1–10; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–684]

In the Matter of Certain Articulated Coordinate Measuring Arms and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 10) of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 28, 2009, based on a complaint filed by Hexagon Metrology AB of Stockholm, Sweden, and Hexagon Metrology, Inc. of North Kingstown, Rhode Island alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain articulated coordinate measuring arms or components thereof by reason of infringement of certain claims of U.S. Patent No. 5,829,148. 74 FR 44384–85 (August 28, 2009). The complainant named Metris N.V. of Leuven, Belgium and Metris U.S.A., Inc. of Brighton, Michigan, and Mitutoyo Corporation of Kanagawa, Japan and Mitutoyo America Corporation of Aurora, Illinois as respondents.

On December 15, 2009, all the private parties to the investigation jointly moved to terminate the investigation without prejudice based on a settlement agreement. The Commission investigative attorney supported the motion provided the private parties submit appropriately redacted public versions of the agreements. The private parties filed public versions of their agreements on December 28, 2009.

On January 5, 2010, the ALJ issued an ID (Order No. 10) granting the motion. No party petitioned for review of the ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

Issued: January 27, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–2073 Filed 2–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606, 9607 and 9613, as Amended

Notice is hereby given that on January 20, 2010 a Consent Decree in *United States of America* v. *U.S. Borax Inc.,* Civil Action No. 4:10–cv–00057 was lodged with the United States District

Court for the Western District of Missouri.

In this action the United States sought, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.,* as amended ("CERCLA"), declaratory relief, injunctive relief, and recovery of response costs incurred and to be incurred by the United States in connection with the release or threatened release of hazardous substances at or from the Armour Road Superfund Site, located at and adjacent to 2251 Armour Road in North Kansas City, Clay County, Missouri ("Site"). The Consent Decree requires the settling defendant to perform a remedial investigation and feasibility study ("RI/FS") for the Site and to pay the costs incurred and to be incurred by the United States in connection with the RI/FS. The work to be performed by the settling defendant is expected to cost about $600,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. 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. In either case, the comments should refer to *United States of America* v. *U.S. Borax Inc.,* Civil Action 4:10–cv–00057 (W.D. Missouri), D.J. Ref. No. 90–11–3–08035/3.

During the comment period, the Consent Decrees may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be examined at the Office of the United States Attorney, Western District of Missouri, Charles Evans Whittaker Courthouse, 400 East 9th Street, Room 5510, Kansas City, MO 64106 (Contact: Charles Thomas, Assistant United States Attorney), and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. Copies 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 $17.00 (25 cents per page reproduction cost) payable to the United States 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 Section Chief, Environmental Enforcement Section.

[FR Doc. 2010–2070 Filed 2–1–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 27, 2010, a proposed Consent Decree in *United States* v. *Newell Holdings Delaware, Inc. and Rock Springs Enterprises, Inc.,* Civil Action No. 5:07–cv–164, was lodged with the United States District Court for the Northern District of West Virginia. In a civil action filed on December 18, 2007, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), the United States sought recovery of response costs from Newell Holdings Delaware, Inc. ("Newell Holdings") and Rock Springs Enterprises, Inc. ("Rock Springs") in connection with the Eighth and Plutus Streets Pottery Site in Chester, West Virginia ("the Site"). The proposed Consent Decree, lodged on January 27, 2010, resolves the liability of defendant Rock Springs for response costs incurred and to be incurred by the United States in connection with the Site, and requires Rock Springs to market and sell the Site property Newell Holdings and to pay percent of net sales proceeds in reimbursement of response costs in accordance with the terms of the Decree. A Consent Decree with defendant Newell Holdings was lodged with the Court on December 18, 2009, and notice of that Consent Decree was published in the **Federal Register** on December 24, 2009. Cite.. Newell Holdings is not a party to the Consent Decree being noticed today.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, by e-mail to *pubcomment-ees.enrd@usdoj.gov* or regular mail to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States* v. *Newell Holdings Delaware, Inc. and Rock Springs Enterprises, Inc.,* D.J. Ref. 90–11–3–09297.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of West Virginia, U.S. Courthouse and Federal Building, 1125 Chapline Street, Wheeling, WV 26003 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/consent_decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.00 for the Consent Decree only or $20.25 for the Consent Decree and attachments (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 address above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–2071 Filed 2–1–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on January 21, 2010, a proposed Consent Decree in *United States* v. *United Fibers, LLC, et al.* (N.D.N.Y.) No. 1:09–cv–00602 (GLS/RFT) was lodged with the United States District Court for the Northern District of New York.

In this action, the United States sought the recovery of response costs pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended ("CERCLA"), 42 U.S.C. 9607(a), from Defendants for response costs incurred at the Stevens & Thompson Paper Company Superfund Site (the "Site"), located in Washington County, New York. Pursuant to the proposed Consent Decree, the Settling Defendants will pay to the United States

$498,519.18 in reimbursement of past response costs incurred by the United States with respect to the Site. The proposed Consent Decree provides the Settling Defendants with a covenant not to sue for past response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. 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* v. *United Fibers, LLC, et al.* (N.D.N.Y.) No. 1:09–cv–00602 (GLS/RFT); D.J. Ref. 90–11–3–09724.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, Post Office Box 7198, 100 South Clinton Street, Syracuse, New York 13261–7198 (contact AUSA William Pease), and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Jocelyn Scott). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (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. 2010–2069 Filed 3–1–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0042]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 62596 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 4, 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:

—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 agencies 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 currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The information contained in the statement of process is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 8 respondents, who will complete the required information within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 16 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 27, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–2128 Filed 2–1–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "Veterans Supplement to the Current Population Survey (CPS)," to be conducted in July 2010, August 2011, and August 2012.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before *April 5, 2010.*

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment since 1940 (70 years). Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. The Veterans Supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. Also, Afghanistan, Iraq, and Vietnam veterans are identified by theater of service. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information on veterans' participation in various transition and employment and training programs. The data collected through this supplement will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS. A reinstatement, with change, of this previously approved collection, for which approval has expired, is needed to provide the Nation with timely information about the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, recently discharged veterans, and veterans who have served in Afghanistan, Iraq, or Vietnam.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 11,000.

Frequency: Annually.

Total Responses: 11,000.

Average Time Per Response: Approximately 2 minutes.

Estimated Total Burden Hours: 367 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 27th day of January 2010.

Kim Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–2094 Filed 2–1–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for Workforce Investment Act National Emergency Grant Program: Application and Reporting Procedures (OMB Control No. 1205–0439), Extension Without Revisions

AGENCY: Employment and Training Administration.

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 Employment and Training Administration is soliciting comments concerning the collection of data supporting the Workforce Investment Act's National Emergency Grant Program: Application and Reporting Procedures (OMB Control No. 1205–0439, expires March 31, 2010).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before April 5, 2010.

ADDRESSES: Submit written comments to Jeanette Provost, Office of National Response, Room C–5311, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3500 (this is not a toll-free number). E-mail: *NEGEsystem@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: The information collection is necessary for the U.S. Department of Labor's (DOL's) award of National Emergency Grants (NEGs) which are discretionary grants intended to temporarily expand the service capacity at the state and local area levels by providing funding assistance in response to significant dislocation events for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of the Workforce Investment Act (WIA) (Pub. L. 105–220); sections 113, 114 and 203 of the Trade Adjustment Assistance (TAA) Reform Act of 2002 (Pub. L. 107–210), as amended by the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009; and 20 CFR 671.140. Applications are accepted on an ongoing basis as the need for funds arises at the state and local levels.

The provisions of WIA and the Regulations define four NEG project types:

- *Regular,* which encompasses plant closures, mass layoffs, and multiple layoffs in a single community.
- *Disaster,* which includes all eligible Federal Emergency Management Agency (FEMA)-declared natural and manmade disaster events.
- *TAA–WIA Dual Enrollment,* which provides supplemental funding to ensure that a full range of services is available to individuals eligible under the TAA program provisions of the TAA Reform Act of 2002, as amended by the TGAAA.
- *TAA Health Insurance Coverage Assistance,* which provides specialized health coverage, support services, and income assistance to targeted individuals defined in the TAA program provisions of the TAA Reform Act of 2002, as amended by the TGAAA.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions:

Type of Review: Extension without changes.

Title: Workforce Investment Act National Emergency Grant.

Program: Application and Reporting Procedures.

OMB Number: 1205–0439.

Affected Public: State and Local Grantees, Tribal Government.

Forms: ETA 9103, Cumulative Planning Form; ETA 9104, Quarterly Report; ETA 9105, Employer Data Form; ETA 9106, Project Synopsis; and ETA 9107, Project Operator Data Form.

Total Respondents: 150.

Frequency: Once per project; for ETA–9104, quarterly per project.

Total Responses: 1,685.

Estimated Total Burden Hours: 1,144.

Total Burden Cost for Respondents: 0.

Comments submitted in response to this comment request 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: January 27, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–2102 Filed 2–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of January 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/21/09 and 12/24/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73128	Apria Healthcare (State)	Minnetonka, MN	12/22/09	12/21/09

APPENDIX—Continued

[TAA petitions instituted between 12/21/09 and 12/24/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73129	Bruce Development (Comp)	Port Richey, FL	12/22/09	12/17/09
73130	The Hartford Fire Insurance Company (State)	Simsbury, CT	12/22/09	12/17/09
73131	Android Wixom (Comp)	Wixom, MI	12/22/09	12/21/09
73132	Hyatt Regency Pittsburgh (Comp)	Pittsburgh, PA	12/22/09	12/21/09
73133	CVG—Mayflower Vehicle Systems, LLC (Wkrs)	Norwalk, OH	12/23/09	12/17/09
73134	Hexion (Wkrs)	Brady, TX	12/23/09	12/18/09
73135	Hewlett Packard (Wkrs)	Marlboro, MA	12/23/09	12/15/09
73136	Everett Sales DBA Yarns Etc. (Comp)	Fort Payne, AL	12/23/09	12/16/09
73137	Loadcraft Industry, Ltd. (Wkrs)	Brady, TX	12/23/09	12/18/09
73138	Asten Johnson (Union)	Appleton, WI	12/23/09	12/10/09
73139	Zebra Technologies Corporation (Wkrs)	Camarillo, CA	12/23/09	12/07/09
73140	Talbar, Inc. (Wkrs)	Meadville, PA	12/23/09	12/11/09
73141	Nippon Fusso Company, Ltd. (State)	Richmond, CA	12/23/09	12/10/09
73142	General Electric (Wkrs)	Albuquerque, NM	12/24/09	12/18/09
73143	Lexis Nexis (Comp)	Orem, UT	12/24/09	12/21/09
73144	Trimble Navigation Ltd. (Comp)	Coryalla, OR	12/24/09	12/16/09
73145	M & L Manufacturing, Inc.—The Jewelry Stream (State)	Los Angeles, CA	12/24/09	12/18/09
73146	International Business Machine Corp. (IBM) (Wkrs)	Charleston, WV	12/24/09	12/21/09

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BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of January 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 12/28/09 AND 12/31/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73147	Shaw Fabricator (State)	Addis, LA	12/28/09	12/22/09
73148	Regal Ware, Inc. (Comp)	Kewaskum, WI	12/28/09	12/22/09
73149	Ashland Hercules Water Technology (State)	Kearny, NJ	12/28/09	12/18/09
73150	Manchester Grand Hyatt (State)	San Diego, CA	12/28/09	12/17/09
73151	Trimble Navigation Ltd. (Comp)	Corvallis, OR	12/28/09	12/16/09
73152	Dell, Inc. (Wkrs)	Round Rock, TX	12/28/09	12/18/09
73153	Kimberly-Clark Global Sales, Inc. (Wkrs)	Neenah, WI	12/28/09	12/18/09
73154	Transcom Enhanced Services, Inc. (State)	Fort Worth, TX	12/28/09	12/21/09
73155	Air Cruisers Company (Comp)	Liberty, MS	12/28/09	12/21/09
73156	American Spring Wire Corporation (Wkrs)	Kankakee, IL	12/28/09	12/17/09
73157	FCI USA, LLC (Comp)	Mount Union, PA	12/28/09	12/22/09
73158	Siemens Medical Solutions, Inc. (Comp)	Concord, CA	12/28/09	12/22/09
73159	Roscommon Manufacturing Company (Comp)	Roscommon, MI	12/28/09	12/18/09
73160	Fisher Controls International, LLC (Comp)	Portsmouth, NH	12/28/09	12/21/09
73161	Carmeuse Industrial Sands (Wkrs)	Brady, TX	12/28/09	12/18/09
73162	Imation Corporation (State)	Oakdale, MN	12/29/09	12/21/09
73163	Siemens Medical Solutions, Inc. (Wkrs)	Malvern, PA	12/29/09	12/15/09
73164	General Motors Corporation (Wkrs)	Detroit, MI	12/29/09	12/18/09
73165	James Hamilton Construction Company (Wkrs)	Silver City, NV	12/29/09	12/23/09
73166	Gormac Products, Inc. (Comp)	Racine, WI	12/29/09	12/28/09
73167	Veeco Instruments, Inc. (State)	Camarillo, CA	12/29/09	12/24/09

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 12/28/09 AND 12/31/09—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73168	Riverside Mechanical, Inc. (Comp)	Groveport, OH	12/29/09	12/12/09
73169	MIC Group, Inc. (Wkrs)	Brenham, TX	12/29/09	11/28/09
73170	Idearc Media Corporation (Wkrs)	Troy, NY	12/29/09	12/14/09
73171	Hallmark Jewelry (Comp)	Warwick, RI	12/29/09	12/10/09
73172	Rusnak (Pasadena) (State)	Pasadena, CA	12/29/09	12/18/09
73173	Muller Martini Mailroom Systems, Inc. (Comp)	Allentown, PA	12/29/09	12/15/09
73174	EMD Chemicals (Wkrs)	Gibbstown, NJ	12/29/09	12/21/09
73175	Caraco Pharmaceutical Labs, Ltd. (Wkrs)	Detroit, MI	12/29/09	12/18/09
73176	Valeo Electrical Systems, Inc. (Wkrs)	Troy, MI	12/29/09	12/08/09
73177	Century Aluminum of Kentucky, GP (Union)	Hawesville, KY	12/29/09	12/15/09
73178	Alcatel-Lucent (Wkrs)	Murray Hill, NJ	12/29/09	12/10/09
73179	Axiom XCell, Inc. (Wkrs)	San Diego, CA	12/29/09	12/11/09
73180	Protingent Staffing (State)	Redmond, WA	12/29/09	12/04/09
73181	Advanced Technology Services, Inc. (Wkrs)	Peoria, IL	12/30/09	12/18/09
73182	Thomas Petroleum (Wkrs)	Nomsa, TX	12/30/09	12/16/09
73183	Halliburton Energy Services, Inc. (Comp)	Carrollton, TX	12/30/09	12/16/09
73184	Transguard Industries (Wkrs)	Angola, IN	12/30/09	12/22/09
73185	Belcan Corporation (Comp)	Cincinnati, OH	12/30/09	12/28/09
73186	The North Carolina Moulding Company (Wkrs)	Lexington, NC	12/30/09	12/28/09
73187	Cascade Wood Products (Wkrs)	White City, OR	12/30/09	12/18/09
73188	Hagemeyer North America (Wkrs)	Charleston, SC	12/30/09	12/11/09
73189	Lear Corporation (Wkrs)	El Paso, TX	12/30/09	12/18/09
73190	Stanley Assembly Technologies (Comp)	Cleveland, OH	12/30/09	12/09/09
73191	HSBC Bank USA NA (Wkrs)	Brooklyn, NY	12/31/09	12/22/09
73192	Hewlett Packard (HP) (State)	Rancho Cordova, CA	12/31/09	12/30/09
73193	Bassett Fiberboard (Comp)	Bassett, VA	12/31/09	12/29/09
73194	Jim Beam Brands Company (Comp)	Cincinnati, OH	12/31/09	12/29/09
73195	PIAD Precision Casting Corporation (Wkrs)	Greensburg, PA	12/31/09	12/29/09
73196	GMAC Insurance (Wkrs)	Maryland Heights, MO	12/31/09	12/29/09
73197	Rexam Consumer Plastics, Inc. (Wkrs)	Holden, MA	12/31/09	12/29/09
73198	Thomson Reuters (State)	Eagan, MN	12/31/09	12/30/09
73199	Dow Jones and Company (Wkrs)	West Middlesex, PA	12/31/09	12/30/09

[FR Doc. 2010–2098 Filed 2–1–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 12, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of January 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/14/09 and 12/18/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73082	Yellow Roadway Corporation, Site 457 (Wkrs)	Mechanicsburg, PA	12/14/09	12/08/09
73083	Viewpointe Archive Services (State)	Parsippany, NJ	12/14/09	12/11/09
73084	Thyssen Krypp Elevator (Wkrs)	Walnut, MS	12/14/09	12/11/09
73085	Inspire Technologies, Inc. (Comp)	Caldwell, ID	12/14/09	12/10/09
73086	J.I.T Tool & Die, Inc. (Comp)	Brockport, PA	12/14/09	12/11/09
73087	Dover Parkersburg (Union)	Parkersburg, WV	12/14/09	12/11/09

APPENDIX—Continued

[TAA petitions instituted between 12/14/09 and 12/18/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73088	Emerson Process Management (State)	Chanhassen, MN	12/14/09	12/11/09
73089	Talhar, Inc. (Wkrs)	Meadville, PA	12/14/09	12/11/09
73090	Cambridge Filter Corp (Wkrs)	Gilbert, AZ	12/14/09	12/01/09
73091	Basic Aluminum Castings Company (Union)	Cleveland, OH	12/14/09	12/02/09
73092	Sun Microsystems (State)	Santa Clara, CA	12/14/09	12/01/09
73093	Ruan Transport (State)	Marshalltown, IA	12/14/09	12/11/09
73094	Trane Springhill (State)	Springhill, LA	12/14/09	12/11/09
73095	Avon Products, Inc. (Comp)	Springdale, OH	12/15/09	12/13/09
73096	U.S.F. Holland Motor Freight (Wkrs)	Romulus, MI	12/15/09	11/18/09
73097	Coventry Health Care, Inc. (Comp)	Bethesda, MD	12/15/09	12/14/09
73098	Valspar Coatings (Wkrs)	High Point, NC	12/15/09	11/24/09
73099	Siemen Medical Solutions (Wkrs)	Malvern, PA	12/15/09	12/15/09
73100	Superior Tire and Rubber Corporation (Wkrs)	Warren, PA	12/15/09	11/30/09
73101	Tyler Pipe Company (Comp)	Tyler, TX	12/16/09	12/10/09
73102	Hewlett Packard, PSG's Desktop Organization (State)	Cupertino, CA	12/16/09	12/09/09
73103	Marine Corps Logistics Base (State)	Barstow, CA	12/16/09	12/15/09
73104	United Steelworkers (Union)	Dawson, PA	12/16/09	12/11/09
73105	Avis Budget Group (Wkrs)	Wichita Falls, TX	12/16/09	12/14/09
73106	Open Solutions (State)	Windsor Locks, CT	12/16/09	12/15/09
73107	Infrasoft International (Wkrs)	State College, PA	12/16/09	12/15/09
73108	Allegis Group (Tek Systems) (Wkrs)	Pittsburgh, PA	12/16/09	11/30/09
73109	Dayco Products, LLC (Comp)	Walterboro, SC	12/16/09	12/09/09
73110	Robin Industries, Inc. (Wkrs)	Cleveland, OH	12/16/09	12/10/09
73111	Monahan SFI, LLC (Comp)	Middlebury, VT	12/16/09	12/15/09
73112	Sundance Spas, Inc. (State)	Chino, CA	12/16/09	12/15/09
73113	Foamex International (State)	Novi, MI	12/16/09	11/19/09
73114	Maddox Drilling (Wkrs)	San Angelo, TX	12/16/09	12/15/09
73115	Solvay Advanced Polymers (Comp)	Marietta, OH	12/16/09	12/02/09
73116	Teradyne, Inc. (Comp)	Agoura Hills, CA	12/16/09	12/03/09
73117	New Hampshire Oncology-Hematology (Comp)	Hooksett, NH	12/17/09	12/15/09
73118	First Express Remittance Processing/First Tennessee Bank (Rep).	Louisville, KY	12/17/09	12/16/09
73119	Crown Paper Box (Comp)	Indianapolis, IN	12/17/09	12/02/09
73120	SPX–PE (Wkrs)	Buffalo, NY	12/17/09	12/16/09
73121	Hyosung USA, Inc. (Wkrs)	Scottsville, VA	12/17/09	12/11/09
73122	General Mills (State)	Golden Valley, MN	12/18/09	12/17/09
73123	Garland Commercial Industries, LLC (Comp)	Freeland, PA	12/18/09	12/17/09
73124	Suite Simplicity, LLC (Wkrs)	Greensboro, NC	12/18/09	12/17/09
73125	Baker Hughes (Wkrs)	Houston, TX	12/18/09	12/16/09
73126	Frescale Semiconductor, Inc. (Wkrs)	Austin, TX	12/18/09	12/11/09
73127	Freescale Semiconductor, Inc. (Wkrs)	Austin, TX	12/18/09	12/09/09

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BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

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Signed at Washington, DC, this 22nd day of January 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 12/7/09 AND 12/11/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73028	TRW Automotive (Wkrs)	Galesville, WI	12/07/09	10/11/09
73029	Faurecia Exhaust Systems, Inc. (Comp)	Troy, OH	12/07/09	12/07/09
73030	Apex Systems (s)	Denver, CO	12/07/09	12/03/09
73031	Bruckner Supply Company, Inc. (Wkrs)	Port Washington, NY	12/07/09	11/25/09
73032	JM Producs, Inc. (State)	Little Rock, AR	12/07/09	12/03/09
73033	Fujifilm (State)	Valhalla, NY	12/07/09	11/27/09
73034	Alfs Manufacturing Company (State)	Sioux City, IA	12/07/09	12/03/09
73035	Brown Corporation of America (Wkrs)	Ionia, MI	12/07/09	11/15/09
73036	Assurant Specialty Property (State)	Orange, CA	12/07/09	12/04/09
73037	Top Fashion 947, Inc. (Wkrs)	Brooklyn, NY	12/07/09	12/05/09
73038	Vaquero Services, Inc. (Wkrs)	Godley, TX	12/08/09	11/25/09
73039	Oce North America (Wkrs)	Trumbull, CT	12/08/09	11/26/09
73040	Thyssenkrupp Presta Steering Group (State)	Ladson, SC	12/08/09	12/01/09
73041	Pilkington, North America (USW)	Lathrop, CA	12/08/09	12/02/09
73042	American Express (Wkrs)	Salt Lake City, UT	12/08/09	12/02/09
73043	I-Level Weyerhaeuser Trucking Operation (State)	Albany, OR	12/08/09	12/04/09
73044	Avaya (Wkrs)	Coppell, TX	12/08/09	12/07/09
73045	Techline USA (Wkrs)	Waunakee, WI	12/08/09	09/01/24
73046	Quality Logic, Inc. (Wkrs)	Boise, ID	12/08/09	12/03/09
73047	Keewatin Taconite Plant, U.S. Steel Corporation (State)	Keewatin, MN	12/08/09	12/07/09
73048	Mohawk Flush Door (UBC)	South Bend, IN	12/08/09	12/07/09
73049	Vertafore, Inc. (Rep)	Bothell, WA	12/08/09	12/02/09
73050	United Southern (Wkrs)	Forest City, NC	12/09/09	12/08/09
73051	Maco, Inc. (Comp)	Shelby, NC	12/09/09	11/30/09
73052	Fabric Processing Center (FPC) (Comp)	Florence, SC	12/09/09	12/08/09
73053	Homes Servicing (Wkrs)	Boone, NC	12/09/09	12/08/09
73054	Spririt AeroSystems, Inc. (SPEEA)	Wichita, KS	12/09/09	12/03/09
73055	Nuart, Inc. (Comp)	Bedford Park, IL	12/09/09	12/08/09
73056	Curtiss-Wright (Comp)	Long Beach, CA	12/09/09	12/07/09
73057	Lamjen, Inc. (Wkrs)	Erie, PA	12/09/09	12/07/09
73058	Honeywell International, Inc. (Comp)	Spring Valley, IL	12/09/09	11/18/09
73059	Honeywell International, Inc. (Comp)	Pawtucket, RI	12/09/09	11/12/09
73060	Harly-Davidson Motor Company (Comp)	York, PA	12/09/09	12/07/09
73061	Honeywell International, Inc. (Comp)	Springfield, IL	12/09/09	11/18/09
73062	Maggy London (Wkrs)	New York, NY	12/09/09	09/14/09
73063	Bank of America (Wkrs)	Concord, CA	12/10/09	08/03/09
73064	Hoerbiger Drivetech USA, Inc. (Comp)	Auburn, AL	12/10/09	12/10/09
73065	Domtar Paper Company (Comp)	Plymouth, NC	12/10/09	12/03/09
73066	Nortel (Wkrs)	Research Triangle Park, NC	12/10/09	12/09/09
73067	Slash Support (Comp)	South Jordan, UT	12/10/09	10/28/09
73068	Grede Foundries. Inc., Vassar Foundry (Wkrs)	Vassar, MI	12/10/09	12/08/09
73069	Allen Edmonds (Wkrs)	Lewiston, ME	12/10/09	12/08/09
73070	Oakley Industries (Union)	Belvidere, IL	12/10/09	12/09/09
73071	Arvin Meritor (Union)	Belvidere, IL	12/10/09	12/09/09
73072	Android Industries (Union)	Belvidere, IL	12/10/09	12/09/09
73073	Ventra Belvidere, LLC (Union)	Belvidere, IL	12/10/09	12/09/09
73074	Johnson Controles (Union)	Sycamore, IL	12/10/09	12/09/09
73075	ABB, Inc. (Wkrs)	Auburn Hills, MI	12/10/09	12/04/09
73076	TRI–DIM Filter Corp. (Union)	Belvidere, IL	12/10/09	12/09/09
73077	Grupo Antolin (Union)	Belvidere, IL	12/10/09	12/09/09
73078	HSBC (Wkrs)	Elmhurst, IL	12/11/09	11/23/09
73079	Leviton Manufacturing Company (Wkrs)	West Jefferson, NC	12/11/09	12/10/09
73080	ATK Space Systems (Wkrs)	Corinne, UT	12/11/09	12/10/09
73081	Paramount Pictures Corporation (Wkrs)	Hollywood, CA	12/11/09	11/30/09

[FR Doc. 2010–2099 Filed 2–1–10; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Proposed Revisions to Accounting Guide for LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Notice and Request for Comments.

SUMMARY: The Legal Services Corporation ("LSC") intends to revise the Accounting Guide for LSC Recipients to reflect changes that have occurred since the last publication of the Accounting Guide in 1997 and is soliciting public comment on the proposed changes. The proposed revisions incorporate: (1) New internal control provisions for electronic banking transactions; (2) financial oversight concepts from the Sarbanes Oxley Act of 2002; (3) references to the accounting standards codification by the Financial Standards Accounting Board (FASB) released on July 1, 2009; (4) key practices to enhance fraud prevention; (5) provisions in other LSC policies, including the LSC Property Acquisition and Management Manual and LSC Program Letters; (6) revisions to accounting procedures and internal controls to reflect current best practices; (7) updated and new references to other

sources of information; and (8) other changes to clarify existing provisions. The proposed revisions to the Accounting Guide for LSC Recipients (2010 edition), in redline format indicating the proposed changes to the current Accounting Guide (1997), can be located by accessing LSC's Web site at *http://www.lsc.gov/pdfs/proposed_revisions_to_accounting_guide_for_lsc_recipients.pdf.*

DATES: Please submit comments by March 19, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed revisions to the Accounting Guide for LSC Recipients (2010 edition) by mail, fax or e-mail to Chuck Greenfield, Program Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202–295–1549 (phone); 202–337–6813 (fax); or *AccountingGuide@lsc.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Chuck Greenfield, Program Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; *greenfieldc@lsc.gov* (e-mail), (212) 295–1549 (phone) or (212) 337–6813 (fax).

SUPPLEMENTARY INFORMATION: Under the Legal Services Corporation Act, as amended, LSC "is authorized to require such reports as it deems necessary from any recipient, contractor or person or entity receiving assistance" 42 U.S.C. 2996g(a). LSC is also "authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records" 42 U.S.C. 2996g(b). Further, LSC "shall conduct or require each recipient, contractor, person or entity receiving financial assistance * * * to provide for an annual financial audit." 42 U.S.C. 2996h(c)(1). In addition, "funds received by any recipient from a source other than the Corporation * * * shall be accounted for and reported as receipts and disbursements separate and district from Federal funds" 42 U.S.C. 2996i(c).

Under authority of the Legal Services Corporation Act, LSC published the Accounting Guide for LSC Recipients. The Guide sets forth LSC's accounting, financial management and reporting guidelines. In general, LSC requires recipients and subrecipients of its funding to: (1) manage LSC and non-LSC funds in a stewardship manner and pursuant to the cost standards and procedures of 45 CFR 1630; and (2) record transactions in accounting records and prepare annual financial statements in accordance with generally accepted accounting principles (GAAP). The current version of the Accounting Guide was last updated in 1997.

In an effort to update the Accounting Guide to reflect more current accounting and financial oversight practices, as well as to respond to grantee financial issues mentioned in a Government Accountability Office (GAO) report, and as a result of the recommendations of the LSC Fiscal Advisory Group, LSC developed a number of proposed revisions to the Guide. The revisions are in the following eight categories:

(1) *New internal control provisions for electronic banking transactions.* The current Accounting Guide does not discuss in detail electronic banking. Electronic banking arrangements and transactions are now common. Many recipients of LSC funding conduct a significant portion of their financial transactions electronically. LSC itself transmits funds electronically to all recipients. The proposed revisions add a new section on electronic banking to the Fundamental Criteria and include sections on the authorization process for electronic banking activities, the authorization process for employees that initiate and transmit electronic fund transactions, review and approval procedures for electronic banking transactions, supporting documentation for electronic banking transactions, recording electronic banking transactions in the general ledger, bank reconciliations and safeguards. Section 3–5.15. New sections on electronic transactions have also been added to the Accounting Procedures and Internal Control Checklist in Appendix VII. Sections G2, G3, and M of Appendix VII.

(2) *Financial oversight concepts from the Sarbanes Oxley Act of 2002.* While only limited provisions of the Sarbanes Oxley Act of 2002 are required of non profit corporations, LSC has determined that certain financial oversight concepts found in Sarbanes Oxley are appropriate for recipients of LSC funds. An example is the current Accounting Guide requirement that recipients of LSC funds have a financial oversight committee of their board of directors, but not a separate audit committee. The proposed revisions require that recipients must have a financial oversight committee that engages in all the activities of an audit committee, including: hiring the auditor; setting the auditor's compensation; overseeing the auditor's activities; setting rules and processes for complaints about accounting practices and internal control practices; reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing; providing assurances of compliance to the full board; risk assessment; governance; and ethics reviews. Section 1–7. In addition, the proposed revisions consider it a best practice for the board of directors to have an audit committee separate from the finance committee and for the board to have at least one member who is a financial expert or for the board to have access to a financial expert. Section 1–7. It should be noted the LSC Board of Directors at its January 30, 2010 meeting will consider the possibility of engaging in rulemaking to require recipients to have separate audit committees on their board of directors. Should there be a regulatory change requiring recipients to have a separate audit committee, there would be a subsequent change to section 1–7 (Responsibilities of the Financial Oversight Committee or Committees) of the Accounting Guide (2010 edition.)

(3) *References to the accounting standards codification by the Financial Standards Accounting Board (FASB).* FASB released a new codification of its accounting standards on July 1, 2009. The standards, an authoritative listing of generally accepted accounting principles (GAAP), are referred to in numerous sections of the Accounting Guide. All references to the accounting standards in the Accounting Guide have been updated and new references have been inserted to reflect new section numbers in the FASB accounting standards codification.

(4) *Key practices to enhance fraud prevention.* While the current Accounting Guide lists the elements of an adequate accounting and financial reporting system, including the use of specific internal controls and risk assessment, there is no separate section on fraud prevention. The proposed revisions add a fraud prevention section that details key practices to help prevent fraud. Section 3–6.

(5) *Provisions in other LSC policies, including the LSC Property Acquisition and Management Manual and LSC Program Letters.* Subsequent to the publication of the Accounting Guide in 1997, LSC issued other guidelines for recipients of LSC funds that impact on the Accounting Guide. For example, the LSC Property Acquisition and Management Manual (PAMM), issued in 2001, requires recipients to capitalize and depreciate all nonexpendable property with a cost in excess of $5,000 and a useful life of more than one year. However, the current Accounting Guide uses $1,000 as the capitalization and depreciation threshold. The proposed revisions to the Accounting Guide change the threshold to $5,000 to be consistent with the PAAM. Appendix IV, Section 1. In addition, LSC has issued Program Letters 08–2 (March 20, 2008), 08–3 (December 18, 2008) and

09–3 (December 17, 2009) that contain guidance to recipients on compliance and fiscal management issues. Those Program Letters have been referenced in the proposed revisions to the Accounting Guide. Section 2–3.1. Also, the LSC Board of Directors at its January 30, 2010 meeting will consider the possibility of engaging in rulemaking to modify or eliminate 45 CFR Part 1642 (attorneys' fees) to reflect changes contained in the Consolidated Appropriations Act of 2010, P.L. 111–117. Should there be a regulatory change to 45 CFR Part 1642 there would be a subsequent change to section 2–2.6 (Court-Awarded Attorney Fees) of the Accounting Guide (2010 edition.)

(6) *Revisions to accounting procedures and internal controls to reflect current best practices.* Appendix VII of the current Accounting Guide (1997) contains a checklist of accounting procedures and internal controls. The proposed revisions update the checklist to reflect current best practices.

(7) *Updated and new references to other sources of information.* The Accounting Guide (1997) contains numerous references to other sources of information. The proposed revisions update and make new references where appropriate.

(8) *Other changes to clarify existing provisions.* The proposed revisions clarify existing sections to make the provisions easier to understand.

LSC invites public comment on the proposed revisions to the Accounting Guide. Interested parties may submit comments to LSC by March 19, 2010. The proposed revisions to the Accounting Guide for LSC Recipients (2010 edition), in redline format indicating the proposed changes to the current Accounting Guide (1997), can be located by accessing LSC's Web site at *http://www.lsc.gov/pdfs/proposed_revisions_to_accounting_guide_for_lsc_recipients.pdf.*

Dated: January 27, 2010.

Mattie Cohan,

Senior Assistant General Counsel, Legal Services Corporation.

[FR Doc. 2010–2160 Filed 2–1–10; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; 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 of the Centers for Chemical Innovation (CCI) at The Georgia Institute of Technology and The University of Massachusetts, Proposal Review Panel for Chemistry (#1191).

Dates and Times:

March 8, 2010; 6 p.m.–9 p.m.
March 9, 2010; 8 a.m.–3:30 p.m.
March 10, 2010; 8 a.m.–8 p.m.

Places: Department of Chemistry, Georgia Institute of Technology, Atlanta, GA 30332.

Department of Chemistry, The University of Massachusetts, Amherst, MA 01002.

Type of Meeting: Part-open.

Contact Person: Dr. William Brittain, Program Director, Chemistry Centers Program, Division of Materials Research, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–5039.

Purpose of Meeting: To provide advice and recommendations concerning Phase II funding.

Agenda: Monday, March 8, 2010 (Atlanta, GA).

6 p.m.–7 p.m. Closed—Panel Briefing.
7 p.m.–9 p.m. Open—Dinner.

Tuesday, March 9, 2010 (Atlanta, GA).

8:30 a.m.–12 p.m. Open—CCI Presentation.
12 p.m.–1:30 p.m. Closed—Executive Session/Lunch.
1:30 p.m.–2:30 p.m. Open—CCI Presentation.
2:30 p.m.–3:30 p.m. Closed—Executive Session.

Wednesday, March 10, 2010 (Amherst, MA).

8:30 a.m.–12 p.m. Open—CCI Presentation.
12 p.m.–1:30 p.m. Closed—Executive Session/Lunch.
1:30 p.m.–2:30 p.m. Open—CCI Presentation.
2:30 p.m.–3:30 p.m. Closed—Executive Session.
4:30 p.m.–8:30 p.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 28, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–2113 Filed 2–1–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Thursday, February 18, 2010.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The One item is open to the public.

MATTER TO BE CONSIDERED:

5300J Most Wanted List Transportation Safety Improvements, February 2010 Progress Report and Update on Federal Issues.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, February 12, 2010.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: January 29, 2010.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2010–2259 Filed 1–29–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0029; Docket No. 50–397]

Energy Northwest; Notice of Receipt and Availability of Application for Renewal of Columbia Generating Station Facility Operating License No. NPF–21 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated January 19, 2010, from Energy Northwest (EN), filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR part 54), to renew the operating license for the Columbia Generating Station (CGS). Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for CGS (NPF–21), expires on December 20, 2023. CGS is a boiling-water reactor designed by Burns & Roe. CGS is located 12 miles north of Richland, WA. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or through

the Internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML100250668. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr.resource@nrc.gov.*

A copy of the license renewal application for CGS is also available to local residents near the site at the Richland Public Library, 955 Northgate Drive, Richland, WA 99352 and at the Kennewick Branch of Mid-Columbia Libraries, 1620 South Union Street, Kennewick, WA 99338.

Dated at Rockville, Maryland, this 26th day of January 2010.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–2175 Filed 2–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0030; Docket Nos. 50–259, 50–260, and 50–296]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating License Nos. DPR–33, DPR–52, and DPR–68, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Browns Ferry Nuclear Plant, Units 1, 2, and 3 (BFN), located in Limestone County, Alabama. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would exempt the TVA from the required implementation date of March 31, 2010, for several new requirements of 10 CFR part 73. Specifically, BFN would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. TVA has proposed an alternate full compliance implementation date of December 20, 2012, approximately two and three-quarter years beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the BFN site.

The proposed action is in accordance with the licensee's application dated November 6, 2009, as supplemented by letter dated January 11, 2010.

The Need for the Proposed Action:

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the BFN security system because they involve new components and engineering that cannot be obtained or completed by the March 31, 2010, implementation date.

Environmental Impacts of the Proposed Action:

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of the BFN as TVA implements certain new requirements in 10 CFR part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR part 73 to December 20, 2012, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to the proposed action, the NRC staff considered denial of the proposed action *(i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources:

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the BFN dated September 1, 1972.

Agencies and Persons Consulted:

In accordance with its stated policy, on December 24, 2009, the NRC staff consulted with the Alabama State official, Kirk Whatley of the Office of Radiological Control, regarding the environmental impact of the proposed

action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 6, 2009, as supplemented by letter dated January 11, 2010. Portions of the November 6, 2009, submittal contain safeguards and security sensitive information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of January 2010.

For The Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–2169 Filed 2–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of February 1, 8, 15, 22, March 1, 8, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 1, 2010

There are no meetings scheduled for the week of February 1, 2010.

Week of February 8, 2010—Tentative

Tuesday, February 9, 2010

9:30 a.m.
Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting). (Contact: Richard Barkley, 610–337–5065.)

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of February 15, 2010—Tentative

Thursday, February 18, 2010

9:30 a.m.
Briefing on Office of Nuclear Regulatory Research—Programs, Performance, and Future Plans (Public Meeting). (Contact: Patricia Santiago, 301–251–7982.)

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of February 22, 2010—Tentative

Tuesday, February 23, 2010

9:30 a.m.
Briefing on Decommissioning Funding (Public Meeting). (Contact: Thomas Fredrichs, 301–415–5971.)

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of March 1, 2010—Tentative

Tuesday, March 2, 2010

9:30 a.m.
Briefing on Uranium Recovery (Public Meeting). (Contact: Dominick Orlando, 301–415–6749.)

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of March 8, 2010—Tentative

There are no meetings scheduled for the week of March 8, 2010.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: January 28, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–2251 Filed 1–29–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0568]

Notice of Extension of Comment Period for NUREG–1934, Nuclear Power Plant Fire Modeling Application Guide (NPP FIRE MAG), Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Nuclear Regulatory Commission (NRC) published a notice of opportunity for public comment on "NUREG–1934 (EPRI 1019195), Nuclear Power Plant Fire Modeling Application Guide (NPP FIRE MAG), Draft Report for Comment" in the **Federal Register** (74 FR 68873) on December 29, 2009. Issues encountered during the holiday season delayed publication of NUREG–1934. In addition, the final document has been revised to correct some editorial issues resulting from the conversion to a pdf file.

DATES: The public comment period was to end on March 10, 2010. This notice announces an extension of the public comment period until April 30, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0568 in the subject line of your

comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and, therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0568. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

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

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. NUREG–1934 "Nuclear Power Plant Fire Modeling Application Guide (NPP FIRE MAG)" is available electronically under ADAMS Accession Number ML093500187. Electronic copies are also available through the NRC's public Web site under Drafts for Comment in the NUREG-series Publications collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0568.

FOR FURTHER INFORMATION CONTACT: David Stroup, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–251–7609, e-mail: *David.Stroup@nrc.gov*.

SUPPLEMENTARY INFORMATION: There is a movement to introduce risk-informed and performance-based (RI/PB) analyses into fire protection engineering practice. This movement exists in both the general fire protection and the nuclear power plant (NPP) fire protection communities. The U.S. Nuclear Regulatory Commission (NRC) has used risk-informed insights as a part of its regulatory decision making since the 1990s. In 2002, the National Fire Protection Association developed NFPA 805, Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants. In July 2004, the NRC amended its fire protection requirements in Title 10, Section 50.48, of the Code of Federal Regulations to permit existing reactor licensees to voluntarily adopt fire protection requirements contained in NFPA 805 as an alternative to the existing deterministic requirements. NUREG–1934 (EPRI 1019195), "Nuclear Power Plant Fire Modeling Application Guide, Draft Report for Comment" was written as a collaborative effort by the U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Regulatory Research (RES), the Electric Power Research Institute (EPRI), and the National Institute of Standards and Technology (NIST) to provide guidance on using fire modeling for nuclear power plant applications. The features and limitations of the five fire models documented in NUREG–1824 (EPRI 1011999), Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications are discussed relative to NPP applications. Finally, the report describes the implications of verified and validated (V&V) fire models that can reliably predict the consequences of fires.

Dated at Rockville, Maryland, this 27th day of January 2010.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2010–2168 Filed 2–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0467]

Office of New Reactors; Final Interim Staff Guidance on Post-Combined License Commitments

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Interim Staff Guidance (ISG) ESP/DC/COL–ISG–015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093561416). This ISG supplements the guidance provided to the NRC staff in Section 1.0, "Introduction and Interfaces," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," concerning the review of applications to support early site permit (ESP), design certification (DC) and combined license (COL) applications. In addition, this ISG supplements the guidance provided in Section C.III.4 of Regulatory Guide (RG) 1.206, "Regulatory Guide for Combined License Applications for Nuclear Power Plants," June 2007.

The NRC staff issues ISGs to facilitate timely implementation of the current staff guidance and to facilitate activities associated with review of applications for ESPs, DCs, and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved ISGs into the next revision to the review guidance documents for new reactor applications.

Disposition: On October 27, 2009, the NRC staff issued the proposed ISG, ESP/DC/COL–ISG–015 "Post-Combined License Commitments," (ADAMS Accession No. ML091671355) to solicit public and industry comment. The NRC staff received comments (ADAMS Accession No. ML093430227) on the proposed guidance on November 24, 2009. These comments were further discussed in a public meeting held by the NRC on December 17, 2009. This final issuance incorporates changes from the majority of the comments and the discussions at the public meeting. A discussion and slide presentation on ESP/DC/COL–ISG–015 held during the public meeting on December 17, 2009,

document the NRC's responses to these comments (see ADAMS Accession No. ML093520068).

ADDRESSES: The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 21st day of January 2010.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–2137 Filed 2–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0336]

In the Matter of Entergy Nuclear Operations, Inc., et al.; Order Extending the Effectiveness of the Approval of the Indirect Transfer of Facility Operating Licenses

Entergy Nuclear Operations, Inc. Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station)	Docket No. 50–293. License No. DPR–35.
Entergy Nuclear Indian Point 2, LLC (Indian Point Nuclear Generating Unit Nos. 1 and 2)	Docket Nos. 50–003, 50–247) and 72–51. License Nos. DPR–5, DPR–26.
ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point Nuclear Generating Unit No. 3)	Docket No. 50–286. License No. DPR–64.
Entergy Nuclear Fitzpatrick, LLC (James A. FitzPatrick Nuclear Power Plant)	Docket Nos. 50–333 and 72–12. License No. DPR–59.
Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station)	Docket Nos. 50–271 and 72–59. License No. DPR–28.
Entergy Nuclear Palisades, LLC (Palisades Nuclear Plant)	Docket Nos. 50–255 and 72–7. License No. DPR–20.
(Big Rock Point)	Docket Nos. 50–155 and 72–43. License No. DPR–6.

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear Generation Company (Entergy Nuclear) are co-holders of the Facility Operating License, No. DPR–35, which authorizes the possession, use, and operation of the Pilgrim Nuclear Power Station (Pilgrim). Pilgrim is a boiling water nuclear reactor that is owned by Entergy Nuclear and operated by ENO. The facility is located on the western shore of Cape Cod in the town of Plymouth on the Entergy Nuclear site in Plymouth County, Massachusetts.

ENO and Entergy Nuclear Indian Point 2, LLC (ENIP2) are co-holders of the Facility Operating License No. DPR–5, which authorizes the possession of the Indian Point Nuclear Generating Unit No. 1 (IP1). IP1 is a pressurized water nuclear reactor that is owned by ENIP2 and maintained by ENO. IP1 was permanently shut down in 1974 and placed in a safe storage condition pending decommissioning. The facility is located in Westchester County, New York.

ENO and ENIP2 are co-holders of the Facility Operating License No. DPR–26, which authorizes the possession, use, and operation of the Indian Point Nuclear Generating Unit No. 2 (IP2). ENO and Entergy Nuclear Indian Point 3, LLC (ENIP3) are co-holders of the Facility Operating License No. DPR–64, which authorizes the possession, use, and operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). IP2 and IP3 are both pressurized water nuclear reactors that are owned by ENIP2 and ENIP3, respectively, and operated by ENO. The facilities are located in Westchester County, New York.

ENO and Entergy Nuclear FitzPatrick, LLC (EN-FitzPatrick) are co-holders of the Facility Operating License No. DPR–59, which authorizes the possession, use, and operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a boiling water nuclear reactor that is owned by EN-FitzPatrick and operated by ENO. The facility is located in Scriba, Oswego County, New York.

ENO and Entergy Nuclear Vermont Yankee, LLC (EN-Vermont Yankee) are co-holders of the Facility Operating License No. DPR–28, which authorizes the possession, use, and operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee). Vermont Yankee is a boiling water nuclear reactor that is owned by EN-Vermont Yankee and operated by ENO. The facility is located in the town of Vernon, Windham County, Vermont.

ENO and Entergy Nuclear Palisades, LLC (EN-Palisades) are co-holders of the Renewed Facility Operating License No. DPR–20, which authorizes the possession, use, and operation of the Palisades Nuclear Plant (Palisades). Palisades is a pressurized water nuclear reactor that is owned by EN-Palisades and operated by ENO. The facility is located in Van Buren County, Michigan.

ENO and EN-Palisades are co-holders of the Facility Operating License No. DPR–06, which authorizes the possession of Big Rock Point. Big Rock Point is an independent spent fuel storage installation (ISFSI) that is owned by EN-Palisades and operated by ENO. The facility is located in Charlevoix County, Michigan.

II

The NRC's Orders dated July 28, 2008, consented to the indirect transfer of control of the licenses of the above facilities pursuant to § 50.80 of Title 10 of the Code of Federal Regulations in connection with a proposed corporate restructuring and establishment of Enexus Energy Corporation. By its terms, the Orders of July 28, 2008, would become null and void if the license transfers were not completed by July 28, 2009, unless upon application and for good cause shown, such date

was extended by the Commission. By Order dated July 24, 2009, the NRC staff determined that good cause had been shown to extend the effectiveness of the Orders of July 28, 2008, through January 28, 2010. Similarly, by its terms, the Order of July 24, 2009, becomes null and void if the license transfers are not completed by January 28, 2010, unless upon application and for good cause shown, such date is extended by the Commission.

III

By letter dated November 3, 2009, as supplemented by letter dated December 10, 2009, ENO, acting on behalf of itself, Entergy Nuclear, ENIP2, ENIP3, EN-FitzPatrick, EN-Vermont Yankee, and EN-Palisades (together the Applicants), submitted a request for an extension of the effectiveness of the Orders of July 28, 2008, such that they would remain effective through August 1, 2010. According to the submittal, diligent efforts have been made to obtain the required State and Federal regulatory approvals, and many of the required approvals have been obtained. ENO has expressed confidence that it will receive all of the required approvals for the transaction. However, proceedings are ongoing before the New York State Public Service Commission (PSC) and the State of Vermont Public Service Board (PSB) and these two State agencies may not complete their regulatory approval processes in time to complete the restructuring and establishment of Enexus Energy Corporation prior to January 28, 2010, as required by the NRC Orders consenting to the proposed restructuring and associated indirect license transfers.

As indicated in ENO's letter dated August 18, 2009, an amended petition has been submitted to the New York PSC that includes several enhancements to the transaction. In Vermont, Entergy Nuclear Vermont Yankee, LLC, ENO, and Enexus have entered into a Memorandum of Understanding (MOU) with the Vermont Department of Public Service. This MOU must be approved by the Vermont PSB.

The Applicants are concerned that the transaction may not be completed by January 28, 2010, as required by the current Orders. Moreover, beginning in early 2010, there are certain "blackout periods" imposed by Federal regulations in connection with efforts to finalize the audited 2009 annual financial results for Entergy Corporation. Once such blackout periods begin, limitations on access to the financial markets would likely delay completion of the transaction until the June or July 2010 time frame.

As stated in the licensee's submittal, the conditions under which the NRC issued the Orders approving the license transfers have not changed significantly. The technical qualifications of the new organization and other bases for approving the transfers remain intact and the various inter-company contractual arrangements and financial support described in the application and supplemental information submitted to support the NRC staff's review and issuance of its safety evaluation (SE), remain valid and fully support the staff's findings. In support of the claim that the financial qualifications have not significantly changed, ENO submitted revised proprietary financial projections for the plant licensees and Enexus for the 5 calendar years 2010–2014 along with responses to staff questions regarding decommissioning funding assurance. As such, the current conditions continue to support the staff's findings regarding the technical and financial qualifications of the affected licensees.

The NRC staff has considered the submittal of November 3, 2009, as supplemented by letter dated December 10, 2009, and has determined that good cause to extend the effectiveness of the Orders of July 28, 2008, has been shown in that the delay in completing the transaction was not caused by the licensee. The findings set forth above are supported by a SE dated January 22, 2010.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the effectiveness of the Orders of July 28, 2008, described herein are extended such that if the proposed corporate restructuring and establishment of Enexus Energy Corporation is not consummated by August 1, 2010, the Orders of July 28, 2008, and July 24, 2009, shall become null and void, unless upon application and for good cause shown, such date is further extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the submittal dated November 3, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093100496), as supplemented by letter dated December 10, 2009 (ADAMS Accession No. ML093630884), and the SE dated January 22, 2010 (ADAMS Accession No. ML093620895), which may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site: *http://www.nrc.gov.*

Dated at Rockville, Maryland, this 22 day of January 2010.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–2139 Filed 2–1–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Expiring Information Collection 3206–0165

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Federal Investigative Services Division (FISD), U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an expiring information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–0165, for the General Request for Investigative Information (INV 40), the Investigative Request for Employment Data and Supervisor Information (INV 41), the Investigative Request for Personal Information (INV 42), the Investigative Request for Educational Registrar and Dean of Students Record Data (INV 43), and the Investigative Request for Law Enforcement Data (INV 44).

As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget (OMB) is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments are encouraged and will be accepted until April 5, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the FISD, OPM, 1900 E Street, NW., Washington, DC 20415, Attention: Lisa Loss or sent via electronic mail to *FISDFormsComments@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the FISD, OPM, 1900 E Street, NW., Washington, DC 20503, Attention: Lisa Loss or sent via electronic mail to *FISDFormsComments@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 3(a) of Executive Order (E.O.) 10450, as amended, states that with specified exceptions, "the appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation," and that "in no event shall the investigation consist of less than a national agency check * * * and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the persons under investigation." This minimum investigation for appointment in the civil service is called the National Agency Check with Inquiries (NACI).

The INV 40, 41, 42, 43, and 44 are used to conduct the "written inquiries" portion of the NACI. They are also used in any investigation requiring the same written inquiries, including suitability investigations under E.O. 10577, as amended and 5 CFR part 731, for employment in positions defined in 5 CFR 731.101(b); investigations for employment in a sensitive national security position under E.O. 10450, as amended and 5 CFR part 732; certain investigations for eligibility for access to classified information pursuant to standards promulgated under E.O. 12968, as amended; certain investigations for fitness for employment in the excepted service or as a contract employee, pursuant to investigative requirements prescribed by employing and contracting agencies; and investigations for identity credentials for long-term physical and logical access to Federally controlled facilities and information systems, pursuant to standards promulgated under the Federal Information Security Management Act. The INV forms 40 and 44, in particular, facilitate OPM's access to criminal history record information under 5 U.S.C. 9101.

The content of the INV forms is also designed to meet notice requirements for personnel investigations specified by 5 CFR 736.102(c). These notice requirements apply to any "investigation * * * to determine the suitability, eligibility, or qualifications of individuals for Federal employment, for work on Federal contracts, or for access to classified information or restricted areas."

None of the forms is used for any purpose other than a personnel background investigation, as described above. The completed forms are maintained by OPM subject to the protections of the Privacy Act of 1974, as amended.

Procedurally, the subject of a personnel background investigation discloses the identity of relevant sources, such as supervisors, coworkers, neighbors, friends, current or former spouses, instructors, relatives, or schools attended, on the standard form (SF) 85, Questionnaire for Non-Sensitive Positions; the SF 85P, Questionnaire for Public Trust Positions; or the SF 86, Questionnaire for National Security Positions. After OPM receives a completed SF 85, SF 85P, or SF 86, the INV forms are distributed to the provided source contacts through an automated mailing operation.

The INV 40 is used to collect records from a Federal or State record repository or a credit bureau. The INV 44 is used to collect law enforcement data from a criminal justice agency. The INV 41, 42, and 43 are sent to employment references, associates, and schools attended. The forms disclose that the source's name was provided by the subject to assist in completing a background investigation to help determine the subject's suitability for employment or security clearance, and request that the source complete the form with information to help in this determination. Generally the subject of the investigation will identify these employment references, associates, and schools on his or her SF 85, SF 85P, or SF 86 questionnaire. If information is omitted on the questionnaire, however, the information may be provided in a follow-up contact between the subject and an investigator. By their terms, the INV 41, 42, and 43 forms are not to be sent to employment references, associates, and schools that have not been identified by the subject of the investigation.

Approximately 279,000 INV 40 inquiries are sent to federal and non-federal agencies annually. The INV 40 takes approximately five minutes to complete. The estimated annual burden is 23,250 hours. Approximately 2,243,000 INV 41 inquiries are sent to previous and present employers and supervisors. The INV 41 takes approximately five minutes to complete. The estimated annual burden is 186,900 hours. Approximately 1,882,000 INV 42 inquiries are sent to individuals annually. The INV 42 takes approximately five minutes to complete. The estimated annual burden is 156,800 hours. Approximately 464,000 INV 43 inquiries are sent to educational institutions annually. The INV 43 takes approximately five minutes to complete. The estimated annual burden is 38,700 hours. Approximately 1,546,000 INV 44 inquiries are sent to law enforcement agencies annually. The INV 44 takes approximately five minutes to complete. The estimated annual burden is 128,800 hours. The total number of respondents for the INV 40, INV 41, INV 42, INV 43, and INV 44 is 6,135,200 and the total estimated burden is 511,200 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–2193 Filed 2–1–10; 8:45 am]

BILLING CODE 6325–53–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of L. Luria & Son, Inc., Lew Corp. (n/k/a Questus Global Limited), Library Bureau, Inc., Life Sciences, Inc., Lifesmart Nutrition Technologies, Inc., Lightning Rod Software, Inc., Lindatech, Inc., Littlefield, Adams & Company, and Liuski International, Inc.; Order of Suspension of Trading

January 29, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of L. Luria & Son, Inc. because it has not filed any

periodic reports since the period ended May 3, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lew Corp. (n/k/a Questus Global Limited) because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Library Bureau, Inc. because it has not filed any periodic reports since July 2, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Life Sciences, Inc. because it has not filed any periodic reports since the period ended May 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lifesmart Nutrition Technologies, Inc. because it has not filed any periodic reports since the period ended February 28, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lightning Rod Software, Inc. because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lindatech, Inc. because it has not filed any periodic reports since the period ended March 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Littlefield, Adams & Company because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Liuski International. Inc. because it has not filed any periodic reports since the period ended July 20, 1999.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 29, 2010, through 11:59 p.m. EST on February 11, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–2223 Filed 1–29–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61426; File No. SR–Phlx–2010–05]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to Professional Orders

January 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 12, 2010, 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. 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 priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders.

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, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt the new term "professional" for purposes of the Exchange's priority rules. Currently, pursuant to Rule 1014(g), a customer account is an account other than a controlled account; a controlled account is an account controlled by or under common control with a broker-dealer. Rule 1014(g) governs, among other things, the allocation of orders and, thus, the priority over and parity among orders and quotations.

Customer priority is one of the marketplace advantages provided to customer orders on the Exchange; customer priority means that customer orders are given execution priority over non-customer orders and quotations of specialists and Registered Options Traders ("ROTs") at the same price. Another marketplace advantage afforded to customer orders on the Exchange is that member organizations are generally not charged transaction fees for the execution of customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market professionals.[3]

With respect to these Phlx marketplace advantages, the Exchange does not believe that the current definition of customer account versus controlled account properly distinguishes between non-professional retail investors and certain professionals. According to the Exchange, providing marketplace advantages based upon whether the order is for the account of a participant that is a registered broker-dealer is no longer appropriate in today's marketplace, because some non-broker-dealer individuals and entities have access to information and technology that enables them to professionally trade listed options in the same manner as a broker or dealer in securities.[4] These

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market professionals have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

[4] For example, some broker-dealers provided their professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all

individual traders and entities (collectively, "professionals") have the same technological and informational advantages over retail investors as broker-dealers trading for their own account, which enables them to compete effectively with broker-dealer orders and market maker quotes for execution opportunities in the Phlx marketplace.[5]

Therefore, the Exchange does not believe it is consistent with fair competition for the professional account holders to continue to receive the same marketplace advantages as retail investors over broker-dealers trading on the Phlx. Moreover, because customer orders at the same price are executed in time priority, retail investors are prevented from benefitting fully from the priority advantage when professionals are afforded customer priority.

Accordingly, the Exchange is seeking to adopt a new term that will be used to more appropriately provide Phlx marketplace advantages to retail investors on the Phlx. Under the proposal, a "professional" will be defined in Rule 1000 as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Under the proposal, a professional account will be treated in the same manner as an off-floor broker-dealer (controlled account) for purposes of Phlx Rule 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1064(b), 1064.02, and 1080.08.

The proposal will not otherwise affect non-broker-dealer individuals or entities under Phlx rules, and all customer orders will continue to be treated equally for purposes of the linkage-related rules, including non-broker-dealer orders included in the definition of "professional" orders.[6] The Exchange, which currently routes only eligible customer orders, would route eligible professional orders.

In order to properly represent orders entered on the Exchange according to the new definition, member organizations will be required to indicate whether customer orders are "professional" orders.[7] To comply with this requirement, member organizations will be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as customer orders or professional orders.[8]

The Exchange is also proposing to amend Rule 1063(e) and the corresponding Options Floor Procedure Advice ("Advice") C–3, Options Floor Broker Management System, to require Floor Brokers to record the "professional" designator in the Floor Broker Management System. Advice C–3 is part of the Exchange's minor rule plan.[9]

With respect to the fees applicable to professional orders, the Exchange is not proposing to charge differently for professionals at this time, such that professional orders would be subject to the same transaction fees as customers today.

The Exchange believes that identifying professional accounts based upon the average number of orders entered for a beneficial account is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors. The Exchange proposes the threshold of 390 orders per day on average over a calendar month, because it believes that this number far exceeds the number of orders that are entered by retail investors in a single day,[10] while being a sufficiently low number of orders to cover the professional account holders that are competing with broker-dealers in the Phlx marketplace. In addition, basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] 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. In particular, the proposal should assure that retail investors continue to receive the appropriate marketplace advantages in the Phlx marketplace, while furthering fair competition among marketplace professionals.

six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds. *See* Securities Exchange Act Release Nos. 59287 (January 23, 2009), 74 FR 5964 (January 30, 2009) (SR–ISE–2006–26) (order approving International Securities Exchange ("ISE") proposal to introduce priority customer and professional orders) and 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) (SR–ISE–2006–26) (notice of ISE proposal to introduce priority customer and professional orders) at note 8.

[5] Specialists and ROTs enter quotes based upon the theoretical value of the option, which moves with various factors in their pricing models, such as the value of the underlying security. Professional customers place and cancel orders in relation to an option's theoretical value in much the same manner as specialists and ROTs. This is evidenced by the entry of limit orders that join the best bid or offer and by a very high rate of orders that are cancelled. In contrast, retail customers who enter orders as part of an investment strategy (such as covered write or directional trade) most frequently enter marketable orders or limit orders that they do not cancel and replace. *See, e.g.* Securities Exchange Act Release No. 57254 at note 9.

[6] *See* Phlx Rule 1080(m), 1083, 1084, and 1086. These rules are not included by the proposed rule change in the list of rules, *supra,* for which the professional designation would apply.

[7] *See* proposed Rule 1000(b)(14). The Exchange intends to utilize a special order origin code for professional orders. The Exchange also proposes to disseminate the professional designator over its new Top of Phlx Options Plus Orders ("TOPO Plus Orders"), which includes disseminated Exchange top-of-market data (including orders, quotes and trades) together with all of the data currently available on the Specialized Order Feed ("SOF"). *See* Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR–Phlx–2009–92).

[8] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as professional orders for the next calendar quarter. Member organizations will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While member organizations will only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as customer orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the member organization and the member organization will be required to change the manner in which it is representing the customer's orders within five days.

[9] *See* Rule 970.

[10] 390 orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to market close. Many of the largest retail-oriented electronic brokers offer lower commission rates to customers they define as "active traders." Publicly available information from the Web sites of Charles Schwab, Fidelity, TD Ameritrade and optionsXpress all define "active trader" as someone who executes only a few options trades per month. The highest required trading activity to qualify as an active trader among these four firms was 35 trades per quarter. *See* Securities Exchange Act Release No. 57254 at note 11 (which also notes that a study of one of the largest retail-oriented options brokerage firms indicated that on a typical trading day, options orders were entered with respect to 5,922 different customer accounts. There was only one order entered with respect to 3,765 of the 5,922 different customer accounts on this day, and there were only 17 customer accounts with respect to which more than ten orders were entered. The highest number of orders entered with respect to any one account over the course of an entire week was 27.).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

In addition, Section 11(a) of the Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion, unless an exemption applies.[13] Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. One such exception, set forth in subparagraph (G) of Section 11(a)(1) and in Rule 11a1–1(T),[14] permits any transaction for a member's own account provided, among other things, that the transaction yields priority, parity, and precedence to orders for the account of persons who are not members or associated with members of the exchange. Exchange rules, therefore, may require members to yield priority to non-members, including public customers, to satisfy this exception to Section 11(a).[15] Another exception, found in Section 11(a)(1)(A), permits market makers to effect transactions on exchanges in which they are members.[16]

In addition to the exceptions noted above, Rule 11a2–2(T) under the Act[17] provides exchange members with an exception from the prohibitions in Section 11(a). Rule 11a2–2(T), known as the "effect versus execute" rule, permits an exchange member, subject to certain conditions, to effect transactions for his own account, the account of an associated person or an account with respect to which it or an associated person thereof exercises investment discretion (collectively, "covered accounts") by arranging for an unaffiliated member to execute the transaction on the exchange.

To comply with the "effect versus execute" rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[18] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[19]

As applied to the Exchange's electronic trading platform, Phlx XL II, the Exchange does not believe that the proposal relating to professional orders would affect the availability of the exceptions to Section 11(a) of the Act, including the exceptions in subparagraph (G) of Section 11(a) and in Rules 11a1–1(T) and 11a2–2(T), as are currently available.[20]

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–05 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–2010–05. 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,[21] 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–2010–05 and should be submitted on or before February 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2092 Filed 2–1–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78k(a).

[14] 17 CFR 240.11a1–1(T).

[15] *See* Phlx Rule 1014.

[16] 15 U.S.C. 78k(a)(1)(A).

[17] 17 CFR 240.11a2–2(T).

[18] The member may, however, participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

[19] 17 CFR 240.11a2–2(T).

[20] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[21] The text of the proposed rule change is available on Phlx's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings,* on the Commission's Web site at *http://www.sec.gov,* at Phlx, and at the Commission's Public Reference Room.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61404; File No. SR–NYSEArca–2009–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Modifying the NYSE Arca Realtime Reference Prices Service

January 22, 2010.

I. Introduction

On December 1, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add data elements to its "NYSE Arca Realtime Reference Prices" service and to add a usage-based fee alternative for that service. The proposed rule change was published for comment in the **Federal Register** on December 18, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes several changes to the NYSE Arca Realtime Reference Prices service. In a recent filing,[4] the Exchange established a fixed monthly fee for its NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The Exchange has found that the NYSE Arca Realtime Reference Prices service provides a low-cost service that makes real-time prices widely available to many millions of casual investors, provides vendors with a real-time substitute for delayed prices, and relieves vendors of all administrative burdens. The service allows internet service providers, traditional market data vendors, and others ("NYSE Arca-Only Vendors") to make available NYSE Arca Realtime Reference Prices on a real-time basis.[5] NYSE Arca Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange.

The Exchange proposes to make the following changes to the service and its fees:

a. Data Elements

Currently, the NYSE Arca Realtime Reference Prices service includes only prices. It does not include the size of each trade and does not include bid/ask quotations. For each security, the Exchange is proposing to add the following data elements to the service:

- High price
- Low price
- Cumulative volume

The Exchange states that it anticipates that it would update these data elements every second, though initially it would update them once per minute. A security's high (low) price would reflect the highest (lowest) price at which the security has traded on the Exchange during the trading session through the point in time at which it is disseminated. Further, the cumulative volume would reflect a security's aggregate volume during a trading session through the point in time at which it is last disseminated. The Exchange believes that adding these data elements would make the product more attractive to the customers of NYSE Arca-Only Vendors.

b. Usage-Based Fee

Currently, the NYSE Arca Realtime Reference Prices service features a flat, fixed monthly vendor fee of $30,000 and no user-based fees. For that fee, the NYSE Arca-Only Vendor may provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The Exchange proposes to establish as an alternative to the fixed monthly fee a fee of $.004 for each real-time reference price that a NYSE Arca-Only Vendor disseminates to its customers. The Exchange proposes to limit a NYSE Arca-Only Vendor's exposure under this alternative fee by setting $30,000, the same amount as the proposed fixed monthly rate, as the maximum fee that a NYSE Arca-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE Arca-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange states that it will impose the per-query fee only on the dissemination of real-time reference prices. NYSE Arca-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge would be imposed on NYSE Arca-Only Vendors, not end-users, and would be payable on a monthly basis. Because it would represent a new and additional alternative to the monthly fixed fee, NYSE Arca-Only Vendors may elect to disseminate NYSE Arca Realtime Reference Prices pursuant to the per-query fee rather than the fixed monthly fee.

c. Justification of Fees

The Exchange believes that the fee enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. According to the Exchange, adding a per-query payment option would reduce the costs of the service to those internet service providers and traditional vendors. The Exchange believes that this would enable NYSE Arca Realtime Reference Prices vendors to make a more appropriate contribution to the Exchange's operating costs.

In establishing the per-query fee, the Exchange states that it took into consideration several factors, including:

(1) the fees that Nasdaq and NYSE are charging for similar services and that NYSE Amex has proposed to charge;

(2) consultation with some of the entities that currently receive the service or that the Exchange anticipates may commence to take advantage of the service;

(3) the contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(4) the contribution that revenues accruing from the proposed fees would make to meet the overall costs of the Exchange's operations;

(5) the savings in administrative and reporting costs that the NYSE Arca Realtime Reference Prices service would provide to NYSE Arca-Only Vendors; and

(6) the fact that the proposed fee would provide an attractive alternative to existing fees under the CTA Plan and to NYSE Arca's monthly flat fee, an alternative that vendors would purchase

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61143 (December 10, 2009), 74 FR 67290.

[4] *See* Securities Exchange Act Release No. 60002 (May 29, 2009), 74 FR 26901 (June 4, 2009) (SR–NYSEArca–2009–32).

[5] The Exchange notes that it makes the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the level of the per-query fee is consistent with the approach set forth in the order by which the Commission approved ArcaBook fees.[6] The Exchange represents that the NYSE Arca Realtime Reference Prices constitute "non-core data;" *i.e.,* the Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange states that it distributes the product voluntarily. In addition, the Exchange believes that both types of the competitive forces that the Commission described in the NYSE Arca Order are present in the case of NYSE Arca Realtime Reference Prices: (i) The Exchange has a compelling need to attract order flow; and (ii) the product competes with a number of alternative products.

The Exchange states that it must compete vigorously for order flow to maintain its share of trading volume, which requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Arca Realtime Reference Prices. The Exchange hopes that NYSE Arca Realtime Reference Prices will enable vendors to distribute NYSE Arca last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[8] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[11] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[12]

Under this proposal, the Exchange would (1) add high price, low price, and cumulative volume data elements to its "NYSE Arca Realtime Reference Prices" service and (2) add a usage-based fee alternative of $.004 for each real-time reference price that a vendor disseminates to its customers (capped at the monthly fee level). In order to take advantage of the usage-based fee alternative, a vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[13] In the NYSE Arca Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."[14] It noted that the "existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."[15] If an exchange "was subject to significant competitive forces in setting the terms of a proposal," the Commission will approve a proposal unless it determines that "there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder."[16]

There are a variety of alternative sources of information that impose significant competitive pressures on the Exchange in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as NYSE Arca's compelling need to attract order flow, imposed significant competitive pressure on the NYSE Arca to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE Arca was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2009–108) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2109 Filed 2–1–10; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) ("NYSE Arca Order").

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 242.603(a).

[12] NYSE Arca is an exclusive processor of NYSE Arca depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[13] *See supra* note 6. In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[14] *Id.* at 74781.

[15] *Id.* at 74781–82.

[16] *Id.* at 74781.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61430; File No. SR–ISE–2010–08]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow All SPY and IWM Options Series To Quote in Penny Increments

January 27, 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 21, 2010, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to quote all series of options on the SPDR S&P 500 Exchange Traded Fund and options on the iShares Russell 2000 Index Fund in penny increments pursuant to the pilot program to quote and to trade certain options in pennies ("Penny Pilot").

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the SEC approved ISE's rule filing, SR–ISE–2006–62, which initiated the Penny Pilot.[3] Under the Penny Pilot, the minimum price variation for all participating options classes, except for the PowerShares QQQ ("QQQQ") [4] (formerly known as the Nasdaq-100 Index Tracking Stock), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. Thus, the current minimum quoting increment for bids and offers in options on the SPDR S&P 500 Exchange Traded Fund ("SPY") and in options on the iShares Russell 2000 Index Fund ("IWM") is $0.01 for all options series below $3.00 and $0.05 for all options series $3.00 and above.

The Exchange now proposes to eliminate the $3.00 breakpoint that exists for SPY and IWM and designate all options series in SPY and IWM as eligible to quote in $0.01 increments, regardless of premium value. The Exchange will communicate the proposed change to its membership via a Regulatory Information Circular ("RIC") which shall also be posted on the Exchange's Web site.

The Exchange notes that although the Penny Pilot has contributed to some increase in quote message traffic, it has been manageable by the Exchange and the Options Price Reporting Authority ("OPRA"), with no significant disruption in the dissemination of pricing information. The Exchange believes that the benefits to public customers and other market participants who are able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. Moreover, the Exchange's rule change proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of the Exchange's or OPRA's systems, or to disrupt the timely dissemination of information.

The Exchange believes that its proposal to eliminate the breakpoint for penny quoting of all SPY and IWM option series should facilitate the continuing narrowing of spreads, thereby lowering costs to the benefit of investors.

This proposal is based on a recent Commission-approved proposal of the NYSEArca exchange.[5] The Exchange proposes to designate SPY and IWM as eligible to quote and trade all options contracts in one cent increments as of February 1, 2010. This date corresponds with the second phase-in date for additional classes in the Penny Pilot.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [6] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act [7] in particular, in that it is designed to promote just and equitable principles of trade, 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, by allowing all SPY and IWM options series to quote in penny intervals.

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 written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007). The Penny Pilot was subsequently extended a number of times and is currently scheduled to expire on December 31, 2010. *See* Securities Exchange Act Release Nos. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR–ISE–2007–68); 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007) (SR–ISE–2007–74); 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008) (SR–ISE–2008–27); 59633 (March 26, 2009), 74 FR 15018 (April 2, 2009) (SR–ISE–2009–14); 60222 (July 1, 2009), 74 FR 32994 (July 9, 2009) (SR–ISE–2009–37); 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009 (SR–ISE–2009–82).

[4] Options on QQQQ are quoted in $0.01 increments for all series.

[5] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative 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 is based on a recent Commission-approved proposal submitted by another options exchange [13] and therefore does not raise any novel regulatory issues. Further, waiving the operative delay will allow the Exchange to commence quoting all series of IWM and SPY in increments of $0.01 effective February 1, 2010, contemporaneously with other options exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

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.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. ISE has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* note 5.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISE–2010–08 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–ISE–2010–08. 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 self-regulatory organization. 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–2010–08 and should be submitted on or before February 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2093 Filed 2–1–10; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61425; File No. SR–OCC–2009–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Allow Members To Deposit Customer Fully Paid or Excess Margin Securities to the Extent Permitted by No-Action Relief or Interpretive Guidance From the Commission or Interpretive Guidance From a Self-Regulatory Organization

January 26, 2010.

I. Introduction

On October 23, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2009–18 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the Federal Register on December 7, 2009.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change allows members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3–3 [3] under the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from a Self-Regulatory Organization ("SRO").

OCC rules currently prohibit members from depositing with OCC fully paid or excess margin securities that are carried for the account of a customer. This prohibition is intended to conform OCC's treatment of customer fully paid and excess margin securities to the requirements of Rule 15c3–3.

Currently, a Commission no-action letter and related interpretive guidance from the New York Stock Exchange permit fully paid or excess margin securities carried in a customer account to be deposited with OCC in two circumstances. First, if a customer makes a specific deposit of fully paid or excess margin securities with a member to secure its obligations as an option writer [4] then the member may in turn deposit the customer's securities with

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 61078 (November 30, 2009), 74 FR 64116.

[3] 17 CFR 240.15c3–3.

[4] OCC Rule 610(e)–(f).

OCC.[5] Second, any fully paid or excess margin securities held by a member to secure a customer's obligations may be posted as margin with OCC to the extent of 140% of the difference between the daily marking price deposits[6] and the original proceeds of the customer's transaction.[7] This proposed rule change permits members to deposit customer fully paid or excess margin securities in these two circumstances as well as in any future circumstances identified by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes that by amending its rules to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3–3 under the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO, the proposal is consistent with the requirements of Section 17A(b)(3)(F),[8] which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–OCC–2009–18) be, and hereby is, approved.[11]

[5] New York Stock Exchange, *New York Stock Exchange Rule Interpretations Handbook* 505 (2004) (Interpretation 01 of Securities Exchange Act Rule 15c3–3(c) citing Chicago Board Options Exchange, Inc., SEC No-Action Letter (Feb. 19, 1975)).

[6] As required by OCC of its member.

[7] New York Stock Exchange, *New York Stock Exchange Rule Interpretations Handbook* 505 (2004)(Interpretation 020 of Securities Exchange Act Rule 15c3–3(c)).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2091 Filed 2–1–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61424; File No. SR–NYSE–2010–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending the Rule Governing the Issuance of Trading Licenses

January 26, 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 13, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 300 (Trading Licenses) to provide that a member organization shall be ineligible to purchase a trading license, either in the annual offering or subsequently, if such member organization is three months in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license. The Exchange also proposes to amend Rule 309 (Failure to Pay Exchange Fees) to provide that failure to pay trading license fee installments will be governed by proposed Rule 300(h).

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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

Exchange Rule 300 provides that member organizations may buy trading licenses in the annual offering and may buy licenses at any other time in the year, provided that the maximum number of 1366 licenses has not been issued and subject to limitations on the number of licenses a single member organization may hold. Rule 300 provides that member organizations must pay for their trading licenses in 12 monthly installments, with the first installment due prior to the commencement of the applicable year. The Exchange has experienced difficulty in collecting trading license fee installments promptly from a small number of member organizations. Consequently, the Exchange now proposes to amend Rule 300 by adding proposed new subparagraph (h), providing that a member organization shall be ineligible to purchase a trading license, either in the annual offering or subsequently, if, at the time of such proposed purchase, such member organization remains three months in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license.

Any trading license purchased by a member organization in the annual auction for the calendar year commencing January 1, 2010, will be subject to automatic revocation at the close of business on March 31, 2010, if the member organization that holds such license remains three months in arrears in making such payments at that time. The Exchange believes that this transitional approach for 2010 is appropriate as it will enable it to give the affected member organizations adequate notice and a reasonable period in which to pay their overdue trading

license fee installments to avoid losing their floor trading privileges. Upon approval of this filing, the Exchange intends to distribute an Information Memorandum to its member organizations to inform them of the rule change.[4] Member organizations receive monthly trading license bills, which reflect unpaid balances from previous periods, so member organizations that are three months in arrears are aware of that fact.

The acceptability proceedings requirements of Rule 308 will not be applicable to any denial or revocation of a trading license under proposed Rule 300(h). Instead, Rule 300(h) will include its own appeal procedure. One calendar month prior to the effective date of any potential denial of renewal or revocation of a trading license (the "Expiration Date") pursuant to Rule 300(h), the Exchange will notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice referenced in the immediately preceding sentence must include a description of the appeal process described below. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice to the officer of the Exchange identified for that purpose in such notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. The Exchange must provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license.[5] This written determination shall be final and conclusive action by the Exchange. If the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. A written record shall be kept of any proceedings under Rule 300(h). As the appeal procedures under proposed Rule 300(h) will not include any provision for an oral hearing, the Exchange expects that the written record will generally consist of (i) the written appeal and supporting documents (if any) submitted by the member organization and (ii) the Exchange's written determination.

Rule 309 ("Failure to Pay Exchange Fees") will not apply to the nonpayment of trading license fee installments, which will be dealt with solely under proposed Rule 300(h). The adoption of proposed Rule 300(h) will not in any way limit the application of Rule 309 in the event of the nonpayment by a member organization of any fee other than a trading license fee or any other sum due to the Exchange. The Exchange also proposes to amend Rule 309 to explicitly provide that failure to pay trading license fee installments will be governed by proposed Rule 300(h).

The Exchange notes that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor regulatory activities. If some member organizations consistently fail to pay their trading license fee bills, the Exchange will be forced to impose higher fees on those member organizations which do pay their bills. The Exchange believes that the proposed rule change will cause member organizations to pay their bills more promptly and thereby enable the Exchange to avoid imposing the cost of the nonpayment by a small number of member organizations on the majority of other member organizations that routinely pay on time. It is neither the intention nor the expectation of the Exchange that a significant number of member organizations will lose their ability to conduct a trading floor business as a result of this amendment. Rather, the Exchange believes that most member organizations that are late in paying their bills will respond to the possibility of losing their access to the floor by paying off their outstanding balances. The Exchange notes that any member organization which forfeits its trading licenses as of March 31, 2010 will only owe the pro rata license fee for 2010 through that date. In addition, any member organization which forfeits its trading licenses in 2010 or is ineligible to purchase trading licenses thereafter may purchase trading licenses (to the extent there are available unsold licenses) at such time as it is no longer three months in arrears in its payments.

2. Statutory Basis

The bases under the Act for this proposed rule change are the requirement under Section 6(b)(4)[6] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, listed companies and other persons using its facilities and the requirement under Section 6(b)(5)[7] that an exchange have rules that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment provides for an equitable allocation of fees among member organizations, as it will deprive member organizations of floor access only if they do not pay the trading license fees applicable to all member organizations with a trading floor business.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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

[4] The first such notice will be sent to member organizations that are two months or more in arrears as of the end of February 2010. This notice will state that the revocation of any trading licenses pursuant to proposed Rule 300(h) on April 1, 2010, will be contingent upon SEC approval of SR–NYSE–2010–03 prior to that date. *See* email from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext LLC, to David Liu, Assistant Director, and Leigh W. Duffy, Attorney-Adviser, Commission, dated January 25, 2010.

[5] If the Exchange denies a member organization's appeal under Rule 300(h), the Exchange will notify the Commission in the manner required by Exchange Act Rule 19d–1.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2010–03 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–NYSE–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,[8] 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2010–03 and should be submitted on or before February 23, 2010.

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2090 Filed 2–1–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2010–0025]

Approved Information Collection Extension Request; Disadvantaged Business Enterprise

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extension for a currently approved information collection.

DATES: Comments on this notice must be received by April 5, 2010.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001;
- *Hand delivery:* West Building Ground Floor, Room W–12–140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Ashby, Office of the Secretary, Office of Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366–9310 (voice), 202–366–9313 (fax) or at *bob.ashby@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Report of DBE Awards and Commitments.

OMB Control Number: 2105–0510.

Type of Request: Extension to a currently approved information collection.

Abstract: 49 CFR Part 26 establishes requirements for the Department of Transportation (DOT) so as to comply with the mandate by statute including 1101 (b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Public Law 109–59 and 49 U.S.C. 47113, Public Law 105–178. The key part of the collection is a requirement that state and local governments subject to the DBE program report to the Secretary of Transportation on DBE participation, as well as maintain a directory of DBE firms and report to the Secretary concerning the composition of the directory. If these reporting requirements were not available, firms controlled by minorities would not achieve the appropriate participation in DOT programs, and the Department would not be able to identify its recipients and evaluate the extent to which financial assistance recipients have been awarded a reasonable amount of contracting dollars to DBEs.

In order to minimize the burden on DOT recipients the Department has limited its informational request and reporting frequency to that necessary to meet its program and administrative monitoring requirements. The information request consists of 17 data items on one page and one attachment, to be completed on a semi-annual basis (for FHWA and FTA programs) or an annual basis (for FAA programs).

Respondents: DOT financially-assisted state and local transportation agencies.

Estimated Number of Respondents: 1,057.

Estimated Total Burden on Respondents: 1,311,000.

The information collection is available for inspection in regulations.gov, as noted in the **ADDRESSES** section of this document.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on *January 28, 2010.*

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 2010–2235 Filed 1–29–10; 4:15 pm]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. RITA–2010–0001]

Notice of Request for Clearance of an Information Collection: Omnibus Household Survey Program

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an extension of a currently approved information collection related to the use of and satisfaction with the nation's transportation system.

DATES: Comments must be submitted on or before April 5, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA–2010–0001 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. RITA–2010–0001, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Room W12–140, Washington, DC 20590. Comments should identify the docket number as indicated above. Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on Docket RITA–2010–0001." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. Comments can also be viewed and/or submitted via the Federal eRulemaking Portal: *http://www.regulations.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://www.gpoaccess.gov/fr/.*

FOR FURTHER INFORMATION CONTACT: Dr. Pheny Weidman, (202) 366–2817 OHS Program Manager, BTS, RITA, Department of Transportation, 1200 New Jersey Ave., SE., Room E32–318, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Omnibus Household Survey Program.

Background: In 2005, Congress passed, and the President signed, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; Pub. L. 109–59). SAFETEA–LU contained a number of legislative mandates including providing data, statistics and analyses to transportation decision-makers. The Research and Innovative Technology Administration, Bureau of Transportation Statistics (RITA/BTS) was tasked to accomplish this legislative mandate under 49 U.S.C. 111(c)(5). RITA/BTS plans to use the Omnibus Household Survey (OHS) to:

- Assess the public's evaluation of the nation's transportation system in light of the DOT's strategic goals (safety, reduced congestion, global connectivity, environmental stewardship and security, preparedness and response),
- provide a vehicle for the operating administrations within the DOT as well as other governmental agencies, to survey the public about current transportation issues, and
- provide national estimates of transportation mode usage.

Each version of the OHS will focus on some subset of topics taken from the list below. Topics may vary from survey to survey since covering all topics in one questionnaire would make the respondent burden unacceptable:

Choices and Frequency of Mode Use in the Month and the Week Prior to the Survey Data Collection

Commercial air
Privately owned vehicle
Taxi
Rail transit (subway, streetcar, or light rail)
Commuter rail
Transit (local) and intercity (long distance) bus
Intercity rail (Amtrak)
Other modes such as biking and walking

Confidence in the safety of the following modes of transportation

Commercial air
Privately owned vehicle
Taxi
Rail transit (subway, streetcar, or light rail)
Commuter rail
Water transportation (taxis, ferries, ships)
Transit (local) and intercity (long distance) bus
Intercity rail (Amtrak)
Other modes such as biking/walking/ferries

Confidence in the security procedures for the following modes of transportation

Commercial air
Charter/general aviation
Rail transit (subway, streetcar, or light rail)
Commuter rail
Water transportation (taxis, ferries, ships)
Transit (local) and intercity (long distance) bus
Intercity rail (Amtrak)

Assessment of/satisfaction with security procedures for the following modes of transportation

Commercial air
Charter/general aviation
Rail transit (subway, streetcar, or light rail)
Commuter rail
Water transportation (taxis, ferries, ships)
Transit (local) and intercity (long distance) bus
Intercity rail (Amtrak)

Processing through security at

Commercial airports
Train stations
Waterway entry points for ferries, water taxis, cruises

Knowledge of current check-in procedures at

Commercial airports
Train stations
Waterway entry points for ferries, water taxis, cruises

Knowledge of/confidence in the Alien Flight Student Program

Experiences with transit delays related to suspicious/unattended baggage

Willingness/tolerance of transportation security risk management procedures

Information on journey to work

Transportation used (single mode/multiple mode)
Time required for one-way trip
Number of days traveled
Assessment of congestion
Methods for dealing with congestion
Telecommuting information
Commuting costs
Availability of transportation subsidies

Impact of congestion on commute

Impact of on-line shopping on passenger and freight travel

Impact of accessibility of transportation on livability of communities

Assessment of/opinions regarding distracted driving behaviors

Respondents: The target population for the OHS Program is the non-institutionalized population, aged 18 and older, who live in the United States. A national probability sample of households generated using list-assisted random digit dialing (RDD) methodology will be employed by the survey. Individual survey respondents within selected households will be chosen at random. The survey will include a total sample of 1,500 respondents, which is increased from a sample size of 1,000 used by previous data collections. The increase in sample size is due to the inclusion of questions regarding the safety of public transit. In order to ensure that there will be enough samples to produce reliable estimates for those questions, a total of 500 individuals will be oversampled from selected Metropolitan Statistical Areas that provide public transit services.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 25 minutes based on calculations from previous data collections. This is a 10 minute increase from that stated for previous data collections. The increase is largely due to the increase in the length of questionnaire.

Estimated Total Annual Burden: The total annual burden is estimated to be 625 hours (that is 25 minutes times 1,500 respondents equals 37,500 minutes or 625 hours).

Frequency: This survey is scheduled to be conducted annually.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: 49 U.S.C. 111(c)(5) and 5601 and 49 CFR 1.46(h).

Issued in Washington, DC, on the 26th day of January 2010.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2010–2133 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cumberland, Harnett and Wake Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project from north of Fayetteville to the Town of Fuquay-Varina, Cumberland, Harnett and Wake Counties, North Carolina. (TIP Project R–2609)

FOR FURTHER INFORMATION CONTACT: Mr. Clarence W. Coleman, P.E., Director of Preconstruction and Environment, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 747–7014.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) on proposed improvements to the US 401 corridor from north of Fayetteville to the Town of Fuquay-Varina. The purpose of this project is to improve the traffic carrying capacity and mobility on the US 401 corridor. The proposed action is consistent with the Fuquay-Varina Community Transportation Plan adopted in 2006 and the Harnett County Thoroughfare Plan adopted in 1994. Alternatives to be studied include: (1) The "no-build" alternative, (2) improve existing facilities, and (3) potential bypass or new location alternatives.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Citizen's informational workshops and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the workshops and hearings will be provided in the local news media. The Draft EIS will be available for public and agency review and comment at the time of the hearing.

An interagency project team is being assembled to obtain input on major milestones during the project's development. These include the purpose and need, detailed study alternatives, bridge lengths, alignment reviews, the preferred alternative, and avoidance and minimization of environmental impacts.

An interagency scoping meeting for the DEIS was held on April 27, 2009. The meeting was held at 10 a.m. in Raleigh, North Carolina at the NCDOT Transportation Building, 1 South Wilmington Street, in Conference Room 470. To ensure that the full range of issues related to the proposed action was addressed and all significant issues were identified, comments and suggestions were invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 21, 2010.

Clarence W. Coleman,

Director of Preconstruction and Environment, Raleigh, North Carolina.

[FR Doc. 2010–2116 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing the offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before March 29, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, and (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing The Offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1535–0127.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business.

Estimated Number of Respondents: 80.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 2009.

Judi Owens,

Manager, Information Management Branch.

Editorial Note: This document was received in the Office of the Federal Register on January 28, 2010.

[FR Doc. 2010–2138 Filed 2–1–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

DATES: Written comments should be received on or before March 29, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Subscription for Purchase and Issue of U.S. Treasury Securities—State and Local Government Series.

OMB Number: 1535–0092.

Form Number: PD F 4144.

Abstract: The information is requested to establish accounts for the owners of securities of State and Local Government Series.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 6,708.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,713.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 2009.

Judi Owens,

Manager, Information Management Branch.

Editorial Note: This document was received in the Office of the Federal Register on January 28, 2010.

[FR Doc. 2010–2141 Filed 2–1–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond of Indemnity to the United States of America.

DATES: Written comments should be received on or before March 29, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity by Purchaser of United States Bonds/Notes Involved in a Chain Letter Scheme.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 2,400.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 320.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 2009.

Judi Owens,

Manager, Information Management Branch.

Editorial Note: This document was received in the Office of the Federal Register on January 28, 2010.

[FR Doc. 2010–2140 Filed 2–1–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request To Reissue United States Savings Bonds.

DATES: Written comments should be received on or before March 29, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Request To Reissue United States Savings Bonds.

OMB Number: 1535–0023.

Form Number: PD F 4000.

Abstract: The information is requested to support a request for reissue and to indicate the new registration required.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 540,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 270,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 2009.

Judi Owens,

Manager, Information Management Branch.

Editorial Note: This document was received in the Office of the Federal Register on January 28, 2010.

[FR Doc. 2010–2136 Filed 2–1–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

United States Mint

ACTION: Notification of Pricing for 2010 United States Mint Presidential $1 Coin Proof Set. ™

SUMMARY: The United States Mint is announcing the price of the 2010 United States Mint Presidential $1 Coin Proof Set.

The 2010 United States Mint Presidential $1 Coin Proof Set, featuring $1 coins honoring Presidents Millard Fillmore, Franklin Pierce, James Buchanan and Abraham Lincoln, will be priced at $15.95. This set will be released February 11, 2010.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: January 27, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–2131 Filed 2–1–10; 8:45 am]

BILLING CODE P

Federal Register

Tuesday,
February 2, 2010

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, et al.
Hazardous Material; Miscellaneous Packaging Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, and 178

[Docket No. PHMSA–06–25736 (HM–231)]

RIN 2137–AD89

Hazardous Material; Miscellaneous Packaging Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, PHMSA is amending packaging requirements in the Hazardous Materials Regulations to enhance compliance flexibility, improve clarity, and reduce regulatory burdens. Specifically, we are revising several packaging related definitions; adding provisions to allow more flexibility when preparing and transmitting closure instructions, including conditions under which closure instructions may be transmitted electronically; adding a requirement for shippers to retain packaging closure instructions; incorporating new language that will allow for a practicable means of stenciling the "UN" symbol on packagings; and clarifying a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or may be considered a variation of a previously tested design. This final rule also incorporates requirements for construction, maintenance, and use of Large Packagings.

DATES: *Effective Date:* October 1, 2010.

Voluntary Compliance Date: Compliance with the requirements adopted herein is authorized as of March 4, 2010. However, persons voluntarily complying with these regulations should be aware that appeals may be received and as a result of PHMSA's evaluation of these appeals, the amendments adopted in this final rule may be revised accordingly.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, or Ben Moore, Office of Hazardous Materials Technology, (202) 366–4545; Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

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I. Background

On September 1, 2006, we published a notice of proposed rulemaking (NPRM) under Docket HM–231 (71 FR 52017) that proposed to: (1) Revise, remove, and add definitions specific to packaging requirements; (2) amend import and export provisions to require plastic single and composite non-bulk packagings containing Division 6.1 material to be marked "POISON" in conformance with § 172.313(b); (3) revise certain § 172.101 Table entries for packaging requirements; (4) add and revise certain special provisions to authorize the transportation of certain hazardous materials in Large Packagings; (5) clarify shippers' responsibilities for complying with packaging standards; (6) clarify requirements for stacking of bulk packages; (7) correct an error in provisions applicable to intermediate bulk container (IBC) requirements related to gauge pressure; (8) authorize the transportation of bromine residue in cargo tanks; (9) clarify requirements applicable to closure instructions for specification packagings; (10) add exceptions for marking of steel drums; (11) add an exception to permit marking of the UN symbol on specification packagings with a stencil; (12) amend general requirements for the use of certain packaging variations; and (13) add standards and provisions for the manufacture and use of Large Packagings.

Twenty-four persons submitted comments on the NPRM. Most supported adoption of the proposals in the NPRM. Negative comments were generally focused on issues related to record retention of closure instructions, documenting methodologies utilized to determine whether packaging variations achieve an equivalent level of performance to already tested packaging configurations, and the definitions proposed for bulk and non-bulk packaging.

The comments may be reviewed at *http://www.regulations.gov.* For convenience, a list of the commenters is provided below.

Name/company	Date of letter or when received	Document No.
Kathryn W. Pacha	09/05/2006	PHMSA–2006–25736–2
Georgia Department of Public Safety	09/25/2006	PHMSA–2006–25736–3
Regulatory Resources, Inc. (RRI)	10/06/2006	PHMSA–2006–25736–4
Frits Wybenga	10/09/2006	PHMSA–2006–25736–5
European Chemical Industry Council (CEFIC)	10/24/2006	PHMSA–2006–25736–6
The Dangerous Goods Advisory Council (DGAC)	10/26/2006	PHMSA–2006–25736–7
North American Automotive Hazmat Action Committee (NAAHAC)	11/16/2006	PHMSA–2006–25736–8
Kurt Colborn	11/22/2006	PHMSA–2006–25736–9
National Association of Chemical Distributors (NACD)	11/22/2006	PHMSA–2006–25736–10
The Chlorine Institute, Inc	11/22/2006	PHMSA–2006–25736–11
HMT Associates L.L.C	11/21/2006	PHMSA–2006–25736–12
Air Products and Chemicals, Inc. (Air Products)	11/29/2006	PHMSA–2006–25736–13
American Trucking Associations (ATA)	11/30/2006	PHMSA–2006–25736–14

Name/company	Date of letter or when received	Document No.
U.S. Department of Energy (DOE)	11/30/2006	PHMSA–2006–25736–15
Crop Life America (CropLife)	11/27/2006	PHMSA–2006–25736–16
C. L. Smith Company	11/30/2006	PHMSA–2006–25736–17
Flexible Intermediate Bulk Container Association (FIBCA)	11/30/2006	PHMSA–2006–25736–18
Reusable Industrial Packaging Association (RIPA)	11/27/2006	PHMSA–2006–25736–19
Charles E. Tudor, CP–P/MH	11/28/2006	PHMSA–2006–25736–20
Steel Shipping Container Institute (SSCI)	11/29/2006	PHMSA–2006–25736–0022
American Promotional Events, Inc. (APE)	11/30/2006	PHMSA–2006–25736–23
Greg McCanless	10/12/2007	PHMSA–2006–25736–24

On December 1, 2006, we published a correction to the NPRM to correct mathematical calculations under the Paperwork Reduction Act section of the rulemaking. The revision changed the total number of annual respondents from 5,000 to 5,010, and the total number of annual responses from 15,000 to 15,500 for OMB Control No. 2137–0572.

This final rule is designed primarily to enhance safety, clarify specific packaging regulations and to ease and enhance compliance by incorporating changes into the HMR based on PHMSA's own initiative and petitions for rulemaking submitted in accordance with 49 CFR 106.95. We are also adding two new subparts to Part 178—Subpart P–Large Packaging Standards, and Subpart Q–Testing of Large Packagings—to facilitate the use of these packagings.

In this final rule, we are amending the HMR to:

1. Revise the definitions for "Bulk packaging" and "Large packaging" to allow intermediate forms of containment and add a definition for "Strong outer packaging" for consistency and clarity when shipping in non-specification packaging.
2. Revise § 172.101 Table entries to authorize the use of Large Packagings for certain explosives, and revise packaging requirements for "Azodicarbonamide" and "Isosorbide-5-mononitrate."
3. Add and revise special provisions to facilitate the use of Large Packagings.
4. Clarify shippers' responsibilities regarding package closure instructions and electronic transmission, and add new requirements regarding retention and other exceptions.
5. Clarify shippers' responsibilities to comply with the HMR's packaging standards, and to document the method used when determining whether a change in packaging configuration requires retesting as a new design or may be considered a variation of a previously tested design.
6. Correct an error in general IBC requirements related to pressure limits.
7. Authorize the transportation of bromine residue in cargo tanks.
8. Revise requirements applicable to closure instructions to permit manufacturers additional flexibility when preparing and transmitting them.
9. Permit stenciling of the UN symbol on specification packagings.
10. Add new Subparts P and Q to Part 178 to authorize the manufacture, testing, and use of Large Packagings.

This final rule also implements several revisions proposed in the NPRM based on six petitions for rulemaking:

Name/company	Date of letter or when received	Document No.	Petition No.
Monsanto-The Agricultural Group	04/16/1993	PHMSA–RSPA–1993–12657–0001	P–1173
Steel Shipping Container Institute	05/20/1997	PHMSA–RSPA–2002–13401–0001	P–1337
The Association of Container Reconditioners	05/20/1998	PHMSA–RSPA–1998–12610–0001	P–1359
Steel Shipping Container Institute	01/26/1999	PHMSA–RSPA–2002–13401–0001	P–1371
Arch Chemicals, Inc	10/01/2002	PHMSA–RSPA–2002–14130–0002	P–1431
Dangerous Goods Advisory Council	04/19/2005	PHMSA–2005–21091–0001	P–1455

The petitions are discussed in more detail in the appropriate sections of this preamble. Each of these petitions may be viewed at *http://www.regulations.gov* in the docket for this rulemaking.

II. Provisions Adopted in This Final Rule

Following is a discussion of the comments we received in response to the 2006 NPRM and a detailed explanation of the provisions we are adopting in this final rule.

A. Definitions

Section 171.8 contains the general definitions and section references that apply to the HMR. In the NPRM, we proposed to revise the definitions in this section for bulk, non-bulk, and large packaging; remove the definition for strong outside container; and add definitions for reconditioned, remanufactured, and strong outer packagings.

Bulk and Non-bulk Packaging. In the NPRM, we proposed to revise the definitions for "Bulk packaging" and "Non-bulk packaging" based on the particular packaging specification at issue and volumetric capacity. The proposed changes were prompted by a petition from Monsanto Company (P–1173) and designed to make the definitions easier to understand. In the NPRM, we proposed to remove the maximum net mass and water capacity limits from these definitions and replace them with requirements that emphasize packaging type and the performance-oriented packaging standards of Subparts C, L, and M of 49 CFR Part 178, as applicable. We proposed these changes to clarify the current definitions, eliminate confusion, and enhance voluntary compliance. We did not intend to change the quantity thresholds in the HMR for bulk or non-bulk packagings.

The majority of commenters object to the proposed changes. The commenters have the following concerns:

1. *Applicability of the proposed definitions to cylinders.* Three commenters (the NACD, The Chlorine Institute, Inc., and Air Products) suggest that the proposed definition for "bulk packaging" could be interpreted to cover the DOT 3AX, 3AAX, and 3T bulk cylinders. In its comments, NACD states

that these containers have traditionally been considered non-bulk packagings and have been handled as such without safety problems. All three commenters are concerned that this "re-definition" will adversely affect the transportation of many compressed gases and could result in the application of regulatory requirements specific to the transportation of bulk packages to transporters of larger chlorine cylinders, essentially eliminating a common transportation method for transporting DOT 3AAX cylinders by highway. The commenters also contend that this change would place a substantial burden on shippers and users of chlorine with no safety justification because historically these packagings have had few problems in transportation.

2. *Applicability of the proposed definitions to RAM.* The U.S. Department of Energy (DOE) is strongly opposed to a bulk/non-bulk distinction with regard to radioactive materials (RAM) packaging. DOE states that packaging requirements for RAM have historically been based on risk and containment only, without consideration for volume. DOE also cites a previously issued interpretation that stated that RAM packagings are generally considered non-bulk (Reference Number: 01–0153). DOE is specifically concerned with the implications of bulk venting requirements and the removal of the restriction on intermediate forms of containment in bulk packagings. DOE is further concerned that current requirements restricting the venting of bulk packagings would prevent necessary venting of certain RAM packagings if they are classed as "bulk."

3. *Volumetric capacity limits and Harmonization with United Nations (UN) Model Regulations.* Nine commenters state that the non-bulk packaging definition should be based on UN Model Regulations (*i.e.,* no volumetric limit for solids). These commenters assert that use of the UN Model Regulations allows non-bulk packagings with volumetric capacities greater than 450 liters (119 gallons) provided the weight does not exceed 400 kg (882 pounds). Generally, the commenters assert that the lack of harmonized definitions places U.S. companies at a competitive disadvantage and appears to provide no safety benefits, while a harmonized standard would promote flexibility and cost-effectiveness. The RIPA agrees it may be beneficial to harmonize with the international requirements, but believes all the consequences of such a change should be considered more fully in a separate rulemaking.

4. *Necessity of definitions.* Two commenters (DGAC and APE) state the definitions for bulk and non-bulk packaging should be removed from the HMR. In its comments, DGAC states that the delineation is arbitrary and that the terms no longer serve a useful purpose in regulation. APE states these terms are not used in international regulations, and in its experience using these terms is detrimental to U.S. industry and offers no safety benefits.

On the other hand, Kathryn W. Pacha states "Removal of the volumetric requirement from the definition could make the application of markings, labels, and placards more confusing and not less." Ms. Pacha supports the volumetric limit in the current version of the HMR and stated in her comments: "From the perspective of emergency responders, if a package looks big, it should be communicated as "big" since communication requirements are for emergency responders." RIPA also opposes removing the volumetric limits in the HMR for bulk and non-bulk packagings because it finds the proposed definitions more confusing than the originals, and believes without these volumetric definitions the distinction between IBCs and drums could disappear.

Based on the overwhelming opposition to the proposed definitions for "bulk packaging" and "non-bulk packaging," we are not adopting the proposed definitions in this final rule. Packaging manufacturers and shippers should be aware that packagings with a volumetric capacity greater than 450 liters (119 gallons) as a receptacle for a liquid, both a maximum net capacity greater than 450 L (119 gallons) and a maximum net mass greater than 400 kg (882 pounds) as a receptacle for a solid, and a water capacity greater than 454 kg (1,000 pounds) as a receptacle for a gas are bulk packagings under the HMR regardless of the weight or volume of the hazardous material contained therein. *See* § 171.8. We want to emphasize for packaging manufacturers and shippers that the bulk packaging definition is based on the capacity of a packaging, not on the actual amount contained in the packaging at shipment. Thus, packagings with the bulk volumetric capacity mentioned earlier in this paragraph are bulk packagings for purposes of the HMR regardless of the weight or volume of the hazardous material contained therein.

In this final rule, we are removing the phrase "with no intermediate form of containment" from the definition of a "bulk packaging." Modifying the definition in this way clarifies that Large Packagings, which contain inner packagings, are considered bulk packagings for purposes of the HMR. Commenters did not oppose this change.

In conjunction with our proposal to revise the definitions for "bulk packaging" and "non-bulk packaging," we proposed to define standards for each specific non-bulk specification packaging type. We proposed to amend §§ 178.512 through 178.521 to specify volumetric capacity may not exceed 450 L (119 gallons) for the following packaging design types: aluminum boxes, natural wood boxes, plywood boxes, reconstituted wood boxes, fiberboard boxes, plastic boxes, woven plastic bags, plastic film bags, textile bags, and paper bags. The purpose was to eliminate uncertainty in determining if a package is a bulk package or a non-bulk package.

Commenters strongly oppose the revised definitions and the revisions to §§ 178.512 through 178.521. As discussed above, we are not adopting the proposed definitions for non-bulk and bulk packagings in this final rule. Similarly, we are not adopting the revisions proposed for §§ 178.512 through 178.521. However, packaging manufacturers and shippers should be aware that packagings with a volumetric capacity greater than 450 liters (119 gallons) are bulk packagings regardless of the weight of the hazardous material contained in the packaging.

Strong outside container and strong outer packaging. In the NPRM, we proposed to remove the definition for "strong outside container" and add a new definition for "strong outer packaging." Currently, the HMR use the terms "strong outside container," "strong outside packaging," and "strong outer packaging" interchangeably; however, there is no definition for "strong outer packaging" or "strong outside packaging" in § 171.8. Therefore, we proposed to remove the wording "strong outside container" and "strong outside packaging," add the language from the "strong outside container" definition to a new definition for "strong outer packaging," and add additional language to the new definition as follows:

Strong outside container vs. strong outer packaging	Current	Proposed
	Strong outside container means the outermost enclosure which provides protection against the unintentional release of its contents under conditions normally incident to transportation.	*Strong outer packaging* means the outermost enclosure which provides protection against the unintentional release of its contents. It is a packaging, which is sturdy, durable, and constructed so that it will retain its contents under normal conditions of transportation, including rough handling. In addition, a strong outer packaging must meet the general packaging requirements of subpart B of part 173 of this subchapter but need not comply with the specification packaging requirements in Part 178 of the subchapter. For transport by aircraft, a strong outer packaging is subject to § 173.27 of this subchapter.

Three commenters, RRI, the DGAC, and the NAAHAC, submitted comments in support of the proposed new definition. RRI and NAAHAC strongly support the new definition; however, they disagree with the use of the phrase "including rough handling" following the long-used phrase "normal conditions of transport" because it implies that rough handling is "normal." In the course of transportation, packages are handled in a manner that can be characterized as "rough." Rough handling is common and may occur any time a package is loaded or unloaded in a hurried manner, shifts while in a transport vehicle, or is dropped from a height of more than a few inches (*e.g.,* three inches). After further consideration, we have concluded that adding the phrase "including rough handling" is redundant and inconsistent with other HMR provisions that include the phrase "normal conditions of transportation." Therefore, in this final rule we are removing the phrase "including rough handling" from the definition proposed in the NPRM.

DGAC supports the new definition for "strong outer packaging" but questions the need to reference Subpart B of Part 173 and § 173.27. DGAC contends that most strong outer packagings are used to transport limited quantities, the regulatory requirements for which already reference Subpart B. The commenter is correct that the regulatory requirements applicable to limited quantity shipments already reference Subpart B. However, there are a number of instances in the HMR authorizing the transportation of certain classes and quantities of hazardous materials, other than limited quantities, in strong outer packagings. Including the references to Subpart B of Part 173 and § 173.27 in the definition for "strong outer packaging" will contribute to an increased level of regulatory compliance by cross-referencing the requirements that apply.

PHMSA notes none of the commenters objected to the interchangeable manner in which "strong outside container," "strong outside packaging," and "strong outer packaging" are currently used in the HMR. Although "strong outer packaging" is used the most in the HMR, to PHMSA's knowledge, the interchangeable use of this wording with strong outside container and strong outside packaging has resulted in little or no confusion to the shipper. Further, we believe that removing "strong outside container" and "strong outside packaging" from the HMR may cause confusion for the regulated community that may compromise safety, whereas adding the definition for "strong outer packaging" and a sentence at its end that states the three terms are interchangeable may clarify their meaning. Therefore, in this final rule we are adding a sentence to the end of the new definition for "strong outer packaging" in § 171.8 to clarify that "strong outside container" and "strong outside packaging" are synonymous in meaning with "strong outer packaging."

Remanufactured packaging, Reused packaging, and Reconditioned Packaging. Currently, the HMR define "remanufactured packaging," "reused packaging," and "reconditioned packaging" in § 173.28. In the NPRM, we proposed to add a reader's aid to § 171.8 to refer to the definitions for "remanufactured packaging" and "reconditioned packaging" in § 173.28. We did not propose a reference to "reused packaging" in the NPRM. RIPA supports the addition of the reader's aids for "remanufactured packaging" and "reconditioned packaging" in § 171.8, and suggests that PHMSA should also add a reference for "reused packaging" in § 171.8. We agree. In this final rule, we are adding a reference for "reused packaging" in § 171.8.

B. Plastic Packagings Used To Transport Poison Materials

Section 171.23 establishes conditions under which shippers may use the international standards as authorized by the HMR for shipments transported to, from, or within the United States. Arch Chemicals, Inc. ("Arch") petitioned PHMSA (P–1431) to amend this section to reference the marking requirement in § 172.313(b). Paragraph (b) of § 172.313 requires plastic single and composite non-bulk packagings containing Division 6.1 material to be marked "POISON." The purpose of this marking is to inform persons who may wish to re-use a packaging that previously contained a poisonous material that the packaging should not be used for foodstuffs because the poison may have permeated the packaging material. In its petition, Arch states that, because § 171.23 does not require compliance with § 172.313, import shipments need not have this marking, creating an inconsistency in the HMR. Thus, in the NPRM we proposed to require import and export shipments to be marked in accordance with § 172.313(b).

Several commenters, including Arch, oppose this proposal. Instead, they suggest that we eliminate the domestic marking requirement. Two commenters, Air Products and CropLife, state the term "poison" is not used in international regulations. CropLife further states it believes the United States should not require that "poison" be marked on foreign plastics that contain these types of materials without evidence the requirement will achieve measureable safety improvements. Commenters also state that the current requirements are outdated because newer plastics have been developed since § 172.313(b) was originally incorporated into the HMR. The newer plastics are designed so that they could be filled with a poison material, cleaned, and filled with a foodstuff safely.

In this final rule we are not adopting the proposed change due to overwhelming opposition to the proposal, including opposition from the original petitioner. Comments concerning elimination of the domestic marking requirement are beyond the scope of this rulemaking. PHMSA may consider revisions to the import-export requirements or a proposal to the UN as a future initiative.

The Dangerous Goods Advisory Council (DGAC) notes that PHMSA permits the use of the word "TOXIC" in the place of "POISON." We agree that TOXIC can be used in place of POISON throughout the HMR. Therefore, we are not revising § 172.313 in this final rule to clarify further that the HMR permit the word "TOXIC" to be used as an alternative to the word "POISON."

C. Revisions to the Hazardous Materials Table

The Hazardous Materials Table (HMT) in § 172.101 lists the proper shipping name, hazard class, and identification number that must be used to describe a hazardous material in transportation. In the NPRM, we proposed several minor amendments to the HMT related to packaging provisions. We received no comments on these proposals; therefore, we are adopting them as proposed in this final rule.

We are amending the entries for "Azodicarbonamide" and "Isosorbide-5-mononitrate." Because these materials pose similar hazards, they are best packaged in the same manner as Musk xylene (5-tert-Butyl-2,4,6-trinitro-m-xylene). We are changing their references for non-bulk packaging to § 173.223. To authorize the transportation of certain explosives in Large Packagings consistent with the UN Recommendations, several entries for explosives are revised to read "62" rather than "none" in Column (8c). We are also making editorial changes to the special provisions and vessel stowage requirements for these entries in the HMT.

As proposed in the NPRM, we are revising § 173.223 for consistency with the revised HMT entries for "Azodicarbonamide" and "Isosorbide-5-mononitrate." PHMSA received no comments on the language change proposed in the NPRM, and will adopt these provisions as proposed.

D. Exceptions for Shipments of Waste Materials

Section 173.12 establishes conditions for reuse of previously used packagings for the transportation of hazardous waste. The Association of Container Reconditioners (ACR) (P–1328) petitioned PHMSA to amend § 173.12(c). ACR states the minimum thickness criteria specified in § 173.28(b)(4) for the reuse of metal and plastic drums and jerricans should be applied to packagings reused for waste materials under the exception in § 173.12(c). ACR contends that hazardous waste packagings currently excepted under § 173.12(c) should be subject to minimum thickness criteria, and that the inclusion of § 173.12(c) is an oversight and was inadvertently incorporated into the HMR as part of Docket HM–181 (December 21, 1990; 55 FR 52401).

The exception in § 173.12(c) is not authorized for a packaging intended to be used more than two times (initial use and the return shipment of the waste product). A package may only be shipped under this exception once and must meet the following conditions: (1) It may only be transported by highway; (2) it must be loaded by the shipper and unloaded by the consignee or shipped by a private motor carrier; (3) the packaging may not be offered for transportation less than twenty-four hours after it is finally closed for transportation and; (4) each package must be inspected for leakage and found to be free from leaks immediately prior to being offered for transportation. If the packaging is subsequently reused, it will be subject to the minimum thickness requirements in § 173.28(b)(4). The significant restrictions of § 173.12(c) and the fact that the exception may only be used once per packaging make it unnecessary to require a shipper to comply with the minimum thickness criteria in § 173.28(b)(4). Therefore, we do not believe that the packages that comply with the restrictions in § 173.12(c) need to comply with the minimum thickness criteria in § 173.28(b)(4). We also do not believe that the costs associated with the impacts of both petitioners' requests are commensurate with the benefits and, therefore, in this final rule we are denying their petitions.

Citing safety as their concern, RIPA supports maintaining minimum thickness criteria for steel and plastic drums reused for one-time shipments of hazardous wastes under the waste exceptions in § 173.12. RIPA suggests that the uncertainty in characterizing these wastes warrants more stringent requirements for their packaging. We disagree. As we previously stated, based on the additional provisions that must be met in § 173.12(c), we concluded that there will be minimal, if any, additional safety benefit as a result of an additional minimum thickness requirement for this exception and there would be significant additional cost associated with the addition of such a requirement.

E. Packaging Closure Instructions

In accordance with § 178.2(c), a packaging manufacturer and subsequent distributors of the packaging must provide written instructions for assembling and closing the packaging so that it will maintain its integrity during transportation. However, this section does not specify how detailed the closure instructions must be or what they must include. Generally, we expect that the closure instructions will provide for a consistent and repeatable means of closure. For example, the manufacturer's closure instructions could specify a range of torque values applicable to the closure or a detailed closure method (*e.g.,* tighten the cap until the bottle contacts the cap gasket and then tighten an additional ¾ turn). Alternatively, the packaging and closure could be designed with a stop feature of other indexing to indicate how the cap should be tightened. The closure instructions should be consistent with the language in the packaging test report and written so the user is able to duplicate the closure method. In the NPRM, we proposed to add language to § 178.2(c) to clarify closure instruction requirements. The new language clarifies that any closure method is authorized provided that it is measurable and repeatable.

Several commenters express concern with this new language, suggesting that it is a significant, unnecessary, and potentially costly new requirement (RIPA); that it will be ineffective because closure failures, when they occur, are more likely the result of human error and not closing the package in accordance with the closure instructions (DGAC); and that it may not always be possible to employ a closure method that is "measurable" (FIBCA) or "repeatable" (RIPA).

Comments are not correct that the proposed language requiring packagings to be closed "in the same manner" as when the package design type was tested is a new requirement; this is a longstanding regulatory requirement. The proposed revision to this section was intended to clarify that packaging closure methods must be consistent and repeatable, but need not necessarily require instruments such as a torque wrench.

We are confident that manufacturers will be able to develop closure methods for all packagings that are both repeatable and measurable. The meaning of the term "measurable" will differ depending on the type of packaging. For example, on a bottle

"measurable" could be the torque setting on a torque wrench or the number of turns (or fraction thereof) past contact with a gasket. In the case of a flexible packaging, it could be the setting on a sewing device, type and grade of thread, the type of glue, the location where the tie-off is to be placed, or pressure settings on a sealing device. We agree that certain closure methods are not measurable in the sense that they cannot be quantified with a number and a unit of measure (*e.g.,* 25 inch-pounds).

In this final rule, we are revising § 178.2(c)(1)(ii) to clarify that closure instructions must provide for a repeatable means of closure consistent with the means of closure used for performance testing. This change is intended to provide additional flexibility to packaging manufacturers and allow for packagings with a simpler means of closure.

In addition, in this final rule we are amending § 178.2(c) to clarify that a packaging manufacturer may transmit the information required in this section, including closure instructions, using electronic means instead of or in addition to making a written notification. Such electronic means of notification may include emailed transmissions or transmission on a CD or other similar device. Permitting the use of electronic means to meet the notification requirements in this section provides manufacturers with additional flexibility and will reduce compliance costs. Note that if a manufacturer elects to utilize electronic measures to make the required notifications, he must make a positive notification—that is, he must email or transmit the information specific to the packaging in question and the transmission must be in a form that can be printed in hard copy by the person receiving the notification. Referring the person receiving the notification to a website for the required information is not acceptable.

In the NPRM, we proposed to revise the shipper's responsibilities in § 173.22(a)(4) to include a requirement to retain a copy of the packaging closure instructions provided by the packaging manufacturer. As proposed, a shipper would be required to retain closure instructions for at least 375 days. Current requirements specify that the person transferring the packaging to the shipper or distributor must furnish a copy of the closure instructions; however, there is no requirement for the shipper to retain the documentation.

A number of commenters (RIPA, DGAC, Mr. Frits Wybenga, Air Products, FIBCA, CropLife, and SSCI) oppose a requirement for shippers to retain packaging closure instructions. These commenters state the proposed requirement imposes a significant new record retention requirement without adequate justification or underlying data. RIPA states it "is unaware of any data or other evidence developed by DOT to support its proposal. In fact, it is quite probable that leaks from closures are more often the result of human error rather than the unavailability of adequate closure instructions." RIPA suggests that if the proposal is adopted, the record retention period should be limited to 365 days and shippers should be required to retain only one current copy of a manufacturer's closure notification. Several commenters questioned the safety benefit of retaining packaging closure instructions for 375 days.

Two commenters (DOE and NAAHAC) support the proposal to ensure that the necessary closure instructions and supporting test documents are available and used, but DOE's request that PHMSA clarify how this proposed requirement would apply to gas cylinders, cargo tanks, and portable tanks. DOE also requests that PHMSA simplify the retention requirement for variation packagings to keep document retention costs at a minimum. Air Products states precautionary labels exist on compressed gas cylinders that include closure instructions, and questions what benefit additional closure instructions would provide. NAAHAC requests that only the initial shipper be required to provide closure instructions and supportive documentation, if applicable, to the second user of the package. NAAHAC states "to require that all of this information be provided to and maintained by [each] subsequent shipper who has opened the package and is reusing it would place a significant burden on the industry." The NACD suggested, if a sufficient need can be demonstrated for retaining the closure instructions, that PHMSA require each shipper to retain an on-site master list of closure instructions and variations instead of those for each individual packaging to reduce the amount of paperwork.

Underlying our NPRM proposal to require shippers to retain packaging closure instructions was our belief that, in the absence of a regulatory requirement, most shippers retain closure instructions as a responsible business practice to ensure that employees know how to properly close a package. We, therefore, assumed that imposition of a regulatory requirement would result in only a minimally increased paperwork burden. However, the commenters indicate that retention of closure instructions is not a common practice.

We continue to believe that shippers should retain and utilize the closure instructions provided by packaging manufacturers to ensure these packagings, including those with variations, are properly prepared and closed for transportation. As we stated in the NPRM, a packaging may be filled and closed by a hazmat employee other than the individual who receives the manufacturer's packaging closure instructions. Moreover, a packaging may not be filled and closed for weeks or months after it has been sold or otherwise transferred to the shipper. In the absence of closure instructions, the shipper and its employees may not know how to properly close the package. Indeed, in its comments on proposed revisions to § 178.2(c) (discussed elsewhere in this preamble), DGAC states that closure failures, when they occur, are likely the result of not closing the package in an accordance with the closure instructions. Our incident data shows that the primary cause of incidents involving leakage from packages in transportation is improperly closed packages.

We agree that human error often results in leaks from closures, and we believe that use of accurate closure instructions will result in fewer instances of human error. A hazmat employee's ability to properly close a hazardous materials packaging is significantly compromised without the manufacturer's closure instructions. Retention of and adherence to the closure instructions will help to ensure hazardous materials packages are closed as the manufacturer intended, thereby reducing the possibility that these packages will leak or be breached during transportation. This will also provide consistency for training. There are many employees that do not perform hazardous material related functions daily, so on the occasion when they are requested to do so, having instructions to use as a guide will assist them with performing these tasks in conformance with the regulations. Therefore, we are retaining this requirement and, in response to the comments, are slightly reducing the number of days of retention to 365 and adjusting our estimates of the compliance burden, including the paperwork burden, to account for the fact that most shippers do not currently retain closure instructions.

We note that a shipper may retain closure instructions in a variety of ways that may prove cost effective. For example, a shipper may maintain closure instructions in an electronic

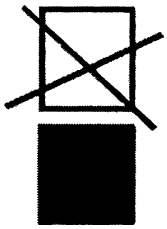
format or as part of a package of guidance material for hazmat employees who are responsible for filling and closing packagings. Further, the closure instructions need not be maintained in the precise format or wording provided by the manufacturer. If a shipper identifies a more effective way to communicate closure instructions to its hazmat employees—such as through graphical or pictorial depictions, step-by-step instructions, simplified wording, or similar methods—a shipper may do so provided the substance of the closure instructions is retained. The closure instructions should be retained in a format that will ensure that each hazmat employee responsible for closing the packaging to which the instructions apply understands the instructions and can apply them consistently. Therefore, in this final rule, we are adopting a requirement for shippers to retain packaging closure instructions provided by the packaging manufacturer for at least 365 days after offering the package for transportation. We are also adopting an exception from this requirement for closure instructions that are permanently embossed or printed on the packaging.

F. General Requirements for Bulk Packagings

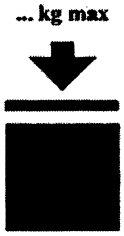
In the NPRM, we proposed a new paragraph § 173.24b(e) to clarify that bulk packagings not designated and tested for stacking may not be stacked during transportation. In addition, we proposed adding language to clarify that bulk packagings intended for stacking may not have more weight superimposed upon them than what is marked on the packaging. Currently, the requirements in § 173.24b(e) apply to IBCs and Large Packagings only. *See* existing § 178.703(a)(1)(vii) and new § 178.903(a)(1)(vii) in this rule. The HMR require bulk packagings designed or intended to be stacked to meet stacking test requirements, either through performance testing specifically prescribed in the HMR or industry standards incorporated-by-reference into the HMR (see § 171.7). However, the HMR do not always require the maximum load that can be stacked on the packaging to be marked or indicated on the packaging in the same manner as it requires this information on IBC and Large Packagings. Adopting the language proposed in the NPRM for § 173.24b(e) may add additional testing, marking, and paperwork activities for some bulk packagings that were not previously considered under this rulemaking action or that may already be addressed under some other type of informational marking. Therefore, we are not revising existing § 173.24b(e) in this final rule. We will continue to examine this issue to determine if additional rulemaking action is necessary. The comments we received on this subject in response to this rulemaking will be taken under consideration if we develop a future rulemaking.

Air Products, ATA, CropLife, RIPA, and DGAC supported aligning the stacking requirements for IBC and Large Packagings with those the UN Subcommittee on the Transport of Dangerous Goods was considering at the time this NPRM was published, which included incorporating specific symbols to indicate if these packages could or could not be stacked during transportation. In December 2006, the UN Subcommittee adopted these symbols in the 15th edition of the UN Recommendations as a stacking mark for IBCs packagings only that are manufactured, repaired, or remanufactured on or after 1/1/2011. We've repeated the symbols here for your convenience. They are also located in the ATA's comments (PHMSA–2006–25736–0014).

IBCs not capable of being stacked



IBCs capable of being stacked (must include the maximum stacking weight):



In a final rule PHMSA issued on January 14, 2009, PHMSA incorporated these symbols for IBCs into § 178.703 of the HMR (see Docket Nos. PHMSA–2007–0065 (HM–224D) and PHMSA–2008–0005 (HM–215J); 74 FR 2200). This section requires manufacturers of IBC packagings that are manufactured, repaired, or remanufactured after 1/1/2011 to mark IBCs with the appropriate symbol, and for those that successfully pass the stacking test prescribed in § 178.815 to include the weight of material that may be safely stacked on the packaging as part of the stacking symbol and specification marking. A packaging not subjected to a stacking test must be marked to indicate that it may not be stacked. For example, the "0" in the second from last position of the following UN standard marking "UN51H/Z/06 04/USA/+ZT1235/*0*/500" indicates that the packaging must not be stacked. If a number greater than zero is in this same position in the marking, such as the number "250" in the following example "UN51H/Z/06 04/USA/+ZT1235/*250*/500," the package may be stacked provided the gross weight stacked upon it does not exceed this number in kilograms. Commenters on this provision in the Docket No. HM–215J rules stated the new stacking symbol is easier for carriers to recognize and understand.

The ATA strongly encourages PHMSA to communicate this stacking requirement to carriers, who often are responsible for loading hazardous materials packages. We have already begun incorporating information about these IBC stacking requirements in our training programs and materials. However, we have not determined at this time whether to require the IBC stacking capability symbols for Large Packagings. PHMSA may consider such action in a future rulemaking.

G. Reuse, Reconditioning, and Remanufacture of Packagings

In the NPRM, we proposed to clarify that packagings not meeting minimum thickness criteria may not be reconditioned or remanufactured. DGAC and RIPA strongly oppose this proposal. Both commenters state remanufactured packagings, such as drums and jerricans, should be treated as "new" packagings under the HMR. Since newly manufactured packagings are not subject to minimum thickness criteria, these commenters assert that remanufactured packagings also should not be subject to such criteria.

The commenters are correct that remanufactured packagings are filled and transported in the same manner as new packagings. For this reason, however, we believe it is critical for transportation safety that the packaging remanufacturer confirm that they are suitable for transportation. The minimum thickness criteria currently prescribed in § 173.28 are designed to prevent packagings with wall thicknesses that are too thin to safely perform their containment function from being reused, reconditioned, or remanufactured. The proposed revisions were intended to clarify that when a packaging no longer meets the minimum thickness criteria, it is no longer suitable for reconditioning or remanufacturing. However, we note that this provision applies to packagings

intended for reuse as well. Therefore, we are adopting the revisions as proposed and adding reused packagings to clarify that the minimum thickness provision applies to reused, reconditioned, and remanufactured packagings.

In § 173.35(h)(2), we are correcting an error in the pressure limitation for metal IBCs. Currently, paragraph (h)(2) prohibits the gauge pressure in a metal IBC from exceeding 110 kPa (16 psig) at 50 °C (122 °F), or 130 kPa (18.9 psig) at 55 °C (131 °F). Use of the term "gauge pressure" is an error. We are correcting this by changing the phrase "gauge pressure" to read "vapor pressure." We received no comments on this issue.

H. Packaging Marking Requirements for Drums

Under the HMR, DOT specification and UN standard packagings must be marked with their package specification markings as specified in §§ 178.3 and 178.503. Section 178.3(a) requires that the marking must appear on a non-removable component of the packaging. Section 178.3(a)(5) requires that packagings with a gross mass of 30 kg (66 pounds) or more must have their original or duplicate specification markings appear on the top or side of the packaging. Section 178.3(c) states a packaging that conforms to more than one DOT specification or UN standard may display each specification marking in its entirety at each location the markings appear provided the packaging meets the requirements for each standard or specification. Further, under § 178.503(a)(1), UN standard markings described in paragraphs (a)(1) through (a)(6) (*i.e.,* UN symbol, identification code, performance standard, specific gravity or mass, hydrostatic pressure, and year of manufacture) and (a)(9)(i) (*i.e.,* nominal thickness of packagings intended for reuse or reconditioning) must appear in a permanent form on the bottom of each new metal drum with a capacity greater than 100 L (26 gallons); however, the markings on the top, head or side of these drums need not be permanent.

SSCI petitioned PHMSA (P–1371) to modify the marking requirements under §§ 178.3(a)(5) and 178.503(a)(10) for packagings with a gross mass of more than 30 kg (66 pounds). In its petition, SSCI requests PHMSA change the HMR to allow the duplicate marking to be a lesser design standard than that marked on the bottom of the packaging. For example, a packaging would be tested and marked on the bottom as meeting the Packing Group I performance standard and the duplicate marking on the side would indicate that the packaging is certified to the Packing Group II performance standard. SSCI states some shippers will not accept a drum marked for PG I materials if they are shipping PG II or III materials. SSCI says the requested change would reduce the need to test drums differently for different customers, thereby reducing potential inventory problems and increasing flexibility for both manufacturers and shippers. PHMSA proposed the change in the NPRM to this rulemaking.

Several commenters, including RRI, DOE, and RIPA, opposed the proposal. These commenters state potential confusion could result from the presence of different performance standard markings that do not appear together in the same location on the same drum. RIPA notes that dual marking of drums in this manner would be confusing, particularly because RIPA states the "official" certification mark for drums is the top or side mark, not the bottom mark. Once a drum is filled and in transportation, RIPA states the only mark that need be accessed to determine compliance would be the side marking. Thus, the test data for the drum marked to the PG I standard on the bottom and the PG II or PG III standard on the side would be required to show that the drum passed the PG II or PG III performance tests, not the PG I test. Also, if the top and/or side marking is removed during reconditioning, RIPA suggests there is no way to accurately trace the standard to which the drum was originally manufactured.

A DOT specification or UN standard packaging must be marked as specified in §§ 178.3 and 178.503. Section 178.3(a) specifies that the marking of DOT specification or UN standard packagings shall be placed on a non-removable component of the packaging in an unobstructed area, and shall provide adequate accessibility. The HMR do not require markings to be placed in a specific location for non-bulk packages with a gross weight less than 30 kg (66 pounds). For packages with a gross mass of more than 30 kg (66 pounds), as prescribed in § 178.3(a)(5), the markings or a duplicate marking must appear on the top or side of the packaging. In accordance with § 178.503(a)(1), every new metal drum having a capacity of 100 L must bear the marks described in paragraphs (a)(1) through (a)(6) and (a)(9)(i) in a permanent form on the bottom. The markings on the top, head or side of these packagings need not be permanent. In addition, as specified in § 173.28(b)(4), metal and plastic drums and jerricans used as single packagings or the outer packagings of composite packaging more than once must be marked in a permanent manner (able to withstand the reconditioning process) with the minimum thickness of the packaging material.

In this final rule, we are not revising §§ 178.3(a)(5) and 178.503(a)(10) to allow a lesser design standard to be marked on the side or top than that required on the bottom. We agree with the objecting commenters that this change may result in confusion and this resulting confusion could impact safety, especially if the correct marking becomes separated from the container (*e.g.,* if a lid with the correct marking becomes separated from the container, the container is filled with a hazardous material that has a higher packing group rating than that marked on the side or top, or if a filled container is too heavy to read its highest performance rating marking on its bottom surface). Further, as stated earlier in this preamble, the HMR already permits DOT specification and UN standard packagings to bear more than one specification marking if the packaging meets the requirements of each design standard or specification, and these markings appear together and in their entirety at each location they are placed on the packaging. Section 178.503(c)(2) of the HMR permits a packaging that has been reconditioned to bear markings that identify a different performance capability than the original tested design type of the packaging, and these markings may even be different from those permanently marked on the bottom of a drum, but these markings may not identify a greater performance capability than the original tested design type. This provision permits the reconditioner to permanently downgrade a packaging (*e.g.,* an "X" rated PG I packaging to a "Y" PG II packaging) provided the new marking includes the reconditioner's mark. This practice does not apply to new packagings because dual marking for these packagings is already authorized under the HMR.

I. UN Symbol Marking

The Dangerous Goods Advisory Council (DGAC) petitioned PHMSA (P–1455; Docket PHMSA–2005–22474–2) to allow stenciling of the United Nations symbol (UN Symbol). The HMR do not currently prohibit stenciling of the UN symbol; however, the current marking requirements in § 178.503 discourage stenciling because they do not tolerate even small gaps in the circle surrounding the letters "u" and "n." The only way to stencil the UN symbol without leaving gaps in the circle is to use a two-step stenciling system. DGAC states that a two-step process introduces

variability, which often results in a smeared image. In the NPRM, we proposed revising § 178.503 paragraphs (a)(1) and (e)(1) to include an objective standard under which small gaps in the UN symbol are permitted. We proposed restricting the gaps to a size no greater than ten percent of the circumference of the circle and the number of gaps to no more than three to ensure that the symbol will remain readily identifiable.

Three commenters (RIPA, Charles E. Tudor, and SSCI) support the proposal. However, the commenters suggest that PHMSA adopt a more performance-based approach and permit a stenciled mark so long as it is legible and readily identifiable. Specifying the permissible number, size, and placement of gaps in the symbol allows any person to determine whether his or her stencil meets the standard without a case-by-case regulatory determination by PHMSA. Another commenter, the DGAC, recommends PHMSA adopt a similar approach to that of the UN Subcommittee, which considered stenciling the UN symbol mark acceptable without establishing any specific provisions on stenciling. The DGAC also supports adding language to permit a stenciled UN mark if it is identifiable from a normal reading distance, which it states can be implied from a letter of clarification PHMSA issued on another type of marking process when it was the Research and Special Programs Administration. If PHMSA does retain the regulatory language to permit stenciling, the DGAC recommends that the proposed requirements in paragraphs § 178.503(e)(1)(ii)(A) through (e)(1)(ii)(D) be removed.

In this final rule, we are adopting the proposal to permit the UN symbol to be stenciled on a packaging. In response to Charles E. Tudor's comments, we are modifying the proposed standard to allow four gaps in the circle, and we are adopting a total gap size no greater than 15 percent of the circumference of the circle to accommodate the fourth break in the circle. Consistent with this revision, in this final rule we are revising § 178.703 (a)(1)(i) to authorize stenciling of the UN symbol for IBCs.

J. Design-Type Variations

Current § 178.601(g)(1) provides exception "Variation 1" that allows a person to substitute an inner receptacle without additional testing to demonstrate compliance with the applicable performance standard if it can be determined that the substitute inner packaging, including its closure, maintains an equivalent level of performance as the originally tested package. The current requirements do not specifically require documentation of the methodology used to determine that a packaging maintains an equivalent level of performance. In the NPRM, we proposed to revise § 178.601(g)(1) to require the person making a change to a packaging design under the provisions of Variation 1 to document the methodology used to demonstrate equivalent performance.

Air Products and DGAC do not support the proposed amendment to document an equivalent level of performance. They both state the proposed text suggests that a detailed analysis would be required and that such a detailed analysis would negate the benefits currently derived from using the variation. DGAC states that it is not aware of any incidents stemming from substituted inner packaging under Variation 1. Air Products also states the proposed amendment will create disharmony with international standards and constitutes a significant increase in paperwork requirements. RIPA does not oppose the new requirement, but asks that PHMSA take steps to make sure the paperwork burden isn't substantial, and that existing combination packagings that are already authorized be grandfathered for compliance purposes.

NAAHAC strongly supports the proposed changes stating "This clarifies the process that the package designer/tester must use in certifying the packaging." The C. L. Smith Company supports PHMSA's proposed changes but suggests we provide more detailed guidance on how to determine whether or not a packaging meets the "equivalent level of performance" standard, especially for plastic inner packagings which vary widely in performance based on variations in the type and amount of ingredients used to make these packagings (*e.g.,* colorants, additives, and regrind materials), as well as manufacturing processes and cooling rates. The C. L. Smith Company also asks what kind of data would be sufficient to show an equivalent level of safety without having to retest the packaging.

It is not our intention to impose analysis and documentation requirements that would negate the benefits currently realized from utilizing the packaging variations, nor do we believe that a requirement to document the methodology used to determine equivalent performance of the variation to the originally tested packaging will result in a significantly increased regulatory burden. We agree that, in general, the supporting documentation may be minimal depending on the degree to which the packaging varies from the original tested design. In many cases, preparation of the documentation should take as little as 60 seconds. The type and level of documentation necessary for demonstration of equivalent level of performance will be based on the change made to the packaging. In addition, we are not specifying a format or detailed examples to provide flexibility to the person making the certification. Documentation may be copies of specification sheets from the original packaging component and the substituted component along with a brief explanation of why they are similar and the name of the individual who made that determination. If the person certifying compliance with § 178.601(g)(1) has a copy of the original test report, he or she may hand-write a few sentences on the report itself in association with the substituted component explaining what was changed and why the packagings are significantly similar. For example, if a person is substituting a plastic bottle used as an inner receptacle with one from a different manufacturer, he or she would describe why the packages are of similar design; similar thread types, same or smaller closure, same type and grade of plastic, and who made these determinations. If the person certifying compliance with the variation chooses to perform tests on the components as a means of comparison, he or she could choose to describe the tests and the results. Because testing is not a requirement for determining an equivalent level of performance, the test description could be as detailed as needed by the person certifying compliance for their complete understanding of the test results.

Based on comments to the NPRM, in this final rule we are revising the proposed language. The language in the NPRM was ambiguous regarding a shipper's responsibilities versus the responsibilities of the manufacturer. PHMSA did not intend to imply that a manufacturer need only document changes made in accordance with Variation 1 and shippers must document changes made to a packaging design in accordance with any variation. For consistency with § 178.601, PHMSA is clarifying that the supporting documentation for equivalent level of performance is only applicable to Variation 1.

K. Selective Testing of Steel Drums

SSCI petitioned PHMSA (P–1337) to make several changes to the provisions in § 178.601(g)(8), which apply to the approval of selective testing of steel drums that differ in minor respects from

a tested type of drum. The changes proposed by SSCI would allow drums with capacities between 12 and 50 liters (3 and 13 gallons, respectively) to be excepted from re-testing design types found under § 178.601(g)(8).

We are revising § 178.601(g)(8) to allow drums with a capacity of 12 liters or more to take advantage of the exception from further design testing under certain conditions. Commenters generally support this proposal as reducing costs without compromising safety.

The NPRM proposed a list of changes for which design testing would be required, such as a change from straight-sided to tapered, a change to the rated capacity and outside dimensions, a change to the type of side seam welding or type of steel used, and changes in the locations in the type, size, and locations of closures. As proposed in the NPRM, for UN 1A2 drums, a change in the width of lugs or extensions in the crimp/lug cover would necessitate design testing of the drum. SSCI suggests that minor modifications dealing with the width of lugs or extensions in a crimp/lug cover relate to making a package more user-friendly and should not be considered a different design type so long as the package performance is repeatable as tested. We disagree. Historically, modest changes in the size and style of the materials and closures for a hazardous materials package have produced changes in that packaging's test results. Therefore, PHMSA is incorporating the language as proposed.

PHMSA has issued numerous approvals to manufacturers authorizing the use of fewer than eighteen test samples. As proposed in the NPRM, we are revising § 178.601(k) to authorize a lesser quantity of test samples used in testing of stainless steel drums. We are adding the provisions found in these approvals to § 178.601(k). PHMSA received no comments on the proposed language change to this section as proposed in the NPRM.

L. Revisions to Requirements for IBCs

In the NPRM, we proposed to revise the lower volumetric limit for flexible IBCs (FIBCs). In Docket HM–181E (59 FR 38068), published July 26, 1994, we defined "Body" as having a lower limit of 450 liters, thus precluding the manufacture of IBCs with a volume of less than 450 L. In reviewing the HMR, we have identified a gap in the allowable packaging specifications for flexible packagings with a capacity between 50 kg and 400 kg (*i.e.,* specification non-bulk bags may not exceed 50 kg). To remedy this gap, we proposed to allow bags between 50 kg and 400 kg to be manufactured and tested under IBC standards in Subparts N and O of Part 178. FIBCA, in support of the proposed change, stated that it is important to address flexible packagings between 50 kg and 400 kg. At this time we are incorporating the change to flexible IBC allowing smaller IBCs. We received numerous comments in support of eliminating the limit for all or certain IBCs and Large Packagings. We are continuing to research to determine if we should eliminate the lower limit for all IBCs. The comments received in response to this rulemaking will be taken under consideration if we develop a future rulemaking.

We proposed moving the lower limit for IBCs currently in the definition of "Body" in § 178.700 to the individual standards in §§ 178.705 through 178.710. These are more appropriate sections for the lower limit and will result in better understanding of the individual IBC specifications. In addition, we proposed to authorize smaller flexible IBCs in § 178.710 by decreasing the limit to 50 kg. Several commenters supported lowering the quantity limit for flexible IBCs. Commenters did not remark on moving these provisions to individual standards. Therefore, we are decreasing the lower limit for flexible IBCs to 50 kg and retaining the 400 kg lower limit for rigid IBCs.

Two commenters (DGAC and FIBCA) oppose a lower volumetric limit for IBCs; they suggest there should be no lower limit on any IBC design type. DGAC contends this would provide consistency with the UN Model Regulations allowing manufacturers to construct IBCs to non-bulk sizes. For example, a shipper would have the choice between a 4G or an 11G packaging when choosing a non-bulk box. In the NPRM, we did not propose to remove the existing lower volumetric limit for IBCs other than flexible IBCs, but we did invite comment on this issue for discussion for a future rulemaking. We are not implementing a change in this final rule to the lower limit of all IBCs. However, we are lowering the limit on FIBCs as proposed in the NPRM. The change to the language in these sections does not constitute a change in the HMR. IBCs have always had a lower volumetric limit under the HMR.

In the NPRM, we proposed requiring in § 178.810 a second drop test for IBCs with a capacity of 0.45 cubic meters (15.9 cubic feet) or less in combination with the proposal to remove the lower limit of 450 liters (119 gallons) and 0.45 cubic meters (15.9 cubic feet) from the specifications for flexible IBCs. Two commenters (Kurt Colborn and FIBCA) support the addition of a second drop test requirement for IBCs. FIBCA states that the second drop test proposed is consistent with approvals that have been issued by the DOT. One commenter (RIPA) is opposed to a second drop test because it applies only to flexible IBCs and, in RIPA's view, is arbitrary and is inadequate from a safety perspective.

The additional drop test is not an arbitrary requirement. Non-bulk packagings are handled in transportation in a different manner than IBCs. Often loading and unloading of a transport vehicle is performed without the use of a mechanical handling device such as a fork lift or hoist. Non-bulk packages are more likely to be dropped while in transportation. Over the past ten years, when issuing an approval in accordance with § 178.801(i), we have imposed an additional drop test for non-bulk capacity IBCs. Therefore, we are incorporating this additional drop test in § 178.810. The net effect of this revision is to eliminate the need to obtain an approval.

We proposed revising the stacking test for IBCs prescribed in § 178.815 by adding a new paragraph (e)(4) to specify the passing criteria for the dynamic compression test after application of the required load include (1) no permanent deformation that would render the IBC or its base pallet unsafe, and (2) maximum deflection may not exceed one inch. We received no comments on this proposal. We are adopting this revision in the final rule as a clarification of existing requirements.

In the NPRM, we proposed that § 178.819 be revised to clarify IBCs intended to contain liquids be permitted to use water as the filling material for a vibration test, and that an IBC sample be placed on a vibrating platform with a vertical or rotary double-amplitude of one inch. One commenter (RIPA) addressed this issue. The commenter supports both proposals. Therefore, we are revising subparagraph (b)(1) to clarify that water is a suitable test filler material for the vibration test, and subparagraph (b)(2) to clarify that these testing provisions are permitted and to provide additional options when performing the vibration test. In paragraph (b)(2), we clarify that a vibrating platform may be used that will produce vertical or rotary double-amplitude.

M. Large Packagings

Large Packagings are currently authorized for the transportation of

hazardous materials if approved by the Associate Administrator for Hazardous Materials Safety. In the NPRM, we proposed to remove the approval requirement and add two new subparts (P and Q) to Part 178 for the design, construction, and testing of Large Packagings. Adding the manufacture, testing and use requirements into the HMR provides additional flexibility and effectively removes the need to apply for an approval to manufacture and use these packagings in the United States. The design, construction and testing requirements are based on the UN Recommendations on the Transport of Dangerous Goods, Thirteenth Revised Edition (2003); Chapter 6.6 Requirements for the Construction and Testing of Large Packagings. The regulatory layout and language is modeled on the current requirements for IBCs. We also proposed a number of other changes to the HMR to authorize the use of Large Packagings for the transportation of specific hazardous materials and to specify operational requirements.

Special provisions. Section 172.102 defines special provisions for entries in the Hazardous Materials Table (HMT). In paragraph (c)(4) introductory text and in Table 1, the HMR authorize the use of IBCs for entries that reference certain IB Special Provisions (*e.g.,* IB3). To authorize the use of Large Packagings we proposed to revise paragraph (c)(4) to include provisions for Large Packagings. In this section, we also proposed to restrict the use of Large Packagings to Packing Group III materials, with the exception of the following PG II entries, which are authorized via a new Special Provision 41: "UN 2531, Methacrylic acid, stabilized" and "UN 3291, Regulated medical waste, n.o.s." These two Packing Group II entries are authorized consistent with the UN Recommendations. We did not receive any comments on the proposal to authorize these two Packing Group II materials for transportation in Large Packagings.

Consistent with the decision to authorize the use of Large Packagings we are adopting the revisions to Special Provisions IB3 and IB8. The revised language specifies that Large Packagings are authorized when a table entry specifies Special Provision IB3 or IB8. We are inserting a new Table 3 authorizing Large Packagings and revising Table 1 so that IB3 and IB8 reference the new Table 3.

One commenter, (Charles E. Tudor) states that we should authorize Large Packagings through a separate Special Provision table to allow for future flexibility. We do not agree that a separate table is necessary at this time. We may reassess the need depending on future rulemaking actions in this area.

Placarding. General provisions for placarding of bulk packagings require bulk packagings, including IBCs, to be placarded on each side and each end for a total of four placards. In accordance with an exception in § 172.514, a shipper may choose to placard an IBC and certain other bulk packagings on two opposite sides or label the IBC in accordance with Part 172, Subpart E. In this final rule, we are adding, as proposed in the NPRM, Large Packagings to the types of packagings that may be placarded on only two opposite sides or labeled instead of placarded. We received no comments regarding the proposed revisions to this section.

Operational requirements. In the NPRM, we proposed a new § 173.36 to specify operational requirements for the use of Large Packagings. This section addresses the Large Packaging filling limits and procedures. Specifically, we proposed to require Large Packagings to be stowed with closures upright for liquid cargoes, and inner packagings in Large Packagings to be packed, secured, and cushioned to prevent breakage or leakage during transportation. In addition, we proposed conditions under which Large Packagings may be reused. We also proposed to require that no hazardous material be on the outside of Large Packagings during transportation, and that Large Packagings be securely fastened to or contained within a transport unit. Further, we proposed to prohibit the use of inner packagings made of paper or fiber in Large Packagings used to transport solids that could become liquid during transportation, and we proposed to require inner packagings in Large Packagings used to transport liquids to be resistant to internal pressure releases likely to be encountered during transportation. Finally, we proposed to limit the capacity of Large Packagings used to transport hazardous materials to a maximum of 3 cubic meters, and we proposed conditions under which Large Packagings could be used to transport more than one hazardous material.

DGAC and CropLife oppose the new § 173.36 for Large Packagings on the grounds that they would prefer Large Packagings be treated as they are in the UN Model Regulations.

All the provisions for Large Packagings in this rulemaking that differ from international requirements are consistent with the current HMR provisions for non-bulk combination packagings and IBCs. We do not believe that Large Packagings should be addressed differently than IBCs in the HMR. In the HMR we spell out specific standards that must be met. These standards include requirements that a package must be inspected prior to offering for transportation to ensure that there are no leaks, that no hazardous material is on the external surface of the packaging, and that the package does not have sharp or protruding objects that may puncture it or other packagings in transport. The intention of this rulemaking in regard to Large Packagings was not to make a major change in packaging requirements, but rather to incorporate Large Packagings into the HMR. IBC and non-bulk packaging standards are based on the UN Model regulations with minor alterations for safety and consistency with domestic practices. In this final rule, we are adopting the operational requirements proposed in the NPRM.

Two commenters (DGAC and APE) state that the vibration testing requirement for all Large Packagings should be a "capability" rather than an actual test because the inner packagings perform a cushioning function. APE also objects to requiring a vibration test for Large Packagings, stating this represents an additional cost burden for the U.S. industry as compared to their international competitors because the UN Recommendations do not require that these packagings be subject to this test, especially those containing inner packagings and articles. A Large Packaging, other than a flexible Large Packaging, is similar in design to an IBC, and subject to similar packaging design stresses and opportunities for failure. We believe the vibration test is an essential component for assessing the integrity of an IBC packaging and a Large Packaging, therefore, in this final rule are requiring a Large Packaging to pass a vibration test as well. We agree with the commenters that, like an IBC, a Large Packaging may be used as a single or combination packaging, and that inner packagings, when used, may provide some cushioning. However, the degree to which these packagings can provide cushioning depends greatly on their structure and content, which can vary greatly. Because the use of inner packagings is not mandatory in Large Packagings, and because inner packagings cannot be relied upon to provide a consistent level of cushioning, we believe the vibration test is necessary to assist us with determining the performance capability of a Large Packaging in transportation. Therefore, in this final rule we are requiring the vibration test to be performed and

documented for Large Packagings, other than flexible Large Packagings.

In the NPRM, we proposed to revise § 173.62 to authorize Large Packagings for the transportation of certain explosives. One commenter (Charles E. Tudor) suggests that the HMR should authorize the use of Large Packagings to transport additional explosives that have a very low mass. APE urges PHMSA to permit consumer fireworks be transported in UN 50G Large Packagings. The commenters did not submit safety data or information to demonstrate that consumer fireworks or other low-mass explosives may be transported safely in Large Packagings. Absent such data, we cannot support a broad authorization for the use of Large Packagings to transport explosive materials. Therefore, in this final rule, we are adopting the provisions for the use of Large Packagings for the transportation of certain explosives without change.

In the NPRM, we proposed to amend §§ 173.240 through 173.242 to authorize Large Packagings for the transportation of certain hazardous materials and to clarify that Large Packagings are not authorized for Packing Group I or II materials. We received no comments on the proposed changes. Therefore, we are adopting them without change in this final rule.

As indicated above, we proposed to add Subparts P and Q to Part 178 to specify design, construction, and testing requirements for Large Packagings. Most commenters support the addition of these subparts. Therefore, we are adopting them as proposed in the NPRM.

N. Additional Revisions in This Final Rule

Under Docket HM–215G (69 FR 76043), published on December 20, 2004, we revised § 173.249(c) to authorize the return of portable tanks containing a residue of bromine. In this final rule, we are revising paragraph (b) to authorize the transportation of bromine residue in cargo tanks to facilitate the return of empty cargo tanks with a bromine residue. PHMSA received no comments on the proposed language change to this section; in this final rule, it is adopted as proposed in the NPRM.

We are changing the section heading and paragraph (a) of § 174.63, which describes rail specific operational requirements for Portable tanks, IM portable tanks, IBCs, cargo tanks, and multi-unit tank car tanks, to indicate that the requirements in this section also apply to Large Packagings. PHMSA received no comments on the proposed language change to this section. Therefore, in this final rule, it is adopted as proposed in the NPRM.

V. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule adopts regulations to enhance the safe and secure transportation of hazardous materials by aircraft in intrastate, interstate, and foreign commerce. This notice revises miscellaneous HMR requirements applicable to hazardous materials packaging.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to formal review by the Office of Management and Budget. This final rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The cost impacts of the changes in this rulemaking are expected to be minimal. Many of the amendments in this rulemaking are intended to clarify current regulatory requirements specific to the construction and use of packagings and do not impose any additional costs on the regulated community. The most significant changes in the final rule relate to: (1) The manufacture, testing and use of a new packaging category called "Large Packagings"; (2) the information required to be contained in a packaging test report prepared by the person certifying compliance with the HMR; (3) requiring shippers to maintain a copy of the manufacture notification already provided to them by the packaging manufacture in accordance with current regulations; and (4) providing guidance to packaging manufacturers on how to instruct shippers to effectively assemble and close packagings.

A "Large Packaging" is a type of packaging design authorized by the UN Recommendations but currently only authorized in the HMR through an approval. Adding the manufacture, testing and use requirements for this packaging into the HMR provides additional flexibility and effectively removes the need to apply for an approval to manufacture and use these packagings in the United States, resulting in a reduction in cost to the regulated community. This final rule also includes amendments to require Large Packaging manufacturers to keep records for the qualification of each design type and for each design requalification. We expect this recordkeeping requirement will apply to fewer than 10 regulated entities. Thus, the overall impact of this requirement will be minimal and will be more than offset by the additional flexibility and administrative cost savings provided by the elimination of current approval provisions.

Currently under the HMR, a person certifying that a packaging meets the construction and testing requirements for UN standard packaging must retain documentation relative to the: (1) Name and address of the packaging manufacture and testing facility; (2) material of construction; (3) capacity, dimensions, closures, and method of closures; and (4) test results. However, all of the record retention requirements associated with UN standard packaging certification are currently spread out throughout the HMR. Therefore, this amendment should not result in any substantial cost impacts on the regulated community.

We are also revising the HMR to require shippers to maintain a copy of the manufacture notification provided to them by the packaging manufacture, and to provide guidance to packaging manufacturers on how to instruct shippers to effectively assemble and close packagings. As a result of comments to the notice of proposed rulemaking, these amendments have been modified to allow more flexibility to packaging manufacturers and to allow for packagings with a simpler means of closure for the end user. Therefore, these amendments should not result in significant cost impacts to the regulated community.

This final rule is designed to increase the clarity of the HMR, thereby enhancing voluntary compliance with existing regulatory requirements while reducing compliance costs. Enhanced voluntary compliance by the regulated community improves overall safety. In addition, we anticipate many changes contained in this rule will have economic benefits. For example, the final rule broadens the scope of several packaging exceptions, which manufacturers and shippers may use to reduce transportation costs. Moreover, the incorporation of Large Packaging specifications into the HMR will eliminate the need for shippers to obtain an approval from PHMSA to use Large Packagings, thus increasing flexibility

and reducing transportation costs. Finally, incorporation of the Large Packaging specifications into the HMR and adoption of other provisions intended to align the HMR with international standards will promote better understanding of the regulations, increased industry compliance, and the smooth flow of hazardous materials in transportation.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local, and Indian tribe requirements, but does not impose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 1, 2, 3, and 5 above. This rule preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" as the Federal requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule amends miscellaneous packaging provisions in the HMR to clarify provisions based on our own initiatives and also on petitions for rulemaking. While maintaining safety, it relaxes certain requirements. Many of the amendments in this rulemaking are intended to clarify current regulatory requirements specific to the construction and use of non-bulk and bulk packagings and do not impose any additional costs on small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. The changes in this final rule will enhance safety, and I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. PHMSA currently has approved information collections under OMB Control No. 2137–0018, "Inspection and Testing of Portable Tanks and Intermediate Bulk Containers," expiring on October 31, 2010; OMB Control No. 2137–0034, "Hazardous Materials Shipping Papers and Emergency Response Information," expiring on May 31, 2011; OMB Control No. 2137–0557, "Approvals for Hazardous Materials," expiring on June 30, 2011; and OMB Control No. 2137–0572, "Testing Requirements for Non-Bulk Packaging," expiring on March 31, 2010. This final rule will result in an increase in annual burden and costs under OMB Control No. 2137–0034 and OMB Control No. 2137–0572.

PHMSA will submit revised information collections to the Office of Management and Budget (OMB) for approval based on the amendments adopted in this final rule. Specifically, this final rule identifies an increase in annual burden and costs under OMB Control No. 2137–0018 which is being offset by a reduction in burden under OMB Control No. 2137–0557 because of the conversion of several approval provisions for packagings into the HMR. These amendments will necessitate a revision to the title of OMB Control No. 2137–0018 to "Inspection and Testing of Portable Tanks, Intermediate Bulk Containers, and Large Packagings." In addition, due to comments received in response to the notice of proposed rulemaking, we have revised the total information collection burden for OMB Control No. 2137–0034 and OMB Control No. 2137–0572 as follows:

OMB Control No. 2137–0034, "Hazardous Materials Shipping Papers and Emergency Response Information"

Total Annual Number of Respondents: 250,000.
Total Annual Responses: 260,000,000.
Total Annual Burden Hours: 6,500,000.
Total Annual Burden Cost: $6,510,000.

OMB Control No. 2137–0572, "Testing Requirements for Non-Bulk Packaging"

Total Annual Number of Respondents: 5,010.
Total Annual Responses: 15,500.
Total Annual Burden Hours: 32,500.
Total Annual Burden Cost: $812,500.

Please direct your requests for a copy of this information collection to

Deborah Boothe (PHH–11) or T. Glenn Foster (PHH–12), Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4375, requires federal agencies to analyze regulatory actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) The need for the action, (2) alternatives to the action, (3) environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

Purpose and Need. As discussed elsewhere in this preamble, this final rule is intended to clarify existing requirements, enhance flexibility, and reduce compliance burdens. The revisions will reduce confusion and promote safety.

Alternatives. PHMSA considered the following alternatives:

No action—Under this alternative, we would not attempt to revise HMR packaging requirements. This alternative does not address the problems we have identified related to unclear or confusing regulations nor does it reduce regulatory burdens and promote flexibility. Thus, it was not selected.

Adopt revisions to the HMR packaging regulations to clarify requirements and reduce regulatory burdens—This is the selected alternative. It accomplishes our regulatory reform goals while enhancing understanding of and compliance with the HMR.

Analysis of Environmental Impacts. Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard—from a high hazard Packing Group I to a low hazard Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Releases of hazardous materials, whether caused by accident or deliberate sabotage, can result in explosions or fires. Radioactive, toxic, infectious, or corrosive hazardous materials can have short- or long-term exposure effects on humans or the environment. Generally, however, the hazard class definitions are focused on the potential safety hazards associated with a given material or type of material rather than the environmental hazards of such materials.

Under the HMR, hazardous materials may be transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be reduced or eliminated through prompt clean-up/decontamination of the accident scene.

We have reviewed the risks associated with adopting the miscellaneous amendments in this rule. The amendments in this rulemaking are intended to clarify existing requirements concerning the construction and use of non-bulk and bulk packagings, such as requiring the shipper to maintain a copy of a hazmat packaging's closure instructions for 365 days (unless the instructions are permanently embossed or printed on the packaging) and adopting requirements for UN standard Large Packagings (removing the need for an approval). The amendments also involve minor changes to existing regulations that will permit additional flexibility, such as permitting the UN symbol to be stenciled on packagings, clarifying definitions, and not requiring international plastic packagings to bear a domestic mark currently required under § 172.313(b). The requirements in this rulemaking will reduce confusion and enhance voluntary compliance, thereby reducing the likelihood of deaths, injuries, property damage, hazardous materials release, and other adverse consequences of incidents involving the transportation of hazardous materials. We have determined there will be no significant environmental impacts associated with this final rule.

Consultation and Public Comment. As discussed above, PHMSA published an NPRM to solicit public comments on our proposal. A total of 24 persons submitted comments, including industry associations, shippers, carriers, federal and State agencies, and private citizens.

J. Privacy Act

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste,

Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I, Subchapter C as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub L. 104–134 section 31001.

■ 1. In § 171.8:

■ a. The definitions for "Reconditioned packaging," "Remanufactured packaging," "Reused packaging," and "Strong outer packaging" are added in appropriate alphabetical order.

■ b. The definition for "Strong outside container" is removed.

■ c. The introductory text of the definition for "Bulk packaging" is revised.

■ d. The definition for "Large packaging" is revised.

The additions and revisions read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded, and which has:

* * * * *

Large packaging means a packaging that—

(1) Consists of an outer packaging that contains articles or inner packagings;

(2) Is designated for mechanical handling;

(3) Exceeds 400 kg net mass or 450 liters (118.9 gallons) capacity;

(4) Has a volume of not more than 3 cubic meters (m^3) (see § 178.801(i) of this subchapter); and

(5) Conforms to the requirements as specified in § 173.36, and subparts P and Q of part 178 of this subchapter, as applicable.

* * * * *

Reconditioned packaging. See § 173.28 of this subchapter.

* * * * *

Remanufactured packagings. See § 173.28 of this subchapter.

* * * * *

Reused packaging. See § 173.28 of this subchapter.

* * * * *

Strong outer packaging means the outermost enclosure that provides protection against the unintentional release of its contents. It is a packaging that is sturdy, durable, and constructed so that it will retain its contents under normal conditions of transportation. In addition, a strong outer packaging must meet the general packaging requirements of subpart B of part 173 of this subchapter but need not comply with the specification packaging requirements in part 178 of the subchapter. For transport by aircraft, a strong outer packaging is subject to § 173.27 of this subchapter. The terms "strong outside container" and "strong outside packaging" are synonymous with "strong outer packaging."

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 4. Section 172.101, the Hazardous Materials Table is amended to read as follows:

■ a. The entry "Azodicarbonamide," in Column (8B) the reference "212" is removed and "223" is added in its place, and in Column (10B) the reference "12" is removed and "2" is added in its place.

■ b. The entry "Isosorbide-5-mononitrate," in Column (7) the reference Special Provision "159" is added in the correct numeric order, and in Column (8B) the reference "213" is removed and "223" is added in its place.

■ c. The entry "Regulated medical waste, n.o.s. *or* Clinical waste, unspecified, n.o.s. *or* (BIO)Medical waste, n.o.s., *or* Biomedical waste, n.o.s. *or* Medical waste, n.o.s.," in Column (7) the reference for Special Provision "41" is added before "A13".

■ d. The entry "Methacrylic acid, stabilized," in Column (7) the reference for Special Provision "41" is added before "IB2".

■ e. In Column (8c), for the following entries, the word "None" is removed and "62" is added in its place:

Column (2) entry	Column (4) entry
Ammunition smoke, white phosphorus *with burster, expelling charge, or propelling charge*	UN0245
Ammunition smoke, white phosphorus *with burster, expelling charge, or propelling charge*	UN0246
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	UN0171
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	UN0254
Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	UN0297
Ammunition, incendiary *with or without burster, expelling charge or propelling charge*	UN0300
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*	UN0009
Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*	UN0010
Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge*	UN0243
Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge*	UN0244
Ammunition, practice	UN0362
Ammunition, practice	UN0488
Ammunition, proof	UN0363
Ammunition, smoke *with or without burster, expelling charge or propelling charge*	UN0015
Ammunition, smoke *with or without burster, expelling charge or propelling charge*	UN0016
Ammunition, smoke *with or without burster, expelling charge or propelling charge*	UN0303
Ammunition, tear-producing *with burster, expelling charge or propelling charge*	UN0018
Ammunition, tear-producing *with burster, expelling charge or propelling charge*	UN0019
Ammunition, tear-producing *with burster, expelling charge or propelling charge*	UN0301
Bombs, photo-flash	UN0038

Column (2) entry	Column (4) entry
Bombs, photo-flash	UN0039
Bombs, photo-flash	UN0299
Bombs, *with bursting charge*	UN0034
Bombs, *with bursting charge*	UN0035
Cartridges for weapons, inert projectile	UN0328
Cartridges for weapons, *with bursting charge*	UN0006
Cartridges for weapons, *with bursting charge*	UN0321
Cartridges for weapons, *with bursting charge*	UN0412
Cartridges, oil well	UN0277
Cartridges, oil well	UN0278
Cartridges, power device	UN0275
Cartridges, power device	UN0276
Cartridges, power device	UN0323
Cartridges, power device	UN0381
Charges, demolition	UN0048
Charges, depth	UN0056
Cutters, cable, explosive	UN0070
Fracturing devices, explosive, *without detonators for oil wells*	UN0099
Mines *with bursting charge*	UN0137
Mines *with bursting charge*	UN0138
Projectiles, *inert with tracer*	UN0345
Projectiles, *inert, with tracer*	UN0424
Projectiles, *inert, with tracer*	UN0425
Projectiles, *with burster or expelling charge*	UN0346
Projectiles, *with burster or expelling charge*	UN0347
Projectiles, *with burster or expelling charge*	UN0434
Projectiles, *with burster or expelling charge*	UN0435
Projectiles, *with bursting charge*	UN0168
Projectiles, *with bursting charge*	UN0169
Projectiles, *with bursting charge*	UN0344
Release devices, explosive	UN0173
Rivets, explosive	UN0174
Rocket motors	UN0186
Rocket motors	UN0280
Rocket motors	UN0281
Rockets, *with bursting charge*	UN0181
Rockets, *with bursting charge*	UN0182
Rockets, *with expelling charge*	UN0436
Rockets, *with expelling charge*	UN0437
Rockets, *with expelling charge*	UN0438
Rockets, with inert head	UN0183
Rockets, *with inert head*	UN0502
Sounding devices, explosive	UN0204
Sounding devices, explosive	UN0296
Sounding devices, explosive	UN0374
Sounding devices, explosive	UN0375
Torpedoes *with bursting charge*	UN0329
Torpedoes *with bursting charge*	UN0451
Warheads, rocket *with burster or expelling charge*	UN0370
Warheads, rocket *with bursting charge*	UN0286
Warheads, rocket *with bursting charge*	UN0287
Warheads, torpedo *with bursting charge*	UN0221

* * * * *

■ 1. In § 172.102:

■ a. In paragraph (c)(1), a new Special provision 41 is added in appropriate numerical order.

■ b. In paragraph (c)(4), the introductory paragraph is revised.

■ c. In paragraph (c)(4), Table 1, the entries IB3 and IB8 are revised, and the headings for the table and first and second columns of the table are revised.

■ d. In paragraph (c)(4), Table 2, the first column heading is revised to read "IP Code," and the second column heading is removed.

■ e. In paragraph (c)(4), a new Table 3 is added.

The additions and revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

41 This material at the Packing Group II hazard criteria level may be transported in Large Packagings.

* * * * *

(4) *IB Codes and IP Codes.* These provisions apply only to transportation in IBCs and Large Packagings. Table 1 authorizes IBCs for specific proper shipping names through the use of IB Codes assigned in the § 172.101 table of this subchapter. Table 2 defines IP Codes on the use of IBCs that are assigned to specific commodities in the § 172.101 Table of this subchapter. Table 3 authorizes Large Packagings for specific proper shipping names through the use of IB Codes assigned in the § 172.101 table of this subchapter. Large Packagings are authorized for the Packing Group III entries of specific proper shipping names when either Special Provision IB3 or IB8 is assigned to that entry in the § 172.101 Table. When no IB code is assigned in the

§ 172.101 Table for a specific proper shipping name, or in § 173.225(e) Organic Peroxide Table for Type F organic peroxides, use of an IBC or Large Packaging for the material may be authorized when approved by the Associate Administrator. The letter "Z" shown in the marking code for composite IBCs must be replaced with a capital code letter designation found in § 178.702(a)(2) of this subchapter to specify the material used for the other packaging. Tables 1, 2, and 3 follow:

TABLE 1–IB CODES

[IBC authorizations]

IB code	Authorized IBCs
*	* * * * * *
IB3	Authorized IBCs: Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). Additional Requirement: Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (*also see* Special Provision IP8 in Table 3 for UN2672). For authorized Large Packagings, see Table 3.
*	* * * * * *
IB8	Authorized IBCs: Metal (11A, 11B, 11N, 21A, 21B, 21N, 31A, 31B and 31N); Rigid plastics (11H1, 11H2, 21H1, 21H2, 31H1 and 31H2); Composite (11HZ1, 11HZ2, 21HZ1, 21HZ2, 31HZ1 and 31HZ2); Fiberboard (11G); Wooden (11C, 11D and 11F); Flexible (13H1, 13H2, 13H3, 13H4, 13H5, 13L1, 13L2, 13L3, 13L4, 13M1 or 13M2). For authorized Large Packagings, *see* Table 3.
*	* * * * * *

* * * * *

TABLE 3—IB CODES

[Large packaging authorizations]

IB3	Authorized Large Packagings (LIQUIDS) (PG III materials only) [2]
Inner packagings: Glass 10 liter Plastics 30 liter Metal 40 liter	Large outer packagings: steel (50A). aluminum (50B). metal other than steel or aluminum (50N). rigid plastics (50H). natural wood (50C). plywood (50D). reconstituted wood (50F). rigid fiberboard (50G).
IB8	**Authorized Large Packagings (SOLIDS) (PG III materials only) [2]**
Inner packagings: Glass 10 kg Plastics 50 kg Metal 50 kg Paper 50 kg Fiber 50 kg	Large outer packagings: steel (50A). aluminum (50B). metal other than steel or aluminum (50N). flexible plastics (51H). [1] rigid plastics (50H). natural wood (50C). plywood (50D). reconstituted wood (50F). rigid fiberboard (50G).

[1] Flexible plastic (51H) Large Packagings are only authorized for use with flexible inner packagings.
[2] Except when authorized under Special Provision 41.

* * * * *

■ 6. In § 172.514, paragraphs (c)(3) and (c)(4) are revised and a new paragraph (c)(5) is added to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(c) * * *

(3) A bulk packaging other than a portable tank, cargo tank, or tank car (*e.g.,* a bulk bag or box) with a volumetric capacity of less than 18 cubic meters (640 cubic feet);

(4) An IBC; and

(5) A Large Packaging as defined in § 171.8 of this subchapter.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

§ 173.4 [Amended]

■ 8. In § 173.4, paragraph (a)(5), the wording "strong outside packaging" is removed and the wording "strong outer packaging" is added in its place.

§ 173.4b [Amended]

■ 9. In § 173.4b, paragraph (a)(4), the wording "strong outside packaging" is removed and the wording "strong outer packaging" is added in its place.

§ 173.7 [Amended]

■ 10. In § 173.7, paragraph (c), the first sentence, the wording "strong outside packaging" is removed and the wording "strong outer packaging" is added in its place.

■ 11. In § 173.22, in paragraph (a)(4), three new sentences are added to the end of the paragraph to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4) * * * A person must maintain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter) unless permanently embossed or printed on the packaging. When applicable, a person must maintain a copy of any supporting documentation for an equivalent level of performance under the selective testing variation in § 178.601(g)(1) of this subchapter. A copy of the notification, unless permanently embossed or printed on the packaging, and supporting documentation, when applicable, must be made available for inspection by a representative of the Department upon request for 365 days after offering the package for transportation.

* * * * *

■ 12. In § 173.28, in paragraph (a), a third sentence is added and, in paragraph (f), a third sentence is added to read as follows:

§ 173.28 Reuse, reconditioning, and remanufacture of packagings.

(a) * * * Packagings not meeting the minimum thickness requirements prescribed in paragraph (b)(4)(i) of this section may not be reused, reconditioned, or remanufactured for reuse.

* * * * *

(f) * * * Drums or jerricans not meeting the minimum thickness requirements prescribed in paragraph (b)(4)(i) of this section may not be reused, reconditioned, or remanufactured for reuse.

■ 13. In § 173.35, paragraph (h)(2), introductory paragraph, is revised to read as follows:

§ 173.35 Hazardous materials in IBCs.

* * * * *

(h) * * *

(2) Liquids having a vapor pressure greater than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F) may not be transported in metal IBCs.

* * * * *

■ 14. New § 173.36 is added to read as follows:

§ 173.36 Hazardous materials in Large Packagings.

(a) No person may offer or accept a hazardous material for transportation in a Large Packaging except as authorized by this subchapter. Except as otherwise provided in this subchapter, no Large Packaging may be filled with a Packing Group I or II material. Each Large Packaging used for the transportation of hazardous materials must conform to the requirements of its specification and regulations for the transportation of the particular commodity.

(b) *Packaging design.* (1) *Inner packaging closures.* A Large Packaging containing liquid hazardous materials must be packed so that closures on inner packagings are upright.

(2) *Flexible Large Packagings.* Flexible Large Packagings (*e.g.,* 51H) are only authorized for use with flexible inner packagings.

(3) *Friction.* The nature and thickness of the outer packaging must be such that friction during transportation is not likely to generate an amount of heat sufficient to dangerously alter the chemical stability of the contents.

(4) *Securing and cushioning.* Inner packagings of Large Packagings must be packed, secured and cushioned to prevent their breakage or leakage and to control their shifting within the outer packaging under conditions normally incident to transportation. Cushioning material must not be capable of reacting dangerously with the contents of the inner packagings or having its protective properties significantly weakened in the event of leakage.

(5) *Metallic devices.* Nails, staples and other metallic devices must not protrude into the interior of the outer packaging in such a manner as to be likely to damage inner packagings or receptacles.

(c) *Initial use and reuse of Large Packagings.* A Large Packaging may be reused. If an inner packaging is constructed of paper or flexible plastic, the inner packaging must be replaced before each reuse. Before a Large Packaging is filled and offered for transportation, the Large Packaging must be given an external visual inspection, by the person filling the Large Packaging, to ensure:

(1) The Large Packaging is free from corrosion, contamination, cracks, cuts, or other damage which would render it unable to pass the prescribed design type test to which it is certified and marked; and

(2) The Large Packaging is marked in accordance with requirements in § 178.910 of this subchapter. Additional marking allowed for each design type may be present. Required markings that are missing, damaged or difficult to read must be restored or returned to original condition.

(d) During transportation—

(1) No hazardous material may remain on the outside of the Large Packaging; and

(2) Each Large Packaging must be securely fastened to or contained within the transport unit.

(e) Each Large Packaging used for transportation of solids which may become liquid at temperatures likely to be encountered during transportation may not be transported in paper or fiber inner packagings. The inner packagings must be capable of containing the substance in the liquid state.

(f) Liquid hazardous materials may only be offered for transportation in inner packagings appropriately resistant to an increase of internal pressure likely to develop during transportation.

(g) A Large Packaging used to transport hazardous materials may not exceed 3 cubic meters (106 cubic feet) capacity.

(h) *Mixed contents.* (1) An outer Large Packaging may contain more than one hazardous material only when—

(i) The inner and outer packagings used for each hazardous material conform to the relevant packaging sections of this part applicable to that hazardous material, and not result in a violation of § 173.21;

(ii) The package as prepared for shipment meets the performance tests prescribed in part 178 of this subchapter for the hazardous materials contained in the package;

(iii) Corrosive materials (except ORM–D) in bottles are further packed in securely closed inner receptacles before packing in outer packagings; and

(iv) For transportation by aircraft, the total net quantity does not exceed the lowest permitted maximum net quantity per package as shown in Column 9a or 9b, as appropriate, of the § 172.101 table. The permitted maximum net quantity must be calculated in kilograms if a package contains both a liquid and a solid.

(2) A packaging containing inner packagings of Division 6.2 materials

may not contain other hazardous materials, except dry ice.

(i) When a Large Packaging is used for the transportation of liquids with a flash point of 60.5 °C (141 °F) (closed cup) or lower, or powders with the potential for dust explosion, measures must be taken during product loading and unloading to prevent a dangerous electrostatic discharge.

■ 15. In § 173.62, paragraph (c), Table of Packing Methods, Packing Instruction 130 is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packaging instruction	Inner packagings	Intermediate packagings	Outer packaging
* * *	*	*	* *
130	Not necessary	Not necessary	
Particular Packaging Requirements:			
The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices.			Boxes. Steel (4A). Wood natural, ordinary (4C1). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel, removable head (1A2). Aluminum, removable head (1B2). Plywood (1D). Fiber (1G). Plastics, removable head (1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
* * *	*	*	* *

■ 16. In § 173.223, the section heading and the introductory text to paragraph (a) are revised as follows:

§ 173.223 Packagings for certain flammable solids.

(a) Packagings for "Musk xylene," "5-tert-Butyl-2,4,6-trinitro-m-xylene," "Azodicarbonamide," or "Isosorbide-5-mononitrate," when offered for transportation or transported by rail, highway, or vessel, must conform to the general packaging requirements of subpart B of part 173, and to the requirements of part 178 of this subchapter at the Packing Group III performance level and may only be transported in the following packagings:

* * * * *

■ 17. In § 173.240, paragraph (e) is added as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

* * * * *

(e) *Large Packagings.* Large Packagings are authorized subject to the conditions and limitations of this section provided the Large Packaging type is authorized according to the IBC packaging code specified for the specific hazardous material in Column (7) of the § 172.101 Table of this subchapter and the Large Packaging conforms to the requirements in subpart Q of part 178 of this subchapter at the Packing Group performance level as specified in Column (5) of the § 172.101 Table for the material being transported.

(1) Except as specifically authorized in this subchapter, Large Packagings may not be used for Packing Group I or II hazardous materials.

(2) Large Packagings with paper or fiberboard inner receptacles may not be used for solids that may become liquid in transportation.

■ 18. In § 173.241, paragraph (e) is added as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.

* * * * *

(e) *Large Packagings.* Large Packagings are authorized subject to the conditions and limitations of this section provided the Large Packaging type is authorized according to the IBC packaging code specified for the specific hazardous material in Column (7) of the § 172.101 Table of this subchapter and the Large Packaging conforms to the requirements in subpart Q of part 178 of this subchapter at the Packing Group performance level as specified in Column (5) of the § 172.101 Table for the material being transported.

(1) Except as specifically authorized in this subchapter, Large Packagings may not be used for Packing Group I or II hazardous materials.

(2) Large Packagings with paper or fiberboard inner receptacles may not be used for solids that may become liquid in transportation.

■ 19. In § 173.242, paragraph (e) is added as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(e) *Large Packagings.* Large Packagings are authorized subject to the conditions and limitations of this section provided the Large Packaging type is authorized according to the IBC packaging code specified for the specific hazardous material in Column (7) of the § 172.101 Table of this subchapter and the Large Packaging conforms to the requirements in subpart Q of part 178 of this subchapter at the Packing Group performance level as specified in Column (5) of the § 172.101 Table for the material being transported.

(1) Except as specifically authorized in this subchapter, Large Packagings may not be used for Packing Group I or II hazardous materials.

(2) Large Packagings with paper or fiberboard inner receptacles may not be used for solids that may become liquid in transportation.

■ 20. In § 173.249, paragraph (b) is revised to read as follows:

§ 173.249 Bromine.

* * * * *

(b) Specification MC 310, MC 311, MC 312 or DOT 412 cargo tank motor vehicles conforming with paragraphs (d) through (f) of this section. Except when transported as a residue, the total quantity in one tank may not be less than 88 percent or more than 96 percent of the volume of the tank. Cargo tanks in bromine service built prior to August 31, 1991, may continue in service under the requirements contained in § 173.252(a)(4) of this part in effect on September 30, 1991.

* * * * *

§ 173.301 [Amended]

■ 21. In § 173.301, paragraph (h)(3)(ii), the wording "strong outside packaging" is removed and the wording "strong outer packaging" is added in its place.

■ 22. In § 173.306, paragraph (a)(2)(i) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * *

(2) * * *

(i) Container is not over 0.95 L (1 quart) capacity and charged to not more than 11.17 bar (482.63 kPa, 170 psig) at 21 °C (70 °F), and must be packed in a strong outer packaging, or

* * * * *

§ 173.334 [Amended]

■ 23. In § 173.334, paragraph (d), the wording "strong outside packaging" is removed and the wording "strong outer packaging" is added in its place in each place it appears.

§ 173.338 [Amended]

■ 24. In § 173.338, paragraph (a), the second sentence, the wording "strong outside container" is removed and the wording "strong outer packaging" is added in its place.

PART 174—CARRIAGE BY RAIL

■ 25. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 26. In § 174.63, the section heading and paragraph (a) are revised as follows:

§ 174.63 Portable tanks, IM portable tanks, IBCs, Large Packagings, cargo tanks, and multi-unit tank car tanks.

(a) A carrier may not transport a bulk packaging (*e.g.,* portable tank, IM portable tank, IBC, Large Packaging, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flatcar (COFC) or trailer-on-flatcar (TOFC) service except as authorized by this section or unless approved for transportation by the Associate Administrator for Safety, FRA.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 27. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 28. In § 178.2, paragraph (c) is revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) *Notification.* (1) Except as specifically provided in §§ 178.337–18 and 178.345–10 of this part, the manufacturer or other person certifying compliance with the requirements of this part, and each subsequent distributor of that packaging must:

(i) Notify each person to whom that packaging is transferred—

(A) Of all requirements in this part not met at the time of transfer, and

(B) With information specifying the type(s) and dimensions of the closures, including gaskets and any other components needed to ensure that the packaging is capable of successfully passing the applicable performance tests. This information must include any procedures to be followed, including closure instructions for inner packagings and receptacles, to effectively assemble and close the packaging for the purpose of preventing leakage in transportation. Closure instructions must provide for a consistent and repeatable means of closure that is sufficient to ensure the packaging is closed in the same manner as it was tested. For packagings sold or represented as being in conformance with the requirements of this subchapter applicable to transportation by aircraft, this information must include relevant guidance to ensure that the packaging, as prepared for transportation, will withstand the pressure differential requirements in § 173.27 of this subchapter.

(ii) Retain copies of each written notification for at least 365 days from date of issuance; and

(iii) Make copies of all written notifications available for inspection by a representative of the Department.

(2) The notification required in accordance with this paragraph (c) may be in writing or by electronic means, including e-mailed transmission or transmission on a CD or similar device. If a manufacturer or subsequent distributor of the packaging utilizes electronic means to make the required notifications, the notification must be specific to the packaging in question and must be in a form that can be printed in hard copy by the person receiving the notification.

■ 29. In § 178.503, paragraphs (a)(1) and (e)(1) are revised as follows:

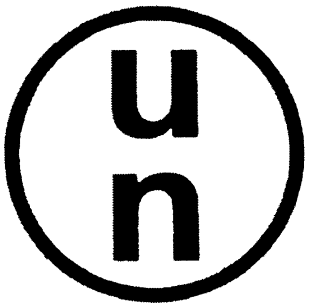
§ 178.503 Marking of packagings.

(a) * * *

(1) Except as provided in paragraph (e)(1)(ii) of this section, the United Nations symbol as illustrated in paragraph (e)(1)(i) of this section (for embossed metal receptacles, the letters "UN") may be applied in place of the symbol;

(e) * * *

(1)(i) The United Nations symbol is:



(ii) The circle that surrounds the letters "u" and "n" may have small

breaks provided the following provisions are met:

(A) The total gap space does not exceed 15 percent of the circumference of the circle;

(B) There are no more than four gaps in the circle;

(C) The spacing between gaps is separated by no less than 20 percent of the circumference of the circle (72 degrees); and

(D) The letters "u" and "n" appear exactly as depicted in § 178.3(e)(1)(i) with no gaps.

* * * * *

■ 30. In § 178.601, the introductory text of paragraph (g)(1), and paragraphs (g)(8) and (k) are revised to read as follows:

§ 178.601 General requirements.

* * * * *

(g) * * *

(1) *Selective testing of combination packagings. Variation 1.* Variations are permitted in inner packagings of a tested combination package, without further testing of the package, provided an equivalent level of performance is maintained and, when a package is altered under Variation 1 after October 1, 2010, the methodology used to determine that the inner packaging, including closure, maintains an equivalent level of performance is documented in writing by the person certifying compliance with this paragraph and retained in accordance with paragraph (l) of this section. Permitted variations are as follows:

* * * * *

(8) For a steel drum with a capacity greater than 12 L (3 gallons) manufactured from low carbon, cold-rolled sheet steel meeting ASTM designations A 366/A 366M or A 568/A 568M, variations in elements other than the following design elements are considered minor and do not constitute a different drum design type, or "different packaging" as defined in paragraph (c) of this section for which design qualification testing and periodic retesting are required. Minor variations authorized without further testing include changes in the identity of the supplier of component material made to the same specifications, or the original manufacturer of a DOT specification or UN standard drum to be remanufactured. A change in any one or more of the following design elements constitutes a different drum design type:

(i) The packaging type and category of the original drum and the remanufactured drum, *i.e.,* 1A1 or 1A2;

(ii) The style, (*i.e.,* straight-sided or tapered);

(iii) Except as provided in paragraph (g)(3) of this section, the rated (marked) capacity and outside dimensions;

(iv) The physical state for which the packaging was originally approved (*e.g.,* tested for solids or liquids);

(v) An increase in the marked level of performance of the original drum (*i.e.,* to a higher packing group, hydrostatic test pressure, or specific gravity to which the packaging has been tested);

(vi) Type of side seam welding;

(vii) Type of steel;

(viii) An increase greater than 10% or any decrease in the steel thickness of the head, body, or bottom;

(ix) End seam type, (*e.g.,* triple or double seam);

(x) A reduction in the number of rolling hoops (beads) which equal or exceed the diameter over the chimes;

(xi) The location, type or size, and material of closures (other than the cover of UN 1A2 drums);

(xii) The location (*e.g.,* from the head to the body), type (*e.g.,* mechanically seamed or welded flange), and materials of closure (other than the cover of UN 1A2 drums); and

(xiii) For UN 1A2 drums:

(A) Gasket material (*e.g.,* plastic), or properties affecting the performance of the gasket;

(B) Configuration or dimensions of the gasket;

(C) Closure ring style including bolt size, (*e.g.,* square or round back, 0.625" bolt); and

(D) Closure ring thickness.

(E) Width of lugs or extensions in crimp/lug cover.

* * * * *

(k) *Number of test samples.* Except as provided in this section, one test sample must be used for each test performed under this subpart.

(1) *Stainless steel drums.* Provided the validity of the test results is not affected, a person may perform the design qualification testing of stainless steel drums using three (3) samples rather than the specified eighteen (18) samples under the following provisions:

(i) The packaging must be tested in accordance with this subpart by subjecting each of the three containers to the following sequence of tests:

(A) The stacking test in § 178.606,

(B) The leakproofness test in § 178.604,

(C) The hydrostatic pressure test in § 178.608, and

(D) Diagonal top chime and flat on the side drop tests in § 178.603. Both drop tests may be conducted on the same sample.

(ii) For periodic retesting of stainless steel drums, a reduced sample size of one container is authorized.

(2) *Packagings other than stainless steel drums.* Provided the validity of the test results is not affected, several tests may be performed on one sample with the approval of the Associate Administrator.

* * * * *

■ 31. In § 178.700, paragraph (c)(1) is revised as follows:

§ 178.700 Purpose, scope and definitions.

* * * * *

(c) * * *

(1) Body means the receptacle proper (including openings and their closures, but not including service equipment) that has a volumetric capacity of not more than 3 cubic meters (3,000 L, 793 gallons, or 106 cubic feet).

* * * * *

■ 32. In § 178.703 paragraph (a)(1)(i) is revised as follows:

§ 178.703 Marking of IBCs.

(a) * * *

(1) * * *

(i) Except as provided in § 178.503(e)(1)(ii), the United Nations symbol as illustrated in § 178.503(e)(1)(i). For metal IBCs on which the marking is stamped or embossed, the capital letters "UN" may be applied instead of the symbol.

* * * * *

■ 33. In § 178.705, paragraph (d) is added to read as follows:

§ 178.705 Standards for metal IBCs.

* * * * *

(d) Metal IBCs may not have a volumetric capacity greater than 3,000 L (793 gallons) or less than 450 L (119 gallons).

■ 34. In § 178.706, paragraph (d) is added to read as follows:

§ 178.706 Standards for rigid plastic IBCs.

* * * * *

(d) Rigid plastic IBCs may not have a volumetric capacity greater than 3,000 L (793 gallons) or less than 450 L (119 gallons).

■ 35. In § 178.707, paragraph (d) is added to read as follows:

§ 178.707 Standards for composite IBCs.

* * * * *

(d) Composite IBCs may not have a volumetric capacity greater than 3,000 L (793 gallons) or less than 450 L (119 gallons).

■ 36. In § 178.708, paragraph (d) is added to read as follows:

§ 178.708 Standards for fiberboard IBCs.

* * * * *

(d) Fiberboard IBCs may not have a volumetric capacity greater than 3,000 L

(793 gallons) or less than 450 L (119 gallons).

■ 37. In § 178.709, paragraph (d) is added to read as follows:

§ 178.709 Standards for wooden IBCs.

* * * * *

(d) Wooden IBCs may not have a volumetric capacity greater than 3,000 L (793 gallons) or less than 450 L (119 gallons).

■ 38. In § 178.710, paragraph (d) is added to read as follows:

§ 178.710 Standards for flexible IBCs.

* * * * *

(d) Flexible IBCs:

(1) May not have a volumetric capacity greater than 3,000 L (793 gallons) or less than 56 L (15 gallons); and

(2) Must be designed and tested to a capacity of no less than 50 kg (110 pounds).

■ 39. In § 178.801, paragraph (i) is revised to read as follows:

§ 178.801 General requirements.

* * * * *

(i) *Approval of equivalent packagings.* An IBC differing from the standards in subpart N of this part, or tested using methods other than those specified in this subpart, may be used if approved by the Associate Administrator. Such IBCs must be shown to be equally effective, and testing methods used must be equivalent.

* * * * *

■ 40. In § 178.810, paragraph (c) is revised as follows:

§ 178.810 Drop test.

* * * * *

(c) *Test method.* (1) Samples of all IBC design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. The point of impact must be the most vulnerable part of the base of the IBC being tested. Following the drop, the IBC must be restored to the upright position for observation.

(2) IBC design types with a capacity of 0.45 cubic meters (15.9 cubic feet) or less must be subject to an additional drop test.

* * * * *

■ 41. Section 178.815 is revised to read as follows:

§ 178.815 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all IBC design types intended to be stacked.

(b) *Special preparation for the stacking test.* (1) All IBCs except flexible IBC design types must be loaded to their maximum permissible gross mass.

(2) The flexible IBC must be filled to not less than 95 percent of its capacity and to its maximum net mass, with the load being evenly distributed.

(c) *Test method.* (1) *Design Qualification Testing.* All IBCs must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load for a period of at least five minutes (see paragraph (c)(5) of this section).

(2) Fiberboard, wooden and composite IBCs with outer packagings constructed of other than plastic materials must be subject to the test for 24 hours.

(3) Rigid plastic IBC types and composite IBC types with plastic outer packagings (11HH1, 11HH2, 21HH1, 21HH2, 31HH1 and 31HH2) which bear the stacking load must be subjected to the test for 28 days at 40 °C (104 °F).

(4) For all IBCs, the load must be applied by one of the following methods:

(i) One or more IBCs of the same type loaded to their maximum permissible gross mass and stacked on the test IBC;

(ii) The calculated superimposed test load weight loaded on either a flat plate or a reproduction of the base of the IBC, which is stacked on the test IBC.

(5) *Calculation of superimposed test load.* For all IBCs, the load to be placed on the IBC must be 1.8 times the combined maximum permissible gross mass of the number of similar IBCs that may be stacked on top of the IBC during transportation.

(d) *Periodic Retest.* (1) The package must be tested in accordance with paragraph (c) of this section; *or*

(2) The packaging may be tested using a dynamic compression testing machine. The test must be conducted at room temperature on an empty, unsealed packaging. The test sample must be centered on the bottom platen of the testing machine. The top platen must be lowered until it comes in contact with the test sample. Compression must be applied end to end. The speed of the compression tester must be one-half inch plus or minus one-fourth inch per minute. An initial preload of 50 pounds must be applied to ensure a definite contact between the test sample and the platens. The distance between the platens at this time must be recorded as zero deformation. The force "A" then to be applied must be calculated using the applicable formula:

Liquids: $A = (1.8)(n - 1)\ [w + (s \times v \times 8.3 \times .98)] \times 1.5$;

or

Solids: $A = (1.8)(n - 1)\ [w + (s \times v \times 8.3 \times .95)] \times 1.5$

Where:

A = applied load in pounds.

n = maximum number of IBCs being stacked during transportation.

w = maximum weight of one empty container in pounds.

s = specific gravity (liquids) or density (solids) of the lading.

v = actual capacity of container (rated capacity + outage) in gallons.

and:

8.3 corresponds to the weight in pounds of 1.0 gallon of water.

1.5 is a compensation factor converting the static load of the stacking test into a load suitable for dynamic compression testing.

(e) *Criteria for passing the test.* (1) For metal, rigid plastic, and composite IBCs, there may be no permanent deformation, which renders the IBC unsafe for transportation, and no loss of contents.

(2) For fiberboard and wooden IBCs, there may be no loss of contents and no permanent deformation, which renders the whole IBC, including the base pallet, unsafe for transportation.

(3) For flexible IBCs, there may be no deterioration, which renders the IBC unsafe for transportation, and no loss of contents.

(4) For the dynamic compression test, a container passes the test if, after application of the required load, there is no permanent deformation to the IBC, which renders the whole IBC, including the base pallet, unsafe for transportation; in no case may the maximum deflection exceed one inch.

■ 42. In § 178.819, paragraph (b)(1) is amended by adding a second sentence and paragraph (b)(2) is revised as follows:

§ 178.819 Vibration test.

* * * * *

(b) * * *

(1) * * * IBCs intended for liquids may be tested using water as the filling material for the vibration test.

(2) The sample IBC must be placed on a vibrating platform with a vertical or rotary double-amplitude (peak-to-peak displacement) of one inch. The IBC must be constrained horizontally to prevent it from falling off the platform, but must be left free to move vertically and bounce.

* * * * *

■ 43. Subpart P is added to Part 178 as follows:

Subpart P—Large Packagings Standards

Sec.

178.900 Purpose and scope.
178.905 Large Packaging identification codes.
178.910 Marking of Large Packagings.
178.915 General Large Packaging standards.

178.920 Standards for metal Large Packagings.
178.925 Standards for rigid plastic Large Packagings.
178.930 Standards for fiberboard Large Packagings.
178.935 Standards for wooden Large Packagings.
178.940 Standards for flexible Large Packagings.

Subpart P—Large Packagings Standards

§ 178.900 Purpose and scope.

(a) This subpart prescribes requirements for Large Packaging intended for the transportation of hazardous materials. Standards for these packagings are based on the UN Recommendations.

(b) Terms used in this subpart are defined in § 171.8 of this subchapter.

§ 178.905 Large Packaging identification codes.

Large packaging code designations consist of: two numerals specified in paragraph (a) of this section; followed by the capital letter(s) specified in paragraph (b) of this section.

(a) Large packaging code number designations are as follows: 50 for rigid Large Packagings; or 51 for flexible Large Packagings.

(b) Large Packagings code letter designations are as follows:

(1) "A" means steel (all types and surface treatments).

(2) "B" means aluminum.

(3) "C" means natural wood.

(4) "D" means plywood.

(5) "F" means reconstituted wood.

(6) "G" means fiberboard.

(7) "H" means plastic.

(8) "M" means paper, multiwall.

(9) "N" means metal (other than steel or aluminum).

§ 178.910 Marking of Large Packagings.

(a) The manufacturer must:

(1) Mark every Large Packaging in a durable and clearly visible manner. The marking may be applied in a single line or in multiple lines provided the correct sequence is followed with the information required by this section. The following information is required in the sequence presented:

(i) Except as provided in § 178.503(e)(1)(ii), the United Nations packaging symbol as illustrated in § 178.503(e)(1)(i). For metal Large Packagings on which the marking is stamped or embossed, the capital letters "UN" may be applied instead of the symbol;

(ii) The code number designating the Large Packaging design type according to § 178.901. The letter "W" must follow the Large Packaging design type identification code on a Large Packaging when the Large Packaging differs from the requirements in subpart P of this part, or is tested using methods other than those specified in this subpart, and is approved by the Associate Administrator in accordance with the provisions in § 178.1001;

(iii) A capital letter identifying the performance standard under which the design type has been successfully tested, as follows:

(A) X—for Large Packagings meeting Packing Groups I, II and III tests;

(B) Y—for Large Packagings meeting Packing Groups II and III tests; and

(C) Z—for Large Packagings meeting Packing Group III test.

(iv) The month (designated numerically) and year (last two digits) of manufacture;

(v) The country authorizing the allocation of the mark. The letters "USA" indicate that the Large Packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter.

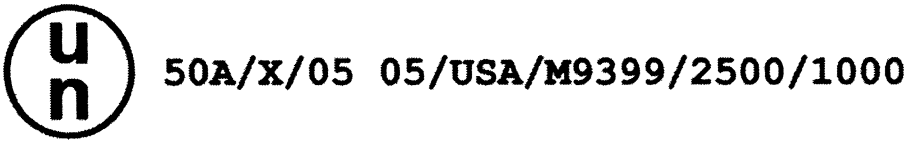
(vi) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subpart P and subpart Q of this part. Symbols, if used, must be registered with the Associate Administrator.

(vii) The stacking test load in kilograms (kg). For Large Packagings not designed for stacking the figure "0" must be shown.

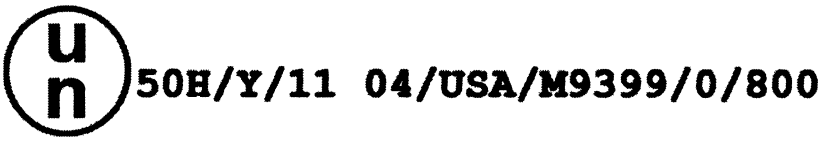
(viii) The maximum permissible gross mass or for flexible Large Packagings, the maximum net mass, in kg.

(2) The following are examples of symbols and required markings:

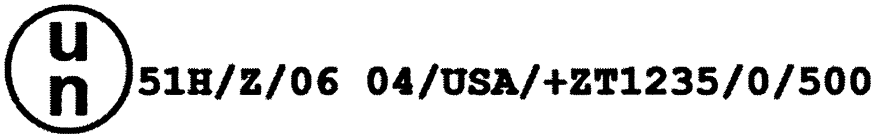
(i) For a steel Large Packaging suitable for stacking; stacking load: 2,500 kg; maximum gross mass: 1,000 kg.



(ii) For a plastic Large Packaging not suitable for stacking; maximum gross mass: 800 kg.



(iii) For a Flexible Large Packaging not suitable for stacking; maximum gross mass: 500 kg.



(b) [Reserved].

§ 178.915 General Large Packaging standards.

(a) Each Large Packaging must be resistant to, or protected from, deterioration due to exposure to the external environment. Large Packagings intended for solid hazardous materials must be sift-proof and water-resistant.

(b) All service equipment must be positioned or protected to minimize potential loss of contents resulting from damage during Large Packaging handling and transportation.

(c) Each Large Packaging, including attachments and service and structural equipment, must be designed to withstand, without loss of hazardous materials, the internal pressure of the contents and the stresses of normal handling and transport. A Large Packaging intended for stacking must be designed for stacking. Any lifting or securing features of a Large Packaging must be sufficient strength to withstand the normal conditions of handling and transportation without gross distortion or failure and must be positioned so as to cause no undue stress in any part of the Large Packaging.

(d) A Large Packaging consisting of packagings within a framework must be so constructed that the packaging is not damaged by the framework and is retained within the framework at all times.

(e) Large packaging design types must be constructed in such a way as to be bottom-lifted or top-lifted as specified in §§ 178.1004 and 178.1005.

§ 178.920 Standards for metal Large Packagings.

(a) The provisions in this section apply to metal Large Packagings intended to contain liquids and solids. Metal Large Packaging types are designated:

(1) 50A steel

(2) 50B aluminum

(3) 50N metal (other than steel or aluminum)

(b) Each Large Packaging must be made of suitable ductile metal materials. Welds must be made so as to maintain design type integrity of the receptacle under conditions normally incident to transportation. Low-temperature performance must be taken into account when appropriate.

(c) The use of dissimilar metals must not result in deterioration that could affect the integrity of the Large Packaging.

(d) Metal Large Packagings may not have a volumetric capacity greater than 3,000 L (793 gallons) and not less than 450 L (119 gallons).

§ 178.925 Standards for rigid plastic Large Packagings.

(a) The provisions in this section apply to rigid plastic Large Packagings intended to contain liquids and solids. Rigid plastic Large Packaging types are designated:

(1) 50H rigid plastics.

(2) [Reserved]

(b) A rigid plastic Large Packaging must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to conformance to § 173.24 of this subchapter, plastic materials must be resistant to aging and to degradation caused by ultraviolet radiation.

(1) If protection against ultraviolet radiation is necessary, it must be provided by the addition of a pigment or inhibiter such as carbon black to plastic materials. These additives must be compatible with the contents and remain effective throughout the life of the plastic Large Packaging body. Where use is made of carbon black, pigments or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if changes in the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction.

(2) Additives may be included in the composition of the plastic material to improve the resistance to aging or to serve other purposes, provided they do not adversely affect the physical or chemical properties of the material of construction.

(3) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of rigid plastic Large Packagings.

(c) Rigid plastic Large Packagings:

(1) May not have a volumetric capacity greater than 3,000 L (793 gallons); and

(2) May not have a volumetric capacity less than 450 L (119 gallons).

§ 178.930 Standards for fiberboard Large Packagings.

(a) The provisions in this section apply to fiberboard Large Packagings intended to contain solids. Rigid fiberboard large Packaging types are designated:

(1) 50G fiberboard

(2) [Reserved]

(b) *Construction requirements for fiberboard Large Packagings.*

(1) Fiberboard Large Packagings must be constructed of strong, solid or double-faced corrugated fiberboard (single or multiwall) that is appropriate to the capacity of the Large Packagings and to their intended use. Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot)—*see* ISO 535 (E) (IBR, *see* § 171.7 of this subchapter). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks or undue bending. The fluting or corrugated fiberboard must be firmly glued to the facings.

(i) The walls, including top and bottom, must have a minimum puncture resistance of 15 Joules (11 foot-pounds of energy) measured according to ISO 3036 (IBR, *see* § 171.7 of this subchapter).

(ii) Manufacturers' joints in the outer packaging of Large Packagings must be made with an appropriate overlap and be taped, glued, stitched with metal staples or fastened by other means at least equally effective. Where joints are made by gluing or taping, a water resistant adhesive must be used. Metal staples must pass completely through all pieces to be fastened and be formed or protected so that any inner liner cannot be abraded or punctured by them.

(2) *Integral and detachable pallets.*

(i) Any integral pallet base forming part of a Large Packaging or any detachable pallet must be suitable for mechanical handling with the Large Packaging filled to its maximum permissible gross mass.

(ii) The pallet or integral base must be designed to avoid protrusions causing damage to the fiberboard Large Packagings in handling.

(iii) The body must be secured to any detached pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from protrusions that might damage the Large Packaging.

(3) Strengthening devices, such as timber supports to increase stacking performance may be used but must be external to the liner.

(4) The load-bearing surfaces of Large Packagings intended for stacking must be designed to distribute the load in a stable manner.

(c) Fiberboard Large Packagings may not have a volumetric capacity greater than 3,000 L (793 gallons) and not less than 450 L (119 gallons).

§ 178.935 Standards for wooden Large Packagings.

(a) The provisions in this section apply to wooden Large Packagings intended to contain solids. Wooden Large Packaging types are designated:

(1) 50C natural wood.

(2) 50D plywood.

(3) 50F reconstituted wood.

(b) Construction requirements for wooden Large Packagings are as follows:

(1) The strength of the materials used and the method of construction must be appropriate to the capacity and intended use of the Large Packagings.

(i) Natural wood used in the construction of Large Packagings must be well-seasoned, commercially dry and free from defects that would materially lessen the strength of any part of the Large Packagings. Each Large Packaging part must consist of uncut wood or a piece equivalent in strength and integrity. Large Packagings parts are equivalent to one piece when a suitable method of glued assembly is used (*i.e.,* a Lindermann joint, tongue and groove joint, ship, lap or babbet joint; or butt joint with at least two corrugated metal fasteners at each joint, or when other methods at least equally effective are used).

(ii) Plywood used in construction must be at least 3-ply. Plywood must be made of well-seasoned rotary cut, sliced or sawn veneer, commercially dry and free from defects that would materially lessen the strength of the Large Packagings. All adjacent piles must be glued with water resistant adhesive. Materials other than plywood may be used for the construction of the Large Packaging.

(iii) Reconstituted wood used in the construction of Large Packagings must be water resistant reconstituted wood such as hardboard, particle board or other suitable type.

(iv) Wooden Large Packagings must be firmly nailed or secured to corner posts or ends or be assembled by similar devices.

(2) *Integral and detachable pallets.*

(i) Any integral pallet base forming part of a Large Packaging, or any detachable pallet must be suitable for mechanical handling of a Large Packaging filled to its maximum permissible gross mass.

(ii) The pallet or integral base must be designed to avoid protrusion that may cause damage to the Large Packaging in handling.

(iii) The body must be secured to any detachable pallet to ensure stability in handling and transportation. Where a detachable pallet is used, its top surface must be free from protrusions that might damage the Large Packaging.

(3) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the liner.

(4) The load bearing surfaces of the Large Packaging must be designed to distribute loads in a stable manner.

(c) Wooden Large Packagings:

(1) May not have a volumetric capacity greater than 3,000 L (793 gallons); and

(2) May not have a volumetric capacity less than 450 L (119 gallons).

§ 178.940 Standards for flexible Large Packagings.

(a) The provisions in this section apply to flexible Large Packagings intended to contain liquids and solids. Flexible Large Packagings types are designated:

(1) 51H flexible plastics.

(2) 51M flexible paper.

(b) Construction requirements for flexible Large Packagings are as follows:

(1) The strength of the material and the construction of the flexible Large Packagings must be appropriate to its capacity and its intended use.

(2) All materials used in the construction of flexible Large Packagings of types 51M must, after complete immersion in water for not less than 24 hours, retain at least 85 percent of the tensile strength as measured originally on the material conditioned to equilibrium at 67 percent relative humidity or less.

(3) Seams must be stitched or formed by heat sealing, gluing or any equivalent method. All stitched seam-ends must be secured.

(4) In addition to conformance with the requirements of § 173.24 of this subchapter, flexible Large Packaging must be resistant to aging and degradation caused by ultraviolet radiation.

(5) For plastic flexible Large Packagings, if necessary, protection against ultraviolet radiation must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the Large Packaging. Where use is made of carbon black, pigments or inhibitors other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction.

(6) Additives may be included in the composition of the material of the Large Packaging to improve the resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(7) When flexible material Large Packagings are filled, the ratio of height to width must be no more than 2:1.

(c) Flexible Large Packagings:

(1) May not have a volumetric capacity greater than 3,000 L (793 gallons);

(2) May not have a volumetric capacity less than 56 L (15 gallons); and

(3) Must be designed and tested to a capacity of not less than 50 kg (110 pounds).

■ 44. Subpart Q is added to Part 178 as follows:

Subpart Q—Testing of Large Packagings

Sec.
178.950 Purpose and scope.
178.955 General requirements.
178.960 Preparation of Large Packagings for testing.
178.965 Drop test.
178.970 Bottom lift test.
178.975 Top lift test.
178.980 Stacking test.
178.985 Vibration test.

Subpart Q—Testing of Large Packagings

§ 178.950 Purpose and scope.

This subpart prescribes certain testing requirements for Large Packagings identified in subpart P of this part.

§ 178.955 General requirements.

(a) *General.* The test procedures prescribed in this subpart are intended to ensure that Large Packagings containing hazardous materials can withstand normal conditions of transportation. These test procedures are considered minimum requirements. Each packaging must be manufactured and assembled so as to be capable of successfully passing the prescribed tests and to conform to the requirements of § 173.24 of this subchapter while in transportation.

(b) *Responsibility.* The Large Packaging manufacturer is responsible for ensuring each Large Packaging is capable of passing the prescribed tests. To the extent a Large Packaging's assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

(c) *Definitions.* For the purpose of this subpart:

(1) *Large packaging design type* refers to a Large Packaging which does not differ in structural design, size, material of construction and packing.

(2) *Design qualification testing* is the performance of the drop, stacking, and

bottom-lift or top-lift tests, as applicable, prescribed in this subpart, for each different Large Packaging design type, at the start of production of that packaging.

(3) *Periodic design requalification test* is the performance of the applicable tests specified in paragraph (c)(2) of this section on a Large Packaging design type, to requalify the design for continued production at the frequency specified in paragraph (e) of this section.

(4) *Production inspection* is the inspection, which must initially be conducted on each newly manufactured Large Packaging.

(5) *Different Large Packaging design type* is one which differs from a previously qualified Large Packaging design type in structural design, size, material of construction, wall thickness, or manner of construction, but does not include:

(i) A packaging which differs in surface treatment;

(ii) A rigid plastic Large Packaging, which differs with regard to additives used to comply with §§ 178.906(b) or 178.909(b);

(iii) A packaging which differs only in its lesser external dimensions (*i.e.,* height, width, length) provided materials of construction and material thickness or fabric weight remain the same;

(d) *Design qualification testing.* The packaging manufacturer must achieve successful test results for the design qualification testing at the start of production of each new or different Large Packaging design type. Application of the certification mark by the manufacturer constitutes certification that the Large Packaging design type passed the prescribed tests in this subpart.

(e) *Periodic design requalification testing.* (1) Periodic design requalification must be conducted on each qualified Large Packaging design type if the manufacturer is to maintain authorization for continued production. The Large Packaging manufacturer must achieve successful test results for the periodic design requalification at sufficient frequency to ensure each packaging produced by the manufacturer is capable of passing the design qualification tests. Design requalification tests must be conducted at least once every 24 months.

(2) Changes in the frequency of design requalification testing specified in paragraph (e)(1) of this section are authorized if approved by the Associate Administrator.

(f) *Test samples.* The manufacturer must conduct the design qualification and periodic tests prescribed in this subpart using random samples of packagings, in the numbers specified in the appropriate test section.

(g) *Selective testing.* The selective testing of Large Packagings, which differ only in minor respects from a tested type is permitted as described in this section. For air transport, Large Packagings must comply with § 173.27(c)(1) and (c)(2) of this subchapter. Variations are permitted in inner packagings of a tested Large Packaging, without further testing of the package, provided an equivalent level of performance is maintained and the methodology used to determine that the inner packaging, including closure, maintains an equivalent level of performance is documented in writing by the person certifying compliance with this paragraph and retained in accordance with paragraph (l) of this section. Permitted variations are as follows:

(1) Inner packagings of equivalent or smaller size may be used provided—

(i) The inner packagings are of similar design to the tested inner packagings (*i.e.,* shape—round, rectangular, etc.);

(ii) The material of construction of the inner packagings (glass, plastic, metal, etc.) offers resistance to impact and stacking forces equal to or greater than that of the originally tested inner packaging;

(iii) The inner packagings have the same or smaller openings and the closure is of similar design (*e.g.,* screw cap, friction lid, etc.);

(iv) Sufficient additional cushioning material is used to take up void spaces and to prevent significant movement of the inner packagings;

(v) Inner packagings are oriented within the outer packaging in the same manner as in the tested package; and

(vi) The gross mass of the package does not exceed that originally tested.

(2) A lesser number of the tested inner packagings, or of the alternative types of inner packagings identified in paragraph (g)(1) of this section, may be used provided sufficient cushioning is added to fill void space(s) and to prevent significant movement of the inner packagings.

(h) *Proof of compliance.* In addition to the periodic design requalification testing intervals specified in paragraph (e) of this section, the Associate Administrator, or a designated representative, may at any time require demonstration of compliance by a manufacturer, through testing in accordance with this subpart, to ensure packagings meet the requirements of this subpart. As required by the Associate Administrator, or a designated representative, the manufacturer must either:

(1) Conduct performance tests or have tests conducted by an independent testing facility, in accordance with this subpart; or

(2) Make a sample Large Packaging available to the Associate Administrator, or a designated representative, for testing in accordance with this subpart.

(i) *Record retention.* Following each design qualification test and each periodic retest on a Large Packaging, a test report must be prepared. The test report must be maintained at each location where the Large Packaging is manufactured and each location where the design qualification tests are conducted, for as long as the Large Packaging is produced and for at least two years thereafter, and at each location where the periodic retests are conducted until such tests are successfully performed again and a new test report produced. In addition, a copy of the test report must be maintained by a person certifying compliance with this part. The test report must be made available to a user of a Large Packaging or a representative of the Department upon request. The test report, at a minimum, must contain the following information:

(1) Name and address of test facility;

(2) Name and address of applicant (where appropriate);

(3) A unique test report identification;

(4) Date of the test report;

(5) Manufacturer of the packaging;

(6) Description of the packaging design type (*e.g.,* dimensions, materials, closures, thickness, etc.), including methods of manufacture (*e.g.,* blow molding) and which may include drawing(s) and/or photograph(s);

(7) Maximum capacity;

(8) Characteristics of test contents, *e.g.,* viscosity and relative density for liquids and particle size for solids;

(9) Mathematical calculations performed to conduct and document testing (for example, drop height, test capacity, outage requirements, etc.);

(10) Test descriptions and results; and

(11) Signature with the name and title of signatory.

§ 178.960 Preparation of Large Packagings for testing.

(a) Except as otherwise provided in this subchapter, each Large Packaging and package must be closed in preparation for testing and tests must be carried out in the same manner as if prepared for transportation, including inner packagings. All closures must be installed using proper techniques and torques.

(b) For the drop and stacking test, inner receptacles must be filled to not less than 95 percent of maximum capacity (*see* § 171.8 of this subchapter) in the case of solids and not less than 98 percent of maximum in the case of liquids. Bags must be filled to the maximum mass at which they may be used. For Large Packagings where the inner packagings are designed to carry liquids and solids, separate testing is required for both liquid and solid contents. The material to be transported in the packagings may be replaced by a non-hazardous material, except for chemical compatibility testing or where this would invalidate the results of the tests.

(c) If the material to be transported is replaced for test purposes by a non-hazardous material, the material used must be of the same or higher specific gravity as the material to be carried, and its other physical properties (grain, size, viscosity) which might influence the results of the required tests must correspond as closely as possible to those of the hazardous material to be transported. It is permissible to use additives, such as bags of lead shot, to achieve the requisite total package mass, so long as they do not affect the test results.

(d) Paper or fiberboard Large Packagings must be conditioned for at least 24 hours immediately prior to testing in an atmosphere maintained—

(1) At 50 percent ± 2 percent relative humidity, and at a temperature of 23 °C ± 2 °C (73 °F ± 4 °F). Average values should fall within these limits. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5 percent relative humidity without significant impairment of test reproducibility;

(2) At 65 percent ± 2 percent relative humidity, and at a temperature of 20 °C ± 2 °C (68 °F ± 4 °F), or 27 °C ± 2 °C (81 °F ± 4 °F). Average values should fall within these limits. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5 percent relative humidity without significant impairment of test reproducibility; or

(3) For testing at periodic intervals only (*i.e.,* other than initial design qualification testing), at ambient conditions.

§ 178.965 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all Large Packagings design types and performed periodically as specified in § 178.1001(e) of this subpart.

(b) *Special preparation for the drop test.* Large Packagings must be filled in accordance with § 178.1002.

(c) *Conditioning.* Rigid plastic Large Packagings and Large Packagings with plastic inner receptacles must be conditioned for testing by reducing the temperature of the packaging and its contents to − 18 °C (0 °F) or lower. Test liquids must be kept in the liquid state, if necessary, by the addition of anti-freeze. Water/anti-freeze solutions with a minimum specific gravity of 0.95 for testing at − 18 °C (0 °F) or lower are considered acceptable test liquids, and may be considered equivalent to water for test purposes. Large Packagings conditioned in this way are not required to be conditioned in accordance with § 178.1002(d).

(d) *Test method.* (1) Samples of all Large Packaging design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. The point of impact must be the most vulnerable part of the base of the Large Packaging being tested. Following the drop, the Large Packaging must be restored to the upright position for observation.

(2) Large Packaging design types with a capacity of 0.45 cubic meters (15.9 cubic feet) or less must be subject to an additional drop test.

(e) *Drop height.* (1) For all Large Packagings, drop heights are specified as follows:

(i) Packing group I: 1.8 m (5.9 feet)

(ii) Packing group II: 1.2 m (3.9 feet)

(iii) Packing group III: 0.8 m (2.6 feet)

(2) Drop tests are to be performed with the solid or liquid to be transported or with a non-hazardous material having essentially the same physical characteristics.

(3) The specific gravity and viscosity of a substituted non-hazardous material used in the drop test for liquids must be similar to the hazardous material intended for transportation. Water also may be used for the liquid drop test under the following conditions:

(i) Where the substances to be carried have a specific gravity not exceeding 1.2, the drop heights must be those specified in paragraph (e)(1) of this section for each Large Packaging design type; and

(ii) Where the substances to be carried have a specific gravity exceeding 1.2, the drop heights must be as follows:

(A) Packing Group I: SG × 1.5 m (4.9 feet).

(B) Packing Group II: SG × 1.0 m (3.3 feet).

(C) Packing Group III: SG × 0.67 m (2.2 feet).

(f) *Criteria for passing the test.* For all Large Packaging design types there may be no loss of the filling substance from inner packaging(s) or article(s). Ruptures are not permitted in Large Packaging for articles of Class 1 which permit the spillage of loose explosive substances or articles from the Large Packaging. Where a Large Packaging undergoes a drop test, the sample passes the test if the entire contents are retained even if the closure is no longer sift-proof.

§ 178.970 Bottom lift test.

(a) *General.* The bottom lift test must be conducted for the qualification of all Large Packagings design types designed to be lifted from the base.

(b) *Special preparation for the bottom lift test.* The Large Packaging must be loaded to 1.25 times its maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* All Large Packaging design types must be raised and lowered twice by a lift truck with the forks centrally positioned and spaced at three quarters of the dimension of the side of entry (unless the points of entry are fixed). The forks must penetrate to three quarters of the direction of entry.

(d) *Criteria for passing the test.* For all Large Packagings design types designed to be lifted from the base, there may be no permanent deformation which renders the Large Packaging unsafe for transport and there must be no loss of contents.

§ 178.975 Top lift test.

(a) *General.* The top lift test must be conducted for the qualification of all of Large Packagings design types to be lifted from the top or, for flexible Large Packagings, from the side.

(b) *Special preparation for the top lift test.* (1) Metal and rigid plastic Large Packagings design types must be loaded to twice its maximum permissible gross mass.

(2) Flexible Large Packaging design types must be filled to six times the maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* (1) A Large Packaging must be lifted in the manner for which it is designed until clear of the floor and maintained in that position for a period of five minutes.

(2) Rigid plastic Large Packaging design types must be:

(i) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied vertically for a period of five minutes; and

(ii) Lifted by each pair of diagonally opposite lifting devices so that the hoisting forces are applied towards the center at 45° to the vertical, for a period of five minutes.

(3) If not tested as indicated in paragraph (c)(1) of this section, a

flexible Large Packaging design type must be tested as follows:

(i) Fill the flexible Large Packaging to 95% full with a material representative of the product to be shipped.

(ii) Suspend the flexible Large Packaging by its lifting devices.

(iii) Apply a constant downward force through a specially designed platen. The platen will be a minimum of 60 percent and a maximum of 80 percent of the cross sectional surface area of the flexible Large Packaging.

(iv) The combination of the mass of the filled flexible Large Packaging and the force applied through the platen must be a minimum of six times the maximum net mass of the flexible Large Packaging. The test must be conducted for a period of five minutes.

(v) Other equally effective methods of top lift testing and preparation may be used with approval of the Associate Administrator.

(d) *Criterion for passing the test.* For all Large Packagings design types designed to be lifted from the top, there may be no permanent deformation which renders the Large Packagings unsafe for transport and no loss of contents.

§ 178.980 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all Large Packagings design types intended to be stacked.

(b) *Special preparation for the stacking test.* (1) All Large Packagings except flexible Large Packaging design types must be loaded to their maximum permissible gross mass.

(2) Flexible Large Packagings must be filled to not less than 95 percent of their capacity and to their maximum net mass, with the load being evenly distributed.

(c) *Test method.* (1) All Large Packagings must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load for a period of at least five minutes (see paragraph (c)(5) of this section).

(2) Fiberboard and wooden Large Packagings must be subjected to the test for 24 hours.

(3) Rigid plastic Large Packagings which bear the stacking load must be subjected to the test for 28 days at 40 °C (104 °F).

(4) For all Large Packagings, the load must be applied by one of the following methods:

(i) One or more Large Packagings of the same type loaded to their maximum permissible gross mass and stacked on the test Large Packaging;

(ii) The calculated superimposed test load weight loaded on either a flat plate or a reproduction of the base of the Large Packaging, which is stacked on the test Large Packaging; or

(5) *Calculation of superimposed test load.* For all Large Packagings, the load to be placed on the Large Packaging must be 1.8 times the combined maximum permissible gross mass of the number of similar Large Packaging that may be stacked on top of the Large Packaging during transportation.

(d) *Periodic Retest.* (1) The package must be tested in accordance with § 178.1015(c) of this subpart; *or*

(2) The packaging may be tested using a dynamic compression testing machine. The test must be conducted at room temperature on an empty, unsealed packaging. The test sample must be centered on the bottom platen of the testing machine. The top platen must be lowered until it comes in contact with the test sample. Compression must be applied end to end. The speed of the compression tester must be one-half inch plus or minus one-fourth inch per minute. An initial preload of 50 pounds must be applied to ensure a definite contact between the test sample and the platens. The distance between the platens at this time must be recorded as zero deformation. The force "A" to then be applied must be calculated using the applicable formula:

Liquids: $A = (1.8)(n-1)\ [w + (s \times v \times 8.3 \times .98)] \times 1.5$;

or

Solids: $A = (1.8)(n-1)\ [w + (s \times v \times 8.3 \times .95)] \times 1.5$

Where:

A = applied load in pounds.

n = maximum number of Large Packagings that may be stacked during transportation.

w = maximum weight of one empty container in pounds.

s = specific gravity (liquids) or density (solids) of the lading.

v = actual capacity of container (rated capacity + outage) in gallons.

and:

8.3 corresponds to the weight in pounds of 1.0 gallon of water.

1.5 is a compensation factor that converts the static load of the stacking test into a load suitable for dynamic compression testing.

(e) *Criterion for passing the test.* (1) For metal or rigid plastic Large Packagings, there may be no permanent deformation which renders the Large Packaging unsafe for transportation and no loss of contents.

(2) For flexible Large Packagings, there may be no deterioration which renders the Large Packaging unsafe for transportation and no loss of contents.

(3) For the dynamic compression test, a container passes the test if, after application of the required load, there is no permanent deformation to the Large Packaging which renders the whole Large Packaging; including the base pallet, unsafe for transportation; in no case may the maximum deflection exceed one inch.

§ 178.985 Vibration test.

(a) *General.* The vibration test must be conducted for the qualification of all rigid Large Packaging design types. Flexible Large Packaging design types must be capable of withstanding the vibration test.

(b) *Test method.* (1) A sample Large Packaging, selected at random, must be filled and closed as for shipment. Large Packagings intended for liquids may be tested using water as the filling material for the vibration test.

(2) The sample Large Packaging must be placed on a vibrating platform that has a vertical or rotary double-amplitude (peak-to-peak displacement) of one inch. The Large Packaging must be constrained horizontally to prevent it from falling off the platform, but must be left free to move vertically and bounce.

(3) The sample Large Packaging must be placed on a vibrating platform that has a vertical double-amplitude (peak-to-peak displacement) of one inch. The Large Packaging must be constrained horizontally to prevent it from falling off the platform, but must be left free to move vertically and bounce.

(4) The test must be performed for one hour at a frequency that causes the package to be raised from the vibrating platform to such a degree that a piece of material of approximately 1.6-mm (0.063-inch) in thickness (such as steel strapping or paperboard) can be passed between the bottom of the Large Packaging and the platform. Other methods at least equally effective may be used (*see* § 178.801(i)).

(c) *Criterion for passing the test.* A Large Packaging passes the vibration test if there is no rupture or leakage.

Issued in Washington, DC, on January 21, 2010, under authority delegated in 49 CFR Part 1.

Cindy Douglass,

Assistant Administrator/Chief Safety Officer.

[FR Doc. 2010–1615 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Tuesday,
February 2, 2010

Part III

Environmental Protection Agency

Sixty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0869; FRL–8804–4]

Sixty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Sixty-Fifth Report to the Administrator of EPA on December 3, 2009. In the 65th ITC Report, which is included with this notice, the ITC has no revisions to the TSCA section 4(e) *Priority Testing List* at this time.

DATES: Comments must be received on or before March 4, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0869, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0869. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0869. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 260l *et seq.*) authorizes the Administrator of EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

You may access additional information about the ITC at *http://www.epa.gov/opptintr/itc*.

A. The 65th ITC Report

The ITC has no revisions to the TSCA section 4(e) *Priority Testing List* at this time.

B. Status of the Priority Testing List

The *Priority Testing List* includes 2 alkylphenols, 12 lead compounds, 16 chemicals with insufficient dermal absorption rate data, and 207 HPV Challenge Program orphan chemicals.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: January 27, 2010.

Wendy Cleland-Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

Sixty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency

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Summary

The ITC has no revisions to the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List* at this time.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1.—TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 2009)

ITC Report	Date	Chemical Name/Group	Action
31	January 1993	2 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	10 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	Branched 4-nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
55	December 2004	203 High Production Volume (HPV) Challenge Program orphan chemicals	Recommended
56	August 2005	4 HPV Challenge Program orphan chemicals	Recommended
60	May 2007	12 Lead and lead compounds	Recommended

I. Background

The ITC was established by section 4(e) of TSCA "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC's website (*http://www.epa.gov/opptintr/itc*) within a few days of submission to the EPA Administrator and from regulations.gov (*http://www.regulations.gov*) after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this report.

II. ITC's Activities During this Reporting Period (June 2009 to November 2009)

During this reporting period, the ITC discussed the potential use of TSCA section 8(a) and 8(d) to obtain biomonitoring data (*http://www.gao.gov/new.items/d09353.pdf*) and the Department of Homeland Security (DHS) Chemical Terrorism Risk Assessment (CTRA) chemicals, and continued to discuss nanoscale materials and the EPA's Nanoscale Materials Stewardship Program (NMSP). For details on the NMSP, see the **Federal Register** issue of January 28, 2008 (73 FR 4861) (FRL–8344–5) available on-line at *http://www.epa.gov/fedrgstr*.

III. The TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Vacant

Department of Commerce

National Institute of Standards and Technology
Dianne Poster, Alternate

National Oceanographic and Atmospheric Administration
Tony Pait, Member, Chair

Environmental Protection Agency
John Schaeffer, Member
Gerry Brown, Alternate

National Cancer Institute
Vacant

National Institute of Environmental Health Sciences
Scott Masten, Alternate

National Institute for Occupational Safety and Health
Gayle DeBord, Member
Dennis W. Lynch, Alternate

National Science Foundation
Margaret Cavanaugh, Alternate

Occupational Safety and Health Administration
Thomas Nerad, Member, Vice-Chair
Maureen Ruskin, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
Daphne Moffett, Member
Glenn D. Todd, Alternate

Consumer Product Safety Commission
Jacqueline Ferrante, Member

Department of Agriculture
Clifford P. Rice, Member
Laura L. McConnell, Alternate

Department of Defense
Laurie Roszell, Member

Department of the Interior
Barnett A. Rattner, Member

Food and Drug Administration
Kirk Arvidson, Member
Ronald F. Chanderbhan, Alternate

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Director
Carol Savage, Administrative Assistant (NOWCC Employee)

TSCA Interagency Testing Committee (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; e-mail address: *savage.carol@epa.gov*; url: *http://www.epa.gov/opptintr/itc*.

[FR Doc. 2010–2152 Filed 2–1–10; 8:45 am]

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Federal Register

Tuesday,
February 2, 2010

Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Part 54

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

Centers for Medicare & Medicaid Services

45 CFR Part 146

Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9479]

RIN 1545–BJ05

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB30

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4140–IFC]

45 CFR Part 146

RIN 0938–AP65

Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Interim final rules with request for comments.

SUMMARY: This document contains interim final rules implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, which requires parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations under group health plans and health insurance coverage offered in connection with a group health plan.

DATES: *Effective date.* These interim final regulations are effective on April 5, 2010.

Comment date. Comments are due on or before May 3, 2010.

Applicability date. These interim final regulations generally apply to group health plans and group health insurance issuers for plan years beginning on or after July 1, 2010.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. *WARNING:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB30, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: E-OHPSCA.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* RIN 1210–AB30.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code CMS–4140–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4140–IFC, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4140–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday

through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–120692–09, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–120692–09), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–120692–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Adam Shaw, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (877) 267–2323, extension 61091.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws, including the mental health parity provisions, may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers (such as mental health and substance use disorder parity) can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.asp*).

SUPPLEMENTARY INFORMATION:

I. Background

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008 as sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Pub. L. 110–343).[1] MHPAEA amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), and the Internal Revenue Code of 1986 (Code). In 1996, Congress enacted the Mental Health Parity Act of 1996 (MHPA 1996), which required parity in aggregate lifetime and annual dollar limits for mental health benefits and medical and surgical benefits. Those mental health parity provisions were codified in section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code, which apply to employment-related group health plans and health insurance coverage offered in connection with a group health plan. The changes made by MHPAEA are codified in these same sections and consist of new requirements as well as amendments to the existing mental health parity provisions. The changes made by MHPAEA are generally effective for plan years beginning after October 3, 2009.

On April 28, 2009, the Departments of the Treasury, Labor, and HHS (collectively, the Departments) published in the **Federal Register** (74 FR 19155) a request for information (RFI) soliciting comments on the requirements of MHPAEA. After consideration of the comments received in response to the RFI, the Departments are publishing these interim final regulations. These regulations generally become applicable to plans and issuers for plan years beginning on or after July 1, 2010.

II. Overview of the Regulations

These interim final regulations replace regulations published on December 22, 1997 at 62 FR 66932 implementing MHPA 1996. These regulations also make conforming changes to reflect modifications MHPAEA made to the original MHPA 1996 definitions and provisions regarding parity in aggregate lifetime and annual dollar limits, and incorporate new parity standards.

A. Meaning of Terms (26 CFR 54.9812–1T(a), 29 CFR 2590.712(a), and 45 CFR 146.136(a))

The paragraph with the heading "definitions" in the MHPA 1996 regulations has been renamed "meaning of terms" under these regulations because some of the terms added by MHPAEA are not comprehensively defined. The change in heading reflects the fact that if a term is described as including a list of examples, the term may have a broader meaning than the illustrative list of examples.

1. Aggregate Lifetime and Annual Dollar Limits

The word "dollar" has been added to the terms "aggregate lifetime limit" and "annual limit" under the MHPA 1996 regulations to distinguish them from lifetime and annual limits expressed in terms of days or visits which are subject to new requirements under MHPAEA.

2. Coverage Unit

Paragraph (a) in these regulations cross-references the definition of coverage unit in paragraph (c)(1). Paragraph (c)(1) clarifies the term for purposes of the new MHPAEA rules and is discussed later in this preamble.

3. Cumulative Financial Requirements

These regulations add a definition for the term "cumulative financial requirements". Under this definition, a cumulative financial requirement is a financial requirement that typically operates as a threshold amount that, once satisfied, will determine whether, or to what extent, benefits are provided. A common example of a cumulative financial requirement is a deductible that must be satisfied before a plan will start paying for benefits. However, aggregate lifetime and annual dollar limits are excluded from being cumulative financial requirements (because the statutory term financial requirements excludes aggregate lifetime and annual dollar limits).

4. Cumulative Quantitative Treatment Limitations

These regulations add a definition for the term "cumulative quantitative treatment limitations". Similar to the definition for cumulative financial requirements, a cumulative quantitative treatment limitation is defined as a treatment limitation that will determine whether, or to what extent, benefits are provided based on an accumulated amount. A common example of a cumulative quantitative treatment limitation is a visit limit (whether imposed annually or on a lifetime basis).

5. Financial Requirements

These regulations repeat the statutory language that provides the term "financial requirements" includes deductibles, copayments, coinsurance, and out-of-pocket maximums. The statute and these regulations exclude aggregate lifetime and annual dollar limits from the meaning of financial requirements; these limits are subject to

[1] A technical correction to the effective date for collectively bargained plans was made by Public Law 110–460, enacted on December 23, 2008.

separate provisions originally enacted as part of MHPA 1996 that remain in paragraph (b).

6. Medical/Surgical Benefits, Mental Health Benefits, and Substance Use Disorder Benefits

Among the changes enacted by MHPAEA is an expansion of the parity requirements for aggregate lifetime and annual dollar limits to include protections for substance use disorder benefits. Prior law specifically excluded substance abuse or chemical dependency benefits [2] from those requirements. Consequently, these regulations amend the meanings of medical/surgical benefits and mental health benefits (and add a definition for substance use disorder benefits). Under these regulations, medical/surgical benefits are benefits for medical or surgical services, as defined under the terms of the plan or health insurance coverage, but do not include mental health or substance use disorder benefits. Mental health benefits and substance use disorder benefits are benefits with respect to services for mental health conditions and substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law. These regulations further provide that the plan terms defining whether the benefits are mental health or substance use disorder benefits must be consistent with generally recognized independent standards of current medical practice. This requirement is included to ensure that a plan does not misclassify a benefit in order to avoid complying with the parity requirements.

The word "generally" in the requirement "to be consistent with generally recognized independent standards of current medical practice" is not meant to imply that the standard must be a national standard; it simply means that a standard must be generally accepted in the relevant medical community. There are many different sources that would meet this requirement. For example, a plan may follow the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the International Classification of Diseases (ICD), or a State guideline. All of these would be considered acceptable resources to determine whether benefits for a particular condition are classified as medical/surgical, mental health, or substance use disorder benefits.

7. Treatment Limitations

These regulations repeat the statutory language with respect to the term "treatment limitation" and also distinguish between a quantitative and a nonquantitative treatment limitation. These regulations provide that the parity requirements in the statute apply to both quantitative and nonquantitative treatment limitations. A quantitative treatment limitation is a limitation that is expressed numerically, such as an annual limit of 50 outpatient visits. A nonquantitative treatment limitation is a limitation that is not expressed numerically, but otherwise limits the scope or duration of benefits for treatment. A non-exhaustive list of nonquantitative treatment limitations is included in these regulations in paragraph (c)(4). This list, as well as the application of these regulations to nonquantitative treatment limitations, is further discussed later in this preamble. However, these regulations provide that a permanent exclusion of all benefits for a specific condition or disorder is not a treatment limitation.

B. Conforming Amendments to Parity Requirements With Respect to Aggregate Lifetime and Annual Dollar Limits (26 CFR 54.9812–1T(b), 29 CFR 2590.712(b), and 45 CFR 146.136(b))

Paragraph (b) of these regulations addresses the parity requirements with respect to aggregate lifetime and annual dollar limits. The mechanics of these requirements generally remain the same as under the MHPA 1996 regulations, except that MHPAEA expanded the scope of the parity provisions to apply also to substance use disorder benefits. Accordingly, these regulations make conforming changes to reflect this expansion. Certain examples illustrating the application of MHPA 1996 to benefits for substance abuse and chemical dependency were deleted (as they are no longer accurate); other provisions were modified to include references to substance use disorder benefits as within the scope of the parity requirements for aggregate lifetime and annual dollar limits.

C. Parity Requirements With Respect to Financial Requirements and Treatment Limitations (26 CFR 54.9812–1T(c), 29 CFR 2590.712(c), and 45 CFR 146.136(c))

Paragraph (c) of these regulations implements the core of MHPAEA's new rules, which require parity with respect to financial requirements and treatment limitations.

1. Clarification of Terms

In addition to the meaning of terms in paragraph (a), paragraph (c)(1) of these regulations clarifies certain terms that have been given specific meanings for purposes of MHPAEA.

a. *Classification of benefits.* Paragraph (c)(1) cross-references the term "classification of benefits" in paragraph (c)(2)(ii). Paragraph (c)(2)(ii) describes the six benefit classifications and their application, which are discussed later in this preamble. These regulations provide that the parity requirements for financial requirements and treatment limitations are applied on a classification-by-classification basis.

b. *Type.* These regulations use the term "type" to refer to financial requirements and treatment limitations of the same nature. Different types include copayments, coinsurance, annual visit limits, and episode visit limits. Plans often apply more than one financial requirement or treatment limitation to benefits. These regulations specify that a financial requirement or treatment limitation must be compared only to financial requirements or treatment limitations of the same type within a classification. For example, copayments are compared only to other copayments, and annual visit limits are compared only to other annual visit limits; copayments are not compared to coinsurance, and annual visit limits are not compared to episode visit limits.

c. *Level.* A type of financial requirement or treatment limitation may vary in magnitude. For example, a plan may impose a $20 copayment or a $30 copayment depending on the medical/surgical benefit. In these regulations, a "level" of a type of financial requirement or treatment limitation refers to the magnitude (such as the dollar, percentage, day, or visit amount) of the financial requirement or treatment limitation.

d. *Coverage unit.* Plans typically distinguish between coverage for a single participant, for a participant plus a spouse, for a family, and so forth. Coverage unit is the term used in these regulations to refer to how a plan groups individuals for purposes of determining benefits, or premiums or contributions. These regulations provide that the general parity requirement of MHPAEA for financial requirements and treatment limitations is applied separately for each coverage unit.

2. General Parity Requirement for Financial Requirements and Treatment Limitations

The general parity requirement of paragraph (c)(2) of these regulations

[2] The terms "substance abuse," "chemical dependency, " and "substance use disorder" are variously used to refer to substance use disorders. Although they mean essentially the same thing, the term used in MHPAEA is "substance use disorder".

prohibits a plan (or health insurance coverage) from applying any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation applied to substantially all medical/surgical benefits in the same classification. For this purpose, the general parity requirement of MHPAEA applies separately for each type of financial requirement or treatment limitation (that is, for example, copayments are compared to copayments, and deductibles to deductibles). The test is applied somewhat differently to nonquantitative treatment limitations, as discussed later in this preamble.

a. *Classifications of benefits.* Plans often vary the financial requirements and treatment limitations imposed on benefits based on whether a treatment is provided on an inpatient, outpatient, or emergency basis; whether a provider is a member of the plan's network; or whether the benefit is specifically for a prescription drug. Therefore, determining the predominant financial requirements and treatment limitations for the entire plan without taking these distinctions into account could potentially lead to absurd results. For example, if a plan generally requires a $100 copayment on inpatient medical/surgical benefits and a $10 copayment on outpatient medical/surgical benefits, and most services (as measured by plan costs) are provided on an inpatient basis, the plan theoretically could charge a $100 copayment for outpatient mental health and substance use disorder benefits. Similarly, if most benefits are provided on an outpatient basis, the plan would only be able to charge a $10 copayment for inpatient mental health and substance use disorder benefits. Commenters generally agreed that the statute should be applied within several broad classifications of benefits.

These regulations specify, in paragraph (c)(2)(ii), six classifications of benefits: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. If a plan does not have a network of providers for inpatient or outpatient benefits, all benefits in the classification are characterized as out-of-network. These regulations provide that the parity requirements for financial requirements and treatment limitations are generally applied on a classification-by-classification basis and these are the only classifications used for purposes of satisfying the parity requirements of MHPAEA. Moreover, these classifications must be used for all financial requirements and treatment limitations to the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification. Examples illustrate the application of this rule.

Commenters noted that a common plan design imposes lower copayments for treatment from a primary care provider (for example, an internist or a pediatrician) as compared to higher copayments for treatment from a specialist (such as a cardiologist or an orthopedist). Some of these commenters requested that this distinction be permitted in applying the parity requirements by recognizing a separate classification for specialists; others of these commenters opposed allowing this distinction. Some plans (or health insurance coverage) identify a large range of mental health and substance use disorder providers as specialists. Allowing plans to provide less favorable benefits with respect to services by these providers than for services by providers of medical/surgical care that are classified by the plan as primary care providers would undercut the protections that the statute was intended to provide. These regulations, therefore, do not allow the separate classification of generalists and specialists in determining the predominant financial requirement that applies to substantially all medical/surgical benefits.

Under these regulations, if a plan provides any benefits for a mental health condition or substance use disorder, benefits must be provided for that condition or disorder in each classification for which any medical/surgical benefits are provided. This follows from the statutory requirement that any treatment limitations applied to mental health or substance use disorder benefits may be no more restrictive than the predominant treatment limitations applied to substantially all medical/surgical benefits. Treatment limitation is not comprehensively defined under the statute. The statute describes the term as including limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment, but it is not limited to such types of limits. Indeed, these regulations make a distinction between quantitative treatment limitations (such as day limits, visit limits, frequency of treatment limits) and non-quantitative treatment limitations (such as medical management, formulary design, step therapy). If a plan provides benefits for a mental health condition or substance use disorder in one or more classifications but excludes benefits for that condition or disorder in a classification (such as outpatient, in-network) in which it provides medical/surgical benefits, the exclusion of benefits in that classification for a mental health condition or substance use disorder otherwise covered under the plan is a treatment limitation. It is a limit, at a minimum, on the type of setting or context in which treatment is offered.

This rule does not require an expansion of the range of mental health conditions or substance use disorders covered under the plan; it merely requires, for those conditions or disorders covered under the plan, that coverage also be provided for them in each classification in which medical/surgical coverage is provided. If a plan does not offer, for instance, any benefits for medical/surgical services on an outpatient basis by an out-of-network provider, then there is no requirement to provide benefits for mental health conditions or substance use disorders on an outpatient, out-of-network basis. Although this rule follows from the general parity requirement added by MHPAEA, the statute includes a specific provision in the case of out-of-network benefits.[3] The rule for out-of-network benefits is stated separately in these regulations to reflect the separate statutory provision, but the application of the general rule requires the same result with respect to all classifications.

These regulations do not define inpatient, outpatient, or emergency care. These terms are subject to plan design and their meanings may differ from plan to plan. Additionally, State health insurance laws may define these terms. A plan must apply these terms uniformly for both medical/surgical benefits and mental health or substance use disorder benefits. However, the manner in which they apply may differ from plan to plan. For example, a plan may treat a hospital stay of more than 12 hours as inpatient care for medical/surgical benefits; in such case, it must also treat a hospital stay of more than 12 hours as inpatient care for mental health and substance use disorder benefits. However, another plan may treat a hospital stay that includes midnight as inpatient care for medical/surgical benefits; in such a case the plan must also treat a hospital stay that includes

[3] See sections 9812(a)(5) of the Code, 712(a)(5) of ERISA, 2705(a)(5) of the PHS Act.

midnight as inpatient care for mental health or substance use disorder benefits.

b. *Applying the general parity requirement to financial requirements and quantitative treatment limitations.* Paragraph (c)(3) of these regulations addresses the application of the general parity requirement of MHPAEA to plan financial requirements and quantitative treatment limitations.

(1) *Measuring plan benefits.* In order to apply the substantive rules, these regulations first establish standards for measuring plan benefits. These regulations, similar to the MHPA 1996 regulations, provide that the portion of plan payments subject to a financial requirement or quantitative treatment limitation is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year. Also similar to the MHPA 1996 regulations, any reasonable method may be used to determine the dollar amount expected to be paid under the plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation.

Some cumulative financial requirements, such as deductibles and out-of-pocket maximums, involve a threshold amount that causes the amount of a plan payment to change. These regulations clarify that, for purposes of deductibles, the dollar amount of plan payments includes all payments with respect to claims that would be subject to the deductible if it had not been satisfied. For purposes of out-of-pocket maximums, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that were taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Other threshold requirements are treated similarly.

(2) "*Substantially all*". The first step of these regulations in applying the general parity requirement of MHPAEA is to determine whether a financial requirement or quantitative treatment limitation applies to substantially all medical/surgical benefits in a classification. Regulations issued under MHPA 1996 interpreted the term "substantially all" to mean at least two-thirds. Under these regulations, a financial requirement or quantitative treatment limitation applies to substantially all medical/surgical benefits in a classification if it applies to at least two-thirds of the benefits in that classification. In determining whether a financial requirement or quantitative treatment limitation applies to substantially all medical/surgical benefits in a classification, benefits expressed as subject to a zero level of a type of financial requirement are treated the same as benefits that are not subject to that type of requirement, and benefits expressed as subject to an unlimited quantitative treatment limitation are treated the same as benefits that are not subject to that type of limitation. For example, in the classification of outpatient, in-network medical/surgical benefits, a plan could reduce the normal copayment amount of $15 to $0 for well baby care or routine physical examinations, while a copayment is not imposed on office visits for allergy shots. For purposes of this analysis, both of these benefits are treated as not subject to a copayment.

If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of the medical surgical benefits in a classification, that type of requirement or limitation cannot be applied to mental health or substance use disorder benefits in that classification. If a single level of a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of medical/surgical benefits in a classification, then it is also the predominant level and that is the end of the analysis. However, if the financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification but has multiple levels and no single level applies to at least two-thirds of all medical/surgical benefits in the classification, then additional analysis is required. In such a case, the next step is to determine which level of the financial requirement or quantitative treatment limitation is considered predominant.

(3) "*Predominant*". MHPAEA provides that a financial requirement or treatment limitation is predominant if it is the most common or frequent of a type of limit or requirement. Under these regulations, the predominant level of a type of financial requirement or quantitative treatment limitation is the level that applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in that classification. If a single level of a type of financial requirement or quantitative treatment limitation applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in a classification (based on plan costs, as discussed earlier in this preamble), the plan may not apply that particular financial requirement or quantitative treatment limitation to mental health or substance use disorder benefits at a level that is more restrictive than the level that has been determined to be predominant.

If no single level applies to more than one-half of medical/surgical benefits subject to a financial requirement or quantitative treatment limitation in a classification, plan payments for multiple levels of the same type of financial requirement or quantitative treatment limitation can be combined by the plan (or health insurance issuer) until the portion of plan payments subject to the financial requirement or quantitative treatment limitation exceeds one-half. For any combination of levels that exceeds one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in a classification, the plan may not apply that particular financial requirement or quantitative treatment limitation to mental health and substance use disorder benefits at a level that is more restrictive than the least restrictive level within the combination. The plan may combine plan payments for the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation. Examples in these regulations illustrate the application of this rule.

These regulations provide an alternative, simpler method for compliance when a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of medical surgical benefits in a classification but no single level applies to more than one-half of the medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in that classification. In such a situation, a plan is permitted to treat the least restrictive level of the financial requirement or quantitative treatment limitation applied to medical/surgical benefits in that classification as the predominant level.

If a plan provides benefits for more than one coverage unit and applies different levels of financial requirements or quantitative treatment limitations to these coverage units within a classification of benefits, determining the predominant level of a particular financial requirement or quantitative treatment limitation must be done separately for each coverage unit. Thus, for example, a plan with

different deductibles for self-only and family coverage units would not determine the predominant level of a deductible applied for benefits across both the self-only and family coverage units. Instead, the plan would determine the predominant level of the deductible for self-only coverage independently from the predominant level for family coverage.

c. *Special rule for prescription drug benefits with multiple levels of financial requirements.* These regulations include, in paragraph (c)(3)(iii), a special rule for applying the general parity requirement of MHPAEA to prescription drug benefits. Although applying the general parity requirement to a prescription drug program with a single level of a type of financial requirement would be relatively uncomplicated, the analysis becomes more difficult if different financial requirements are imposed for different tiers of drugs. The placement of a drug in a tier is generally based on factors (such as cost and efficacy) unrelated to whether the drug is usually prescribed for the treatment of a medical/surgical condition or a mental health condition or substance use disorder. To the extent such a program does not distinguish between drugs as medical/surgical benefits or mental health or substance use disorder benefits, requiring the program to make that distinction solely for the purpose of determining the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in a classification might impose significant burdens without ensuring any greater parity for mental health and substance use disorder benefits.

Consequently, these regulations provide that if a plan imposes different levels of financial requirements on different tiers of prescription drugs based on reasonable factors (such as cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up), determined in accordance with the requirements for nonquantitative treatment limitations, and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or mental health or substance use disorder benefits, the plan satisfies the parity requirements with respect to the prescription drug classification of benefits. The special rule for prescription drugs, in effect, allows a plan or issuer to subdivide the prescription drug classification into tiers and apply the general parity requirement separately to each tier of prescription drug benefits. For any tier, the financial requirements and treatment limitations imposed with respect to the drugs prescribed for medical/surgical conditions are the same as (and thus not more restrictive than) the financial requirements and treatment limitations imposed with respect to the drugs prescribed for mental health conditions and substance use disorders in the tier. Moreover, because the financial requirements and treatment limitations apply to 100 percent of the medical/surgical drug benefits in the tier, they are the predominant financial requirements and treatment limitations that apply to substantially all of the medical/surgical drug benefits in the tier.

d. *Cumulative financial requirements and quantitative treatment limitations, including deductibles.* While financial requirements such as copayments and coinsurance generally apply separately to each covered expense, other financial requirements (in particular, deductibles) accumulate across covered expenses. In the case of deductibles, generally an amount of otherwise covered expenses must be accumulated before the plan pays benefits. Financial requirements and quantitative treatment limitations that determine whether and to what extent benefits are provided based on accumulated amounts are defined in these regulations as cumulative financial requirements and cumulative quantitative treatment limitations.

In response to the RFI, the Departments received a number of comments regarding how to apply the parity requirements to cumulative financial requirements, in particular to deductibles (although some also referred to out-of-pocket maximums). The comments reflect two opposing views. One view is that a plan can have deductibles that accumulate separately for medical/surgical benefits on the one hand, and mental health or substance use disorder benefits on the other, as long as the level of the two deductibles is the same (separately accumulating deductibles). The opposing view is that expenses for both mental health or substance use disorder benefits and medical/surgical benefits must accumulate to satisfy a single combined deductible before the plan provides either medical/surgical benefits or mental health or substance use disorder benefits (combined deductible).

The provisions of the statute imposing parity on financial requirements and treatment limitations do not specifically address this issue; the language of the statute can be interpreted to support either position. The comments that supported allowing separately accumulating deductibles maintained that it is commonplace for plans to have such deductibles, and that the projected cost of converting systems to permit unified deductibles would be extremely high for the many plans that use a separate managed behavioral health organization (MBHO).[4]

By contrast, comments that supported requiring combined deductibles argued that allowing separately accumulating deductibles undermines a central goal of parity legislation, to affirm that mental health and substance use disorder benefits are integral components of comprehensive health care and generally should not be distinguished from medical/surgical benefits. Distinguishing between the two requires individuals who need both kinds of care to satisfy a deductible that is greater than that required for individuals needing only medical/surgical care. Other comments that supported requiring combined deductibles noted that mental health and substance use disorder benefits typically comprise only 2 to 5 percent of a plan's costs, so that even using identical levels for separately accumulating deductibles imposes a greater barrier to mental health and substance use disorder benefits.

The Departments carefully considered the positions advanced by both groups of comments regarding separately accumulating and combined deductibles. Given that the statutory language does not preclude either interpretation, the Departments' view is that prohibiting separately accumulating financial restrictions and quantitative treatment limitations is more consistent with the policy goals that led to the enactment of MHPAEA. Consequently, these regulations provide, in paragraph (c)(3)(v), that a plan may not apply cumulative financial requirements or cumulative quantitative treatment limitations to mental health or

[4] Several commenters stated that the estimated cost to develop interfaces between MBHOs and the entity administering medical/surgical claims would be $420,000–$750,000 per interface, and that in some cases multiple interfaces per MBHO (as many as 40–50) would be necessary. In response to these cost concerns, the Departments performed an independent analysis, which indicated that the initial cost per interface could be as low as $35,000. The Departments' lower estimated cost reflects, in part, the use of less expensive interface systems (for example, batch processing rather than real-time), and the ability to model new interfaces on existing systems used to interface with pharmacy benefit managers and dental insurers. In addition, many MBHOs already have developed interfaces, because their clients requested combined deductibles. This should result in reduced costs, because interface development costs are incremental and should decrease after the first interface is created. For a further discussion of this issue, see section IV. Economic Impact and Paperwork Burden later in this preamble.

substance use disorder benefits in a classification that accumulate separately from any such cumulative financial requirements or cumulative quantitative treatment limitations established for medical/surgical benefits in the same classification.[5] Examples in these regulations illustrate the application of this rule.

e. *Application to nonquantitative treatment limitations.* Plans impose a variety of limits affecting the scope or duration of benefits under the plan that are not expressed numerically. Nonetheless, such nonquantitative provisions are also treatment limitations affecting the scope or duration of benefits under the plan. These regulations provide an illustrative list of nonquantitative treatment limitations, including medical management standards; prescription drug formulary design; standards for provider admission to participate in a network; determination of usual, customary, and reasonable amounts; requirements for using lower-cost therapies before the plan will cover more expensive therapies (also known as fail-first policies or step therapy protocols); and conditioning benefits on completion of a course of treatment.

Paragraph (c)(4) of these regulations generally prohibits the imposition of any nonquantitative treatment limitation to mental health or substance use disorder benefits unless certain requirements are met. Any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in a classification must be comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical surgical/benefits in the classification. However, these requirements allow variations to the extent that recognized clinically appropriate standards of care may permit a difference. These requirements apply to the terms of the plan (or health insurance coverage) both as written and in operation.

The phrase, "applied no more stringently" was included to ensure that any processes, strategies, evidentiary standards, or other factors that are comparable on their face are applied in the same manner to medical/surgical benefits and to mental health or substance use disorder benefits. Thus, for example, assume a claims administrator has discretion to approve benefits for treatment based on medical necessity. If that discretion is routinely used to approve medical/surgical benefits while denying mental health or substance use disorder benefits and recognized clinically appropriate standards of care do not permit such a difference, the processes used in applying the medical necessity standard are considered to be applied more stringently to mental health or substance use disorder benefits. The use of discretion in this manner violates the parity requirements for nonquantitative treatment limitations.

Different types of illnesses or injuries may require different review, as well as different care. The acute versus chronic nature of a condition, the complexity of it or the treatment involved, and other factors may affect the review. Although the processes, strategies, evidentiary standards, and other factors used in applying these limitations must generally be applied in a comparable manner to all benefits, the mere fact of disparate results does not mean that the treatment limitations do not comply with parity.

Examples in these regulations illustrate the operation of the requirements for nonquantitative treatment limitations. Medical management standards are implemented by processes such as preauthorization, concurrent review, retrospective review, case management, and utilization review; the examples feature the application of these requirements to some of these processes. The facts in the examples reflect simple situations for purposes of better illustrating the application of the rules rather than reflecting the realistic, complex facts that would typically be found in a plan. The Departments invite comments on whether additional examples would be helpful to illustrate the application of the nonquantitative treatment limitation rule to other features of medical management or general plan design.

Commenters asked if the MHPAEA requirements apply when eligibility for mental health and substance use disorder benefits under a major medical program is conditioned on exhausting some limited number of mental health and substance use disorder counseling sessions offered through an employee assistance program (EAP). Generally, the provision of mental health or substance use disorder benefits by an EAP in addition to the benefits offered by a major medical program that otherwise complies with the parity rules would not violate MHPAEA. However, requiring participants to exhaust the EAP benefits—making the EAP a gatekeeper—before an individual is eligible for the major medical program's mental health or substance use disorder benefits is a nonquantitative treatment limitation subject to the parity requirements. Consequently, if similar gatekeeping processes with a similar exhaustion requirement (whether or not through the EAP) are not applied to medical/surgical benefits, the requirement to exhaust mental health or substance use disorder benefits available under the EAP would violate the rule that nonquantitative treatment limitations be applied comparably and not more stringently to mental health and substance use disorder benefits.

The Departments received many comments addressing an issue characterized as "scope of services" or "continuum of care". Some commenters requested, with respect to a mental health condition or substance use disorder that is otherwise covered, that the regulations clarify that a plan is not required to provide benefits for any particular treatment or treatment setting (such as counseling or non-hospital residential treatment) if benefits for the treatment or treatment setting are not provided for medical/surgical conditions. Other commenters requested that the regulations clarify that a participant or beneficiary with a mental health condition or substance use disorder have coverage for the full scope of medically appropriate services to treat the condition or disorder if the plan covers the full scope of medically appropriate services to treat medical/surgical conditions, even if some treatments or treatment settings are not otherwise covered by the plan. Other commenters requested that MHPAEA be interpreted to require that group health plans provide benefits for any evidence-based treatment.

The Departments recognize that not all treatments or treatment settings for mental health conditions or substance use disorders correspond to those for medical/surgical conditions. The Departments also recognize that MHPAEA prohibits plans and issuers from imposing treatment limitations on mental health and substance use disorder benefits that are more restrictive than those applied to medical/surgical benefits. These regulations do not address the scope of services issue. The Departments invite comments on whether and to what

[5] This rule in the interim final regulations prohibiting separately accumulating financial requirements and quantitative treatment limitations does not apply with respect to aggregate lifetime and annual dollar limits. The statutory language of MHPA 1996 specifically permitted plans to impose aggregate lifetime or annual dollar limits that distinguish between mental health benefits and medical/surgical benefits. MHPAEA left the language of this statutory provision intact, modifying it only to expand its applicability to include substance use disorder benefits.

extent MHPAEA addresses the scope of services or continuum of care provided by a group health plan or health insurance coverage.

D. Availability of Plan Information (26 CFR 54.9812–1T(d), 29 CFR 2590.712(d), and 45 CFR 146.136(d))

MHPAEA includes two new disclosure provisions for group health plans (and health insurance coverage offered in connection with a group health plan). First, the criteria for medical necessity determinations made under a plan (or health insurance coverage) with respect to mental health or substance use disorder benefits must be made available by the plan administrator (or the health insurance issuer offering such coverage) in accordance with regulations to any current or potential participant, beneficiary, or contracting provider upon request. These regulations repeat the statutory language without substantive change. The Departments invite comments on what additional clarifications might be helpful to facilitate compliance with this disclosure requirement for medical necessity criteria.

MHPAEA also provides that the reason for any denial under a group health plan (or health insurance coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available, upon request or as otherwise required, by the plan administrator (or the health insurance issuer) to the participant or beneficiary in accordance with regulations. These regulations clarify that, in order for plans subject to ERISA (and health insurance coverage offered in connection with such plans) to satisfy this requirement, disclosures must be made in a form and manner consistent with the rules for group health plans in the ERISA claims procedure regulations,[6] which provide (among other things) that such disclosures must be provided automatically and free of charge. In the case of non-Federal governmental and church plans (which are not subject to ERISA), and health insurance coverage offered in connection with such plans, these regulations provide that compliance with the form and manner of the ERISA claims procedure regulations for group health plans satisfies this disclosure requirement. The Departments invite comments regarding any additional clarifications that would be helpful to facilitate compliance with MHPAEA's disclosure requirements regarding denials of mental health or substance use disorder benefits.

E. General Applicability Provisions (26 CFR 54.9812–1T(e), 29 CFR 2590.712(e), and 45 CFR 146.136(e))

Paragraph (e) of these regulations addresses the applicability of these regulations to group health plans and health insurance issuers and clarifies the scope of these regulations.

1. Overview

These regulations make a number of changes to the general applicability provisions in the MHPA 1996 regulations (paragraphs (c) and (d) in those regulations). Amendments made by MHPAEA require some of these changes. For example, the MHPA 1996 rules of construction specifically excluded any plan provisions relating to cost sharing, limits on the number of visits or days of coverage, and requirements relating to medical necessity from the application of the parity requirements for aggregate lifetime and annual dollar limits. MHPAEA replaces these exclusions with a rule providing that the provisions should not be construed as affecting the terms and conditions of the plan or coverage relating to mental health and substance use disorder benefits except as provided in the rules relating to financial requirements and treatment limitations. These regulations make corresponding changes to the MHPA 1996 regulations.

These regulations also (1) establish a new rule with respect to the mental health and substance use disorder parity requirements for the determination of the number of plans that an employer or employee organization maintains, (2) combine what were in the MHPA 1996 regulations separate rules for group health plans and benefit packages, and (3) make additional clarifications.

a. *Group health plans.* In 2004, the Departments issued proposed regulations for a number of issues under Chapter 100 of the Code, Part 7 of ERISA, and Title XXVII of the PHS Act, including rules for determining the number of group health plans that an employer or employee organization is considered to maintain for purposes of those provisions.[7] Those proposed regulations generally would have respected the number of plans designated in the instruments governing the employer's or employee organization's arrangements to provide medical care benefits as long as the arrangements were operated pursuant to those instruments as separate plans. The 2004 proposed regulations included an anti-abuse clause, providing that, if a principal purpose of establishing separate plans was to evade any requirement of law, then the separate plans would be considered a single plan to the extent necessary to prevent the evasion.

The Departments recognized that under the 2004 proposed regulations, absent the anti-abuse clause, plan sponsors might attempt to provide mental health (and now substance use disorder) benefits under a plan that is separate from a plan that provides only medical/surgical benefits. Because the mental health (and now substance use disorder) parity requirements apply only to plans that provide both mental health or substance use disorder benefits and medical/surgical benefits, the absence of medical/surgical benefits in a plan providing mental health or substance use disorder benefits would have resulted in, absent the anti-abuse clause, the inapplicability of the parity requirements. The 2004 proposed regulations included the anti-abuse clause to avoid this kind of evasion of the parity requirements. Commenters raised problems of proof with the subjective intent element of the proposed anti-abuse clause. While the 2004 rule remains proposed, these interim final regulations include a rule for determining the number of plans that an employer or employee organization maintains for the mental health and substance use disorder parity requirements that operates irrespective of the intent of a plan sponsor. The rule is that all medical care benefits provided by an employer or employee organization constitute a single group health plan.

MHPAEA left unchanged the rule from MHPA 1996 requiring that the parity requirements be applied separately to each benefit package option under a group health plan. The MHPA 1996 regulations used the term "benefit package" rather than "benefit package option" and clarified that the parity requirements would apply separately to separate benefit packages also in situations in which the participants (or beneficiaries) had no choice between multiple benefit packages, such as where retirees are provided one benefit package and active employees a separate benefit package. Under these regulations, the statutory rule providing that the parity requirements apply separately to separate benefit package options (reflected in paragraph (c) of the MHPA 1996 regulations), the statutory rule providing that the parity requirements

[6] 29 CFR 2560.503–1.

[7] See 69 FR 78800 (December 30, 2004).

apply to a group health plan providing both mental health or substance use disorder benefits and medical/surgical benefits (reflected in paragraph (d) of the MHPA 1996 regulations), and the determination of how many plans an employer or employee organization maintains have been combined as a single rule in paragraph (e)(1).

The new combined rule in these regulations does not use the term benefit package. Instead, it provides that (1) the parity requirements apply to a group health plan offering both medical/surgical benefits and mental health or substance use disorder benefits, (2) the parity requirements apply separately with respect to each combination of medical/surgical coverage and mental health or substance use disorder coverage that any participant (or beneficiary) can simultaneously receive from an employer's or employee organization's arrangement or arrangements to provide medical care benefits, and (3) all such combinations constitute a single group health plan for purposes of the parity requirements. This new combined rule clearly prohibits what might have been formerly viewed as a potential evasion of the parity requirements by allocating mental health or substance use disorder benefits to a plan or benefit package without medical/surgical benefits (when medical/surgical benefits are also otherwise available). For example, if an employer with a single benefit package for medical/surgical benefits also has a separately administered benefit package for mental health and substance use disorder benefits, the parity requirements apply to the combined benefit package and the combined benefit package is considered a single plan for purposes of the parity requirements.

Similarly, if an employer offered three medical/surgical benefit packages, A, B, and C, and a mental health and substance use disorder benefit package, D, that could be combined with each of A, B, and C, then the parity requirements must be satisfied with respect to each of AD, BD, and CD. If the A benefit package had a standard option and a high option, A_1 and A_2, then the parity requirements would have to be satisfied with respect to each of A_1D and A_2D.

b. *Health insurance issuers.* These regulations make a change regarding applicability with respect to health insurance issuers. Both the MHPA 1996 regulations and these regulations apply to an issuer offering health insurance coverage. The MHPA 1996 regulations provide that the health insurance coverage must be for both medical/surgical and mental health benefits in connection with a group health plan; the rule in these regulations provides that the health insurance coverage must be for mental health or substance use disorder benefits in connection with a group health plan subject to MHPAEA under paragraph (e)(1). Thus, under these regulations, an issuer offering health insurance coverage without any medical/surgical benefits is nonetheless subject to the parity requirements if it offers health insurance coverage with mental health or substance use disorder benefits in connection with a group health plan subject to the parity requirements. In addition, under these regulations, the parity requirements do not apply to an issuer offering health insurance coverage to a group health plan not subject to the parity requirements.

c. *Scope.* Paragraph (e)(3) of these regulations provides that nothing in these regulations requires a plan or issuer to provide any mental health or substance use disorder benefits. Moreover, the provision of benefits for one or more mental health conditions or substance use disorders does not require the provision of benefits for any other condition or disorder.

2. Interaction With State Insurance Laws

Numerous comments requested guidance on how MHPAEA interacts with State insurance laws requiring parity for, or mandating coverage of, mental health or substance use disorder benefits. Some commenters sought clarification that MHPAEA does not preempt any State insurance law mandating a minimum level of coverage (such as a minimum dollar, day, or visit level) for mental health conditions or substance use disorders. Other commenters suggested that, while MHPAEA does not preempt State insurance parity and mandate laws to the extent that they do not prevent the application of MHPAEA, provisions in the State laws that are more restrictive than the requirements of MHPAEA are preempted.

The preemption provisions of section 731 of ERISA and section 2723 of the PHS Act (added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the MHPAEA requirements are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of MHPAEA. The HIPAA conference report indicates that this is intended to be the "narrowest" preemption of State laws. (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.)

A State law, for example, that mandates that an issuer offer a minimum dollar amount of mental health or substance use disorder benefits does not prevent the application of MHPAEA. Nevertheless, an issuer subject to MHPAEA may be required to provide mental health or substance use disorder benefits beyond the State law minimum in order to comply with MHPAEA.

F. Small Employer Exemption (26 CFR 54.9812–1T(f), 29 CFR 2590.712(f), and 45 CFR 146.136(f))

Paragraph (f) of these regulations amends the MHPA 1996 regulations to implement the exemption for a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For this purpose, a small employer is generally defined, in connection with a group health plan with respect to a calendar year and a plan year, as an employer who employed an average of not more than 50 employees on business days during the preceding calendar year.

G. Increased Cost Exemption (26 CFR 54.9812–1T(g), 29 CFR 2590.712(g), and 45 CFR 146.136(g))

Both MHPA 1996 and MHPAEA include an increased cost exemption under which, if certain requirements are met, plans that incur increased costs above a certain threshold as a result of the application of the parity requirements of both these laws can be exempt from the statutory parity requirements. MHPAEA changed the MHPA 1996 increased cost exemption in several ways, including (1) raising the threshold for qualification from one percent to two percent for the first year for which the plan is subject to MHPAEA; (2) requiring certification by qualified and licensed actuaries who are members in good standing of the American Academy of Actuaries; and (3) revising the notice requirements. Under MHPAEA, plans that comply with the parity requirements for one full plan year and that satisfy the conditions for the increased cost exemption are exempt from the parity requirements for the following plan year, and the exemption lasts for one year. Thus, the increased cost exemption may only be claimed for alternating plan years.

These regulations withdraw the MHPA 1996 regulatory guidance on the increased cost exemption and reserve paragraph (g). The Departments intend to issue, in the near future, guidance implementing the new requirements for the increased cost exemption under MHPAEA. The Departments invite comments on implementing the new statutory requirements for the increased cost exemption under MHPAEA, as well as information on how many plans expect to use the exemption.

H. Sale of Nonparity Health Insurance Coverage (26 CFR 54.9812–1T(h), 29 CFR 2590.712(h), and 45 CFR 146.136(h))

These regulations make a few changes to what was paragraph (g) in the MHPA 1996 regulations. That paragraph included a paragraph (g)(2) relating to how long the increased cost exemption applies once its requirements have been satisfied. It has been deleted because MHPAEA provides a new rule for how long the increased cost exemption applies. In addition, minor changes have been made to the presentation in what was paragraph (g)(1) in the MHPA 1996 regulations. Both that paragraph and paragraph (h) in these regulations address the circumstances of health insurance coverage that does not comply with the parity requirements being sold to a group health plan. The MHPA 1996 regulations refer to an issuer selling a policy; these regulations refer to an issuer selling a policy, certificate, or contract of insurance. The longer phrase in these regulations includes health insurance coverage sold in a form that might not always be described by the term "policy" and is the more typical formulation used throughout the regulations under Chapter 100 of the Code, Part 7 of ERISA, and Title XXVII of the PHS Act. An additional change shifts the emphasis by stating the rule in terms of an issuer not being able to sell except in the described circumstances, rather than in terms of an issuer being able to sell only in the described circumstances. Finally, the cross-reference contained in this paragraph to the parity requirements has been conformed to include the new requirements of MHPAEA.

I. Applicability Dates (26 CFR 54.9812–1T(i), 29 CFR 2590.712(i), and 45 CFR 146.136(i))

In general, the requirements of these regulations apply for plan years beginning on or after July 1, 2010. There is a special effective date for certain collectively-bargained plans, which provides that, for group health plans maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of these regulations do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the later of either the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after October 3, 2008) or July 1, 2010. MHPAEA provides that any plan amendment made pursuant to a collective bargaining agreement solely to conform to the requirements of MHPAEA not be treated as a termination of the agreement.

Many commenters requested guidance on what percentage of employees covered by a plan must be union employees for the plan to be considered a plan maintained pursuant to one or more collective bargaining agreements—some suggesting as low a percentage as 25 percent while others suggested 90 percent. This issue arises in a number of statutes that provide special rules for plans maintained pursuant to collective bargaining agreements. As such, the issue is beyond the scope of these regulations implementing the MHPAEA amendments and is not addressed in them.

Because the statutory MHPAEA provisions are self-implementing and are generally effective for plan years beginning after October 3, 2009, many commenters asked for a good faith compliance period from Departmental enforcement until plans (and health insurance issuers) have time to implement changes consistent with these regulations. For purposes of enforcement, the Departments will take into account good-faith efforts to comply with a reasonable interpretation of the statutory MHPAEA requirements with respect to a violation that occurs before the applicability date of paragraph (i) of these regulations. However, this does not prevent participants or beneficiaries from bringing a private action.

III. Interim Final Regulations and Request for Comments

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries of the Treasury, Labor, and HHS (collectively, the Secretaries) to promulgate any interim final rules that they determine are appropriate to carry out the provisions of Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Part A of Title XXVII of the PHS Act, which include the provisions of MHPAEA.

Under Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

These rules are being adopted on an interim final basis because the Secretaries have determined that without prompt guidance some members of the regulated community may not know what steps to take to comply with the requirements of MHPAEA, which may result in an adverse impact on participants and beneficiaries with regard to their health benefits under group health plans and the protections provided under MHPAEA. Moreover, MHPAEA's requirements will affect the regulated community in the immediate future.

The requirements of MHPAEA are generally effective for all group health plans and for health insurance issuers offering coverage in connection with such plans for plan years beginning after October 3, 2009. Plan administrators and sponsors, issuers, and participants and beneficiaries need guidance on how to comply with the new statutory provisions. As noted earlier, these regulations take into account comments received by the Departments in response to the request for information on MHPAEA published in the **Federal Register** on April 28, 2009 (74 FR 19155). For the foregoing reasons, the Departments find that the publication of a proposed regulation, for the purpose of notice and public comment thereon, would be impracticable, unnecessary, and contrary to the public interest.

IV. Economic Impact and Paperwork Burden

A. Summary—Department of Labor and Department of Health and Human Services

As discussed earlier in this preamble, MHPAEA requires group health plans and group health insurance issuers to ensure that financial requirements (*e.g.,* copayments, deductibles) and treatment limitations (*e.g.,* visit limits) applicable to mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements or treatment limitations applied to substantially all medical/surgical benefits. Under MHPAEA, a financial requirement or treatment limitation is considered to be predominant if it is the most common or frequent of such type of requirement or limitation. Additionally, there can be no separate cost-sharing requirements or

treatment limitations applicable only with respect to mental health or substance use disorder benefits. The statute does not mandate coverage for either mental health or substance use disorder benefits. Thus, self-insured plans are free to choose whether to provide mental health or substance use disorder benefits; insured plans may have to provide these benefits under state laws. Either type of plan that provides mental health or substance use disorder benefits must do so in accordance with MHPAEA's parity provisions.

The Departments have crafted these regulations to secure the protections intended by Congress in as economically efficient a manner as possible. Although the Departments are unable to quantify the regulations' economic benefits, they have quantified some of the costs and have provided a qualitative discussion of some of the benefits and costs that may stem from these regulations.

B. Statement of Need for Regulatory Action

Congress directed the Departments to issue regulations implementing the MHPAEA provisions. In response to this Congressional directive, these interim final regulations clarify and interpret the MHPAEA provisions under section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code. These regulations are needed to secure and implement MHPAEA's provisions and ensure that the rights provided to participants, beneficiaries, and other individuals under MHPAEA are fully realized. The Departments' assessment of the expected economic effects of these regulations is discussed in detail below.

C. Executive Order 12866—Department of Labor and Department of Health and Human Services

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Departments have determined that this regulatory action is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an effect on the economy of $100 million or more in any one year. Accordingly, the Departments provide the following assessment of its potential costs and benefits. As elaborated below, the Department believes that the benefits of the rule justify its costs.

Table 1, below, summarizes the costs associated with the rule. The estimates are explained in the following sections. Over the ten-year period of 2010 to 2019, the total undiscounted cost of the rule is estimated to be $115 million in 2010 Dollars. Columns E and F display the costs discounted at 3 percent and 7 percent, respectively. Column G shows a transfer of $25.6 billion over the ten-year period. All other numbers included in the text are not discounted, except where noted.

TABLE 1—TOTAL COSTS OF RULE

[In millions of 2010 dollars]

Year	General review (A)	Medical necessity disclosure (B)	Single deductible (C)	Total undiscounted costs A+B+C	Total 3% discounted costs (E)	Total 7% discounted costs (F)	Transfer (undiscounted) (G)
2010	$27.8	$1.2	$39.2	$68.2	$68.2	$68.2	$2,360.0
2011	0	1.2	3.9	5.2	5.0	4.8	2,400.0
2012	0	1.2	3.9	5.2	4.9	4.5	2,430.0
2013	0	1.2	3.9	5.2	4.7	4.2	2,460.0
2014	0	1.2	3.9	5.2	4.6	3.9	2,510.0
2015	0	1.2	3.9	5.2	4.4	3.7	2,570.0
2016	0	1.2	3.9	5.2	4.3	3.4	2,620.0
2017	0	1.2	3.9	5.2	4.2	3.2	2,680.0
2018	0	1.2	3.9	5.2	4.1	3.0	2,740.0
2019	0	1.2	3.9	5.2	4.0	2.8	2,810.0
Total				114.6	108.4	101.8	25,600.0

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

The Departments performed a comprehensive, unified analysis to estimate the costs and, to the extent feasible, provide a qualitative assessment of benefits attributable to the regulations for purposes of compliance with Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The Departments' assessment and underlying analysis is set forth below.

1. Regulatory Alternatives

Section 6(a)(3)(C)(iii) of Executive Order 12866 requires an economically significant regulation to include an assessment of the costs and benefits of potentially effective and reasonable alternatives to the planned regulation, and an explanation of why the planned regulatory action is preferable to the potential alternatives. As discussed earlier in this preamble, the Departments considered the alternative of whether to require the same separately accumulating deductible for medical/surgical benefits and mental health or substance use disorder benefits or a combined deductible for such benefits.

The language of the statute can be interpreted to support either alternative. The comments that supported allowing separately accumulating deductibles maintained that it is commonplace for plans to have such deductibles, and that the projected cost of converting systems to permit unified deductibles would be extremely high for the many plans that use a separate managed behavioral health organization (MBHO).[8] By contrast, comments that supported requiring combined deductibles argued that allowing separately accumulating deductibles undermines a central goal of parity legislation: To affirm that mental health and substance use disorder benefits are integral components of comprehensive health care and generally should not be distinguished from medical/surgical benefits. Distinguishing between the two requires individuals who need both kinds of care to satisfy a deductible that is greater than that required for individuals needing only medical/surgical care. Other comments that supported requiring combined deductibles noted that mental health and substance use disorder benefits typically comprise only 2 to 5 percent of a plan's costs, so that even using identical levels for separately accumulating deductibles imposes a greater barrier to mental health and substance use disorder benefits.

The Departments carefully considered the alternative of requiring separately accumulating or combined deductibles. Given that the statutory language does not preclude either interpretation, the Departments choose to require combined deductibles, because this position is more consistent with the policy goals that led to the enactment of MHPAEA.

2. Affected Entities and Other Assumptions

The Departments expect MHPAEA to benefit the approximately 111 million participants in 446,400 ERISA-covered employer group health plans, and an estimated 29 million participants in the approximately 20,300 public, non-Federal employer group health plans sponsored by state and local governments.[9] In addition, approximately 460 health insurance issuers providing mental health or substance use disorder benefits in the group health insurance market and at least 120 MBHOs providing mental health or substance use disorder benefits to group health plans are expected to be affected.[10]

3. Benefits

Congress first passed mental health parity legislation in 1996 with the enactment of MHPA 1996.[11] As discussed earlier in this preamble, this law requires health insurance issuers and group health plans that offer mental health benefits to have aggregate annual and lifetime dollar limits on mental health benefits that are no more restrictive than those for all medical/surgical benefits.

The impact of MHPA 1996 was limited, however, because it did not require parity with respect to day limits for inpatient or outpatient care, deductibles, co-payments or coinsurance, substance use disorder benefits, and prescription drug coverage.[12] While a large majority of plans complied with the MHPA 1996 parity requirement regarding annual and lifetime dollar limits, many employer-sponsored group health plans contained plan design features that were more restrictive for mental health benefits than for medical/surgical benefits. For example, data on private insurance arrangements from the pre-MHPAEA era show that after MHPA 1996, the most significant disparities in coverage for mental health substance use treatment involve limits on the number of covered days of inpatient care and the number of outpatient visits. Survey data from the Kaiser/HRET national employer survey shows that 64 percent of covered workers had more restrictive limits on the number of covered hospital days for mental health care and 74 percent had more restrictive limits on outpatient mental health visits. In addition, 22 percent of covered workers had higher cost-sharing imposed on mental health care benefits. Among those workers with more restrictive limits on inpatient days, 77 percent had limits of 30 days or less.[13] For these reasons, as discussed more fully below, the Departments expect that MHPAEA and these regulations will have their greatest impact on people needing the most intensive treatment and financial protection. The Departments do not have an estimate of the number of individuals who have exceeded the treatment limits. However, according to the FEHBP data used to analyze the FEHBP parity directive in the year before its implementation, the 90th percentile of the mental health spending distribution was corresponded to $2,134 in 1999 dollars. Among the people spending at the 90th percentile or higher, 12% had inpatient psychiatric stays and 20% of those above the 90th percentile had a diagnosis of schizophrenia or bipolar disorder, chronic conditions requiring prescription drugs and regular contact with mental health service providers. It is this group that experienced especially large declines in out of pocket payments after FEHBP implemented parity.

Treatment for alcohol abuse disorders showed a similar trend: Surveys indicate that 74 percent of private industry employees were covered by plans that imposed more restrictive limits for inpatient detoxification benefits than medical and surgical benefits, 88 imposed more restrictive limits for inpatient rehabilitation, and 89 percent imposed more restrictive limits for outpatient rehabilitation.[14]

After MHPA 1996, many states also passed mental health parity laws. Research focused on the impacts of parity laws found that similar to MHPA 1996, even the most comprehensive state laws resulted in little or no increase in access to and utilization of

[8] For a full discussion of the cost considerations involved with these alternatives, see section 4.b., below, Costs associated with cumulative financial requirements and quantitative treatment limitations, including deductibles.

[9] The Departments' estimates of the numbers of affected participants are based on DOL estimates using the 2008 CPS. ERISA plan counts are based on DOL estimates using the 2008 MEP–IC and Census Bureau statistics. The number of state and local government employer-sponsored plans was estimated using 2007 Census data and DOL estimates. Please note that the estimates are based on survey data that is not broken down by the employer size covered by MHPAEA making it difficult to exclude from estimates those participants employed by employers who employed an average of at least 2 but no more than 50 employees on the first day of the plan year.

[10] The Departments' estimate of the number of insurers is based on industry trade association membership. Please note that these estimates could undercount small state regulated insurers.

[11] Pub. L. 104–204, title VII, 110 Stat. 2874, 2944–50.

[12] GAO/HEHS–00–95, *Implementation of the Mental Health Parity Act.* In the report, GAO found that 87 percent of compliant plans contained at least one more restrictive provision for mental health benefits with the most prevalent being limits on the number of outpatient office visits and hospital day limits. *Id.* at 5.

[13] Barry, Colleen, *et al.* "Design of Mental Health Benefits: Still Unequal After All These Years," *Health Affairs* Vol. 22, Number 5, 2003. Please note that the baseline data from the Kaiser HRET survey cited in this article are weighted by region, firm size and industry to reflect the national composition of employers. So the data cited establishing the baseline reflects the impact of state parity laws. It is important to realize that state parity laws frequently focus on a subset of diagnoses, *e.g.,* biologically based disorders, and do not apply to self-funded insurance programs. Thus, in most states only a minority of insurance contracts is affected by state parity laws.

[14] Morton, John D. and Patricia Aleman. "Trends in Employer-provided Mental Health and Substance Abuse Benefits." *Monthly Labor Review,* April 2005.

mental health services for covered individuals.[15]

To address these issues, Congress amended MHPA 1996 by enacting MHPAEA. One of Congress' primary objectives in enacting MHPAEA was to improve access to mental health and substance use disorder benefits by eliminating discrimination that existed with respect to these benefits after MHPA 1996. Congress' intent in enacting MHPAEA was articulated in a floor statement from Representative Patrick Kennedy (D–RI), one of the chief sponsors of the legislation, who said "[a]ccess to mental health services is one of the most important and most neglected civil rights issues facing the Nation. For too long, persons living with mental disorders have suffered discriminatory treatment at all levels of society." [16] In a similar statement, Representative James Ramstad (R–MN) said, "[i]t's time to end the discrimination against people who need treatment for mental illness and addition. It's time to prohibit health insurers from placing discriminatory barriers on treatment." [17]

The Departments expect that the largest benefit associated with MHPAEA and these regulations will be derived from applying parity to cumulative quantitative treatment limitations such as annual or lifetime day or visit limits (visit limitations). As discussed above, a large percentage of plans imposed visit limitations pre-MHPAEA, and the GAO found that a major shortcoming of MHPA 1996 was its failure to apply parity to visit limitations. Applying parity to visit limitations will help ensure that vulnerable populations—those accessing substantial amounts of mental health and substance use disorder services—have better access to appropriate care. The Departments cannot estimate how large this benefit will be, because sufficient data is not available to estimate the number of covered individuals that had their benefits terminated because they reached their coverage limit. Though difficult to estimate, the number of beneficiaries who have a medical necessity for substantial amount of care are likely to be relatively small. Severe mental health disorders account for 2–3 percent of people in private health insurance plans and a substantially larger share of mental health spending. Evidenced-based treatments for severe and persistent mental illnesses like schizophrenia, bipolar disorder and chronic major depression requires prolonged (possibly lifetime) maintenance treatment that consists of pharmacotherapy, supportive counseling and often rehabilitation services.[18] The most common visit limits under current insurance arrangements are those for 20 visits per year. That means assuming a minimal approach to treatment of one visit per week, people with severe and persistent mental disorders will exhaust their coverage in about five months. This often results in people foregoing outpatient treatment and a higher likelihood of non-adherence to treatment regimes that produce poor outcomes and the potential for increased hospitalization costs.

Increased coverage also should provide enhanced financial protection for this group by reducing out-of-pocket expenses for services that previously were needed but uncovered. This should help prevent bankruptcy and financial distress for these individuals and families and reduce cost-shifting of care to the public sector, both of which occur when covered benefits are exhausted. In addition, increased coverage for those seeking substantial amounts of care potentially could reduce emergency room use by ensuring that benefits for individuals with serious conditions are not terminated. Finally, reduced entry into disability programs may result from having more complete insurance coverage for mental health and substance use disorder treatment.

Since the early 1990s, many health insurers and employers have made use of specialized vendors, known as behavioral health carve-outs to manage their mental health and substance abuse benefits. These vendors have specialized expertise in the treatment of mental and addictive disorders and organized specialty networks of providers. These vendors are known as behavioral health carve-outs. They use information technology, clinical algorithms and selective contracts to control spending on mental health and substance abuse treatment. There is an extensive literature that has examined the cost savings and impacts on quality of these organizations. Researchers [19] have reviewed this literature and estimated reductions in private insurance spending of 20 percent to 48 percent compared to fee-for-service indemnity arrangements. Also, it appears that the rate of utilization of mental health care rises under behavioral health carve out arrangements. The number of people receiving inpatient psychiatric care typically declines as does the average number of outpatient visits per episode.

The OPM encouraged its insurers to consider carve-out arrangements when implementing the parity directive in 2000 for the FEHBP. This is because of the ability of behavioral health carve-outs to use utilization management tools to control utilization and spending in the face of reductions in cost-sharing and elimination of limits. Thus, parity in a world dominated by behavioral carve-outs has meant increased utilization rates, reduced provider fees, reduced rates of hospitalization and fewer very long episodes of outpatient care. Intensive treatment was more closely aligned with higher levels of severity.

Another potential benefit associated with MHPAEA and these regulations is that use of mental health and substance use disorder benefits could improve.[20] Untreated or under treated mental health conditions and substance use disorders are detrimental to individuals and the entire economy. Day and visit limits can interfere with appropriate treatment thereby reducing the impact of care for workers seeking treatment. Many people with mental health conditions and substance use disorders are employed and these debilitating conditions have a devastating impact on employee attendance and productivity, which results in lost productivity for employers and lost earnings for employees. For example, studies have

[15] *Id.,* at 9. The state mental health parity laws varied significantly with most of differences related the following areas: the type of mental health mandate, definition of mental illness, the inclusion of substance abuse coverage, small employers' coverage, and cost increase exceptions. Few state laws provide as extensive coverage as MHPAEA, particularly with regard to its prohibition of visit limitations.

[16] 153 *Cong. Rec. S1864–5 (daily ed., February 12, 2007).*

[17] 154 *Cong. Rec. H8619 (daily ed., September 23, 2008).*

[18] See, Lehman AF "Quality of care in mental health: the case of schizophrenia" Health Affairs 18(5): 52–65.

[19] Sturm R, "Tracking changes in behavioral health services: How carve-outs changed care?" Journal of Behavioral Health Services and Research 26(4): 360–371, 1999. Frank RG and Garfield RL; "Managed Behavioral Health Carve-Outs: Past Performance and Future Prospects" *Annual Reviews of Public Health 2007,* 28:11; 1–18. Frank RG and Garfield RL; "Managed Behavioral Health Carve-Outs: Past Performance and Future Prospects" *Annual Reviews of Public Health 2007,* 28:11; 1–18.

[20] While studies have shown that state parity laws have increased access only marginally, most state laws still allowed disparate treatment limits for mental health conditions and substance use disorders, which limited access for those needing significant amounts of treatment. As discussed above, MHPAEA and these regulations prohibit the imposition of such disparate limits, which could increase access for those individuals. Nine states have treatment limit requirements similar to MHPAEA for mental health benefits, while 10 states have similar requirements for substance abuse disorder benefits.

shown that the high prevalence of depression and the low productivity it causes have cost employers $31 billion to $51 billion annually in lost productivity in the United States.[21] More days of work loss and work impairment are caused by mental illness than by various other chronic conditions, including diabetes and lower back pain.[22]

Moreover, studies have consistently found that workers who report symptoms of mental disorders have lower earnings than other similarly-situated coworkers. For example, a recent study funded by the National Institutes of Health's National Institute of Mental Health [23] found that mental disorders cost employees at least $193 billion annually in lost earnings alone, a staggering number that probably is a conservative estimate because it did not include the costs associated with people in hospitals and prisons, and included very few participants with autism, schizophrenia and other chronic illnesses that are known to greatly affect a person's ability to work. The study also noted that individuals suffering from depression earn 40 percent less than non-depressed individuals.

Although accurately determining cause and effect can be difficult, studies have attempted to estimate the beneficial impact of treating mental disorders. One study found that treating individuals suffering from mental disorders helped close the gap in productivity between those with mental disorders and those who did not have a mental disorder.[24] The finding that treatment can help increase the productivity of those suffering from mental illness suggests that increasing access to treatment of mental disorders could have a beneficial impact on lost productivity cost and lost earnings that stem from untreated and under treated mental health conditions and substance use disorders. The Departments, however, do not have sufficient data to determine whether this result will occur, and, if it does, the extent to which lost productivity cost and lost earnings could improve.

As noted above the combination of reduced cost sharing and the elimination of day and visit limits have the effect of making coverage more complete. The dominant role of managed behavioral health care in the market and the evidence about it success in controlling costs means that the moral hazard problem can be controlled (the evidence on this is discussed in more detail below). The implication is that more complete financial protection can be offered to people without a significant increase in social costs. This implies improved efficiency in the insurance market since more efficient risk spreading would occur without much welfare loss due to moral hazard.

In order to comply with MHPAEA and these regulations, cost-sharing requirements for mental health and substance use disorder benefits cannot be any more restrictive than the predominant cost-sharing requirement applied to substantially all medical/surgical benefits. Because expenditures on mental health and substance use disorder benefits only comprise 3–6 percent of the total benefits covered by a group health plan and 8 percent of overall healthcare costs,[25] the Departments expect that group health plans will lower cost-sharing on mental health and substance use disorder benefits instead of raising cost-sharing on medical/surgical benefits.

MHPAEA and these interim final regulations could have a positive impact on the delivery system of mental health services. Currently, approximately half of mental health care is delivered solely by primary care physicians.[26] This trend is likely due in part to the large discrepancies between insurance cost-sharing for services delivered by mental health professionals and primary care physicians. Historically, the cost-sharing associated with primary care physician visits is lower than cost-sharing for mental health professional visits. This difference in the relative price encouraged patients suffering from mental illness to visit primary care physicians for mental health-related conditions. If MHPAEA and these regulations result in lowering the relative price of mental health care, more individuals suffering from mental illness could visit and receive care from mental health professionals. One study [27] found that only 12.7 percent of individuals treated in the general medical sector received at least minimally adequate mental health care compared to 48.3 percent of patients treated in the specialty mental health sector.[28] A shift in source of treatment from primary care physicians to mental health professionals could lead to more appropriate care, and thus, better health outcomes.[29] The Departments, however, do not have sufficient data to estimate how large this shift in treatment could be or determine whether it will occur.

Mental health and physical health are interrelated, and individuals with poor mental health are more likely to have

[21] Stewart, W.F., Ricci, J.A., Chee, E., Hahn, S.R. & Morgenstein, D. (2003, June 18). "Cost of lost productive work time among US workers with depression." *JAMA: Journal of the American Medical Association. 289, 23,* 3135–3144.

Kessler, R.C., Akiskal, H.S., Ames, M., Birnbaum, H., Greenberg, P., Hirschfeld, H.M.A. et al. (2006). "Prevalence and effects of mood disorders on work performance in a nationally representative sample of U.S. workers." *American Journal of Psychiatry,* 163, 1561–1568.

[22] Stewart, W.F., Ricci, J.A., Chee, E., Hahn, S.R. & Morgenstein, D. (2003, June 18). "Cost of lost productive work time among US workers with depression." *JAMA: Journal of the American Medical Association. 289, 23,* 3135–3144.

[23] Kessler, Ronald C., Steven Heeringa, Matthew D. Lakoma, Maria Petukhova, Agnes E. Rupp, Michael Schoenbaum, Philip S. Wang, and Alan M. Zaslavsky. "Individual and Societal Effects of Mental Disorders on Earnings in the United States: Results From the National Comorbidity Survey Replication."

The American Journal of Psychiatry; June 2008; 165, 6; Research Library pg. 703.

[24] Hilton, Michael F., Paul A. Schuffham, Judith Sheridan, Catherine M. Clearly, Neria Vecchio, and Harvey A. Whiteford. "The Association Between Mental Disorders and Productivity in Treated and Untreated Employees." *Journal of Occupational and Environmental Medicine.* Volume 51, Number 9, September 2009.

[25] Finch R.A., Phillips K. Center for Prevention and Health Services. "An Employer's Guide to Behavioral Health Services: A Roadmap and Recommendations for Evaluating Designing, and Implementing Behavioral Health Services." National Business Group on Health 2005.

[26] Wang, P.S., Lane, M., Olfson, M., Pincus, H.A., Wells, K.B., and Kessler, R.C. (2005, June). "Twelve month use of mental health services in the United States." *Archives of General Psychiatry,* 62, 629–640. The study found that 40 percent of people reporting mental health and substance use disorders receive some treatment in a year.

[27] Wang, P.S., Lane, M., Olfson, M., Pincus, H.A., Wells, K.B., and Kessler, R.C. (2005, June). "Twelve month use of mental health services in the United states." *Archives of General Psychiatry,* 62, 629–640.

[28] Another analysis demonstrating poor adherence to evidence-based treatment for mental disorders is:

Wang PS, Berglund P, Kessler RC, *Journal of General Internal Medicine.* 2000; 15:284–292. Recent care of common mental disorders in the United States: Prevalence and conformance with evidence-based recommendations. This study finds that only 57.3 percent of people with major depression receive treatment during a year and less than one-third of those who receive treatment receive effective treatment.

Based on expert opinion, Normand et al. rated the likely effectiveness of combinations of general medical visits, specialty visits (with psychotherapy) and drug treatment to demonstrate the correlation between adequate treatment for depression and the probability of remission. For patients with no anti-depressant medication, the probability of remission increased as the number of specialty visits increased from one or less during a year to ten or more. The probability of remission was greater for patients with antidepressant medication and improved with more specialty visits during the year. Normand SLT, Frank RG, McGuire, TG. "Using elicitation techniques to estimate the value of ambulatory treatments for depression." Medical Decision Making, 2001; 22: 245–261.

[29] The Healthcare Effectiveness Data and Information Set report card for 2007 produced by National Center for Quality Assurance shows that for treatment of depression, only 20 percent of patients get appropriate levels of provider contacts; about 45 percent receive appropriate maintenance level medications and 62 percent obtain adequate medication doses and duration during the acute phase of illness.

physical health problems as well. Increased access and utilization of mental health and substance use disorder benefits could result in a reduction of medical/surgical costs for individuals afflicted with mental health conditions and substance use disorders. The decrease in medical/surgical costs could be significant; however, the Departments do not have sufficient data to estimate how large these health care spending offsets could be or determine whether they will occur.

There is disagreement among experts as to whether depression is an important antecedent risk factor for physical illness or whether the causal relationship acts in the opposite direction. Regardless, there is evidence that comorbid depression worsens the prognosis, prolongs recovery and may increase the risk of mortality associated with physical illness. In addition, comorbid depression has been shown to increase the costs of medical care, over and above the costs of treating the depression itself.[30]

The returns on investment from treatment of substance use disorders can be large.[31] Studies in Washington state clinics demonstrated that each dollar invested in inpatient and outpatient substance abuse treatment yielded returns of about 10 and 23 times their initial investments, respectively.[32] California and Oregon state treatment systems demonstrated a sevenfold return in their investments.[33] Other studies show effects ranging from a return of one and a half times the cost in a large study of a treatment clinic in Chicago to a return of 5 times the initial investment for a treatment for mentally ill chemical abusers,[34] resulting in a net benefit of about $85,000 per client for an investment of nearly $20,000.[35]

4. Costs

a. *Cost associated with increased utilization of mental health and substance use disorder benefits.* As discussed in the Benefits section earlier in this preamble, one of Congress' primary objectives in enacting MPHAEA was to eliminate barriers that impede access to and utilization of mental health and substance use disorder benefits. This has raised concerns among some that increased access and utilization of mental health and substance use disorder benefits will result in increases in associated payments and plan expenditures, which could lead to large premium increases that will make mental health and substance use disorder benefits unaffordable. The Departments are uncertain regarding the level of increased costs and premium increases that will result from MHPAEA and these regulations, but there is evidence that any increases will not be large.

One theory for increased costs resulting from parity is based on the fact that cost-sharing for mental health and substance use disorder benefits will decrease. A frequent justification for higher cost-sharing of mental health and substance use disorder benefits is the greater extent of moral hazard for these benefits; individuals will utilize more mental health and substance use disorder benefits at a higher rate when they are not personally required to pay the cost. To support this assumption, many have cited the RAND Health Insurance Experiment, conducted in 1977–1982, which demonstrated that individuals are more likely to increase their mental health care usage when their personal cost-sharing for mental health care services fall than they are to increase their physical health care usage when their personal cost-sharing for physical health care services decreases. Because this experiment was conducted nearly thirty years ago, researchers recently tested to determine whether this result held true.[36] Their results indicate that individuals' sensitivity to changes in cost-sharing may have changed significantly over time. These changes are explained at least in part due to the expansion of managed behavioral health care (described earlier). The authors found that individuals' price responsiveness of ambulatory mental health treatment is now slightly lower than physical health treatment. These results indicate that if plans lower the cost-sharing associated with mental health services, costs will not rise as much as would be expected using the results from the RAND Experiment.[37]

When the RAND Experiment was conducted, managed care was not nearly as prevalent as it is today. Health care economists have studied the impact of using cost control techniques associated with managed care to reduce the quantity of mental health and substance use disorder benefits utilized so that lowered cost sharing may result in only a small increase in spending.[38] This research concluded that "comprehensive parity implemented in the context of managed care would have little impact on total spending."[39]

These findings were similar to those of a recent study published in the New England Journal of Medicine examining the Federal Employees Health Benefits Program (FEHBP), which implemented parity for mental health and substance use disorder benefits in 2001.[40] The primary concern has been that the existence of parity in the FEHBP would result in large increases in the use of mental health and substance-abuse services and spending on these services. However, the study concluded that these fears were unfounded and "that parity of coverage of mental health and substance-abuse services, when coupled with management of care, is feasible and can accomplish its objectives of greater fairness and improved insurance protection without adverse consequences for health care costs."[41] The study found average per user declines in out patient cost sharing of between zero and $87 depending on the

[30] Conti R, Berndt ER, Frank RG. "Early retirement and DI/SSI applications: Exploring the impact of depression", in Culter DM, Wise DA. *Health in Older Ages: The causes and consequences of declining disability among the elderly,* (Chicago: National Bureau of Economic Research, 2008).

[31] The Office of National Drug Control Policy has information on effective treatment and cost savings at *http://www.whitehousedrugpolicy.gov.*

[32] French, M.T., H.J. Salome, A. Krupski, J.R. McKay, D.M. Donovan, A.T. McLellan, and J. Durrell. (2000). "Benefit-cost analysis of residential and outpatient addiction treatment in the State of Washington." *Evaluation Review, 24(6),* 609–634.

[33] Ettner, S.L., D. Huang, E. Evans, D.R. Ash, M. Hardy, M. Jourabchi, and Y. Hser. (2006). "Benefit-Cost in the California Treatment Outcome Project: Does Substance Abuse Treatment 'Pay for Itself?'" *Health Services Research,* 41(1), 192–213.

[34] French, M.T., K.E. McCollister, S. Sacks, K. McKendrick, & G. De Leon. (2002). "Benefit cost analysis of a modified therapeutic community for mentally ill chemical abusers." *Evaluation and Program Planning, 25,* 137–148.

[35] The returns are the ratio of benefits to costs. Benefits include personal as well as societal benefits including increased employment and reduced crime.

[36] Meyerhoefer, Chad D. and Samuel Zuvekas, 2006. "New Estimates of the Demand for Physical and Mental Health Treatment." Agency for Healthcare Research and Quality Working Paper No. 06008.

[37] Another paper showing a similar result to the Myerhoefer paper cited above is: Lu CL, Frank, RG and McGuire TG. "Demand Response Under Managed Care." *Contemporary Economic Policy,* 27(1):1–15, 2009.

[38] Barry, Frank, and McGuire. "The Costs of Mental Health Parity: Still an Impediment?" *Health Affairs,* no. 3:623 (2006).

[39] *Id.*

[40] Goldman, *et al.,* "Behavioral Health Insurance Parity for Federal Employees," New England Journal of Medicine (March 30, 2006) Vol. 354, No. 13. In 1999, President Clinton directed the Office of Personnel Management (OPM) to equalize benefits coverage in the FEHBP, and parity was implemented in 2001. Parity under the FEHBP is very similar to MHPAEA. It requires benefits coverage for plan mental health, substance abuse, medical, surgical, and hospital providers to have the same limitations and cost-sharing such as deductibles, coinsurance, and co-pays. When patients use plan providers and follow a treatment regime approved by their plan, all diagnostic categories of mental health and substance abuse conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV) are covered.

[41] *Id.*

plan. The reductions were largest for high users of mental health care. The study also found that insurers were not likely to drop out of the FEHBP pool due to the implementation of parity.

The experience of states that have enacted mental health parity laws with appropriate managed care also suggests that minimal increased cost results from implementing parity. One study found that "with the implementation of mental health parity at the same time as managed behavioral health care, many states have discovered that overall health care costs increased minimally and in some cases even were reduced." [42] For example, at least nine states—California, Maine, Maryland, Minnesota, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Vermont—have actually documented experience that implementing mental health parity including cost controls through managed care resulted in lower costs and lowered premiums (or at most, very modest cost increases of less than one percent) within the first year of implementation.[43]

Similarly, the Departments expect medical management and managed care techniques will help control any major cost impact resulting from MHPAEA and these regulations. As discussed earlier in this preamble, these regulations provide that medical management can be applied to mental health and substance use disorder benefits by plans as long as any processes, strategies, evidentiary standards, or other factors used in applying medical management are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying medical management to medical/surgical benefits.

Although the increase in per plan costs associated with parity is not likely to be substantial, there may be plans that decide to drop coverage for mental health and substance use disorder benefits in response to higher costs, or individuals may decide to drop coverage even if it is offered. The Departments do not have an estimate of the number of plans that will drop coverage or the number of individuals that will lose benefits. Currently 98 percent of covered workers have some form of mental health benefits.[44] The lack of coverage for mental health and substance use disorder benefits for these people may lead to many of the typical costs associated with uninsured individuals: Lack of access, decreased health, and increased financial burden. The Departments are not able to quantify these costs. Research on the introduction of state parity laws suggests few plans or individuals will drop insurance coverage due to parity.[45]

b. *Costs associated with cumulative financial requirements and quantitative treatment limitations, including deductibles.* As discussed earlier in this preamble, paragraph (c)(3)(v) of these regulations provide that a group health plan may not apply cumulative financial requirements, such as deductibles, for mental health and substance use disorder benefits in a classification that accumulate separately from any such requirements or limitations established for medical/surgical benefits in the same classification. Some group health plans and health insurance issuers "carve-out" the administration and management of mental health and substance use disorder benefits to MBHOs. These entities obtain cost savings for plan sponsors by providing focused case management and directing care to a broad network of mental and behavioral health specialists (with whom they negotiate lower fees) who ensure that appropriate care for mental health conditions and substance use disorders is provided.[46]

When a group health plan or health insurance issuer uses a carve-out arrangement, at least two entities are involved in separately managing and administering medical/surgical and mental health and substance use disorder benefits.[47] The imposition of a single deductible requires entities providing medical/surgical and mental health and substance use disorder benefits to develop and program a communication network often referred to as an "interface" or an "accumulator" that will allow them to exchange the data necessary to make timely and accurate determinations of when participants have incurred sufficient combined medical/surgical and mental health and substance use disorder expenses to satisfy the single deductible.

Two comments received in response to the RFI indicate that MBHOs would confront significant costs to develop real-time interfaces that could range from $420,000–$750,000 with an additional $40,000–$70,000 required for annual maintenance.[48] The Departments held discussions with the regulated community which indicated that interface development costs may not be as high as stated in the RFI comments. For example, the Departments have learned that MBHOs could develop less costly "batch process" interfaces that exchange data on a daily or weekly basis rather than real-time for as low as approximately $35,000 per interface.[49]

It also appears that some plan sponsors using carve-out arrangements already are implementing a unified, single deductible, and MBHOs have created interfaces to service these clients. For example, the Departments' discussions found that one MBHO already has established 10–15 accumulators, because its plan sponsor clients requested a single deductible. The MBHO reported that another 10–15 accumulators were being implemented for the current benefit year, because plan sponsors wanted to ensure that they were compliant with MHPAEA. This finding suggests that while costly, putting these accumulators in place is not cost prohibitive for the MBHOs and plan sponsors. Moreover, plans and issuers have created and used interfaces with separate pharmacy benefit managers and dental insurers for years. Interface development costs should decrease after the first interface is created. The experience and lessons learned from creating these interfaces should reduce the cost associated with designing and implementing interfaces with MBHOs.

While the RFI comment letters suggested that MBHOs would have to create 40–50 interfaces each, this

[42] Melek, Steve, "The Costs of Mental Health Parity," *Health Section News* (March 2005).

[43] Bachman, Ronald, *Mental Health Parity—Just the Facts* (2000).

[44] Kaiser Family Foundation and Health Research & Educational Trust. *Employer Health Benefits 2008 Annual Survey.*

[45] Cseh, Attila. "Labor Market Consequences of State Mental Health Parity Mandates," Forum for Health Economics & Policy, Vol. 11, issue 2, 2008.

[46] Research papers have indicated that carve-out arrangements have reduced the cost of proving mental health and substance use disorder benefits by an estimated 25–40 percent. Frank, Richard G. and Thomas G. McGuire, "Savings from a Carve-Out Program for Mental Health and Substance Abuse in Massachusetts Medicaid" Psychiatric Services 48(9); 1147–1152, 1997; Ma, Ching-to Albert and Thomas G. McGuire, "Costs and Incentives in a Behavioral Health Carve-out. *Health Affairs* March/April 1998.

[47] This can create a coordination issue that has cost implications that otherwise do not exist when a single vendor is used.

[48] RFI comments. MHPAEA RFI comments can be viewed at *http://www.dol.gov/ebsa/regs/cmt-MHPAEA.html.*

[49] An additional undetermined expense would be required to reconcile and make adjustments in instances when two claims are received on the same day satisfying the unified deductible. While this alternative would produce a much lower cost than real-time interfaces, the costs remain significant. A low-end estimate of the first year cost for MBHOs and insurers to create, on average, at least 20 new interfaces would be $700,000 per insurer. There is uncertainty regarding the total cost, because the number of entities that would need to create interfaces is unclear. The Departments are aware of 460 health insurance issuers and at least 120 MBHOs that could be affected.

number most likely only relates to the largest MBHOs. The smallest MBHOs would need to create fewer interfaces. The Departments assume that a significant number of smaller MBHOs exist; therefore, the Departments estimate that, on average, seven interfaces would have to be created per insurer. The Departments acknowledge that there is uncertainty in this estimate due to incomplete information about the MBHO industry.

For purposes of this analysis, the Departments have used an estimated interface development cost of $35,000 per interface, because the Departments were not able to substantiate the higher estimated costs provided in the RFI comment letters, and the propensity of the evidence leads to the conclusion that the cost could be significantly less. Based on the foregoing, the Departments estimate total interface development costs of approximately $39.2 million.[50]

Once the interfaces are created, ongoing annual maintenance costs will be incurred. One industry source suggested that ongoing maintenance costs could be one-tenth of the development costs, and based on this information, the Departments estimate that maintenance cost of $3.9 million will be incurred annually after the interfaces are created.

While the total interface development and maintenance costs are large, a useful measure to examine is the per-participant cost impact. While reliable estimates of the number of participants enrolled in plans utilizing MBHOs are not available, based on the best available information, the Departments estimate that at least 70 million participants are covered by MBHOs. Based on this count, the per-participant first year interface development costs would be $0.60, and the maintenance costs in subsequent years would be less than one cent.

Comments from health insurance issuers have suggested that the costs of creating these interfaces would be passed on to participants in the form of higher premiums; however, no independent information has been found to corroborate this assertion.

c. *Compliance review costs.* The Departments expect that group health plans and health insurance issuers will conduct a compliance review to ensure that their plan documents, summary plan descriptions, and any associated policies and procedures comply with the requirements of MHPAEA and these regulations. While the Departments do not know the total number of issuers that will be affected by the regulations, the Departments estimate that there are approximately 460 issuers operating in the group market. In addition, the Departments are aware of at least 120 MBHOs.[51] The Departments believe smaller MBHOs exist but were unable to obtain a count.

The Departments assume that insured plans will rely on the issuers providing coverage to ensure compliance, and that self-insured plans will rely on third-party administrators to ensure compliance. The per-plan compliance costs are expected to be low, because vendors and issuers will be able to spread these costs across multiple client plans. These regulations provide examples illustrating the application of the rules to specific situations, which are intended to reduce the compliance burden.

The Departments assume that the average burden per plan will be one-half hour of a legal professional's time at an hourly labor rate of $120 to conduct the compliance review and make the needed changes to the plan and related documents. This results in a total cost of $27.8 million in the first year. The Departments welcome public comments on this estimate.

d. *Costs associated with MHPAEA disclosures.* MHPAEA and these regulations contain two new disclosure provisions for group health plans and health insurance coverage offered in connection with a group health plan that are addressed in paragraph (d) of the rules.

(1) *Medical necessity disclosure.* The first disclosure requires plan administrators to make the plan's medical necessity determination criteria available upon request to potential participants, beneficiaries, or contracting providers. The Departments are unable to estimate with certainty the number of requests that will be received by plan administrators based on this requirement. However, the Departments have assumed that, on average, each plan affected by the rule will receive one request. For purposes of this estimate, the Departments assume that it will take a medically trained clerical staff member five minutes to respond to each request at a labor rate of $26.85 per hour resulting in an annual cost of approximately $1,044,000.[52]

The Departments also estimated the cost to deliver the requested criteria for medical necessity determinations. Many insurers already have the information prepared in electronic form, and the Departments assume that 38 percent[53] of requests will be delivered electronically resulting in a de minimis cost. The Departments estimate that the cost associated with distributing the approximately 290,000 requests sent by paper will be approximately $192,000.[54]

(2) *Claims denial disclosure.* MHPAEA and these regulations also provide that the reason for any denial under a group health plan (or health insurance coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available upon request or as otherwise required by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary. The Department of Labor's ERISA claims procedure regulation (29 CFR 2560.503–1) requires, among other things, such disclosures to be provided automatically to participants and beneficiaries free of charge. Although non-ERISA covered plans, such as plans sponsored by state and local governments that are subject to the PHS Act, are not required to comply with the ERISA claims procedure regulation, these regulations provide that such plans (and health insurance coverage offered in connection with such plans) will be deemed to satisfy the MHPAEA claims denial disclosure requirement if they comply with the ERISA claims procedure regulation.

For purposes of this cost analysis, the Departments assume that non-Federal governmental plans will satisfy the safe harbor, because the same third-party administrators and insurers are hired by ERISA- and non-ERISA-covered plans, and these entities provide the same claims denial notifications to participants covered by ERISA- and non-ERISA-covered plans. Therefore,

[50] Please note that using the $420,000 per interface estimate cited in the RFI comment letters would result in total interface development costs of $470 million, with annual maintenance costs of $47 million. Based on this estimate, the per-participant first year interface development costs would be $7, and the annual maintenance costs in subsequent years would be $.06 cents per participant per month.

[51] There are about 460 issuers in the group market; this is an average of 1,000 plans per issuers. In addition, there are at least 120 MBHOs.

[52] EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index (June 2009, Bureau of Labor Statistics).

[53] For purposes of this burden estimate, the Departments assume that 38 percent of the disclosures will be provided through electronic means in accordance with the Department's standards for electronic communication of required information provided under 29 CFR 2520.104b–1(c).

[54] This estimate is based on an average document size of four pages, $.05 cents per page material and printing costs, $.44 cent postage costs.

based on the foregoing, the Departments have not included a cost for plans to provide the claims denial disclosures.

5. Transfer Resulting for Premium Increase Due to MHPAEA

The evaluation of mental health and substance use disorder parity in the Federal Employees Health Benefit Program (FEHBP) estimated the overall impact of parity on total spending for mental health and substance use disorder services relative to a set of control plans that did not experience any increase in mental health coverage.[55] That evaluation also assessed changes in out-of-pocket spending. The overall results on total mental health and substance use disorder (MH/SUD) spending (health plan spending plus out of pocket spending) showed essentially no significant increase in total MH/SUD spending. The evaluation also showed that in general parity resulted in a statistically significant decrease in out-of-pocket spending. This means that while there was no increase in the total spending on MH/SUD services there was a significant shift in the final responsibility for paying for these services. In other words, health plan spending expanded due to parity. The magnitude of the change implies an estimated increase in total health care premiums of 0.4 percent.[56] Thus the 0.4 percent increase derived from the FEHBP evaluation is due entirely to a shift in final responsibility for payment.

The Congressional Budget Office[57] estimated the direct and indirect costs to the private and public sector of implementing MHPAEA and similarly found that health insurance premiums would go up by approximately 0.4 percent. The FEHBP estimate contrasts with the CBO estimate, because the CBO estimate appears to include some shift in final payment along with an increase in service utilization.

The Departments estimate that total health care premiums will rise 0.4 percent due to MHPAEA based on data and analysis from the FEHBP evaluation. The premium increase is a transfer from those not using MH/SUD benefits to those who do, because given the size of the estimated impacts and the known changes in coverage from baseline discussed earlier in this Regulatory Impact Analysis, any change in utilization must be very small again suggesting that premium changes were primarily due to a shift in responsibility for final payments for MH/SUD care.

Using data on private health insurance premiums from the National Health Expenditure Projections[58] and data on premiums for individual insurance[59] from the National Association of Insurance Commissioners, the Departments estimate that the dollar amount of the 0.4 percent premium increases attributable to MHPAEA would be approximately $25.6 billion over the ten-year period 2010–2019. The ten-year value using a discount rate of seven percent is $19.0 billion, and it is $22.4 billion using a three percent discount rate. Yearly estimates are reported in Table 1, column G. Due to the magnitude of this transfer, this regulatory action is economically significant pursuant to section 3(f)(1) of Executive Order 12866.

D. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the Administrative Procedures Act (APA), a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. These interim final regulations are exempt from APA, because the Departments made a good cause finding that a general notice of proposed rulemaking is not necessary earlier in this preamble. Therefore, the RFA does not apply and the Departments are not required to either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Departments carefully considered the likely impact of the rule on small entities in connection with their assessment under Executive Order 12866. The Departments expect the rules to reduce the compliance burden imposed on plans and insurers by clarifying definitions and terms contained in the statute and providing examples of acceptable methods to comply with specific provisions. The Departments believe that the rule's impact on small entities will be minimized by the fact that MHPAEA does not apply to small employers who have between two and 50 employees.

E. Special Analyses—Department of the Treasury

Notwithstanding the determinations of the Department of Labor and Department of Health and Human Services, for purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the RFA, refer to the Special Analyses section in the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.** Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

F. Paperwork Reduction Act

1. Departments of Labor and the Treasury

As part of their continuing efforts to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This 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.

[55] Goldman, *et al.,* "Behavioral Health Insurance Parity for Federal Employees," New England Journal of Medicine (March 30, 2006) Vol. 354, No. 13.

[56] The estimated .04 percent increase was derived from an authors' final calculation based on data from the report cited in the previous footnote.

[57] Congressional Budget Office Cost Estimate on H.R. 1424—Paul Wellstone Mental Health and Addiction Equity Act of 2007, 21 November 2007.

[58] National Health Expenditures Projections 2008–2018, Centers for Medicare & Medicaid Services, Office of the Actuary, *http://www.cms.hhs.gov/NationalHealthExpendData/.*

[59] The National Health Expenditure estimate of total spending on private health insurance includes premiums for purchases made in the individual market, which is not affected by MHPAEA. Therefore it needs to be subtracted from the total. The NAIC data does not contain information from California; therefore, an adjustment based on the number of lives covered in California and average premiums was used to impute a value for California.

As discussed earlier in this preamble, MHPAEA includes two new disclosure provisions for group health plans and health insurance coverage offered in connection with a group health plan. First, the criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available in accordance with regulations by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request ("medical necessity disclosure").

MHPAEA also requires the reason for any denial under a group health plan (or health insurance coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available upon request or as otherwise required by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in accordance with regulations ("claims denial notice").

The MHPAEA disclosures are information collection requests (ICRs) subject to the PRA. The Departments are not soliciting comments concerning an ICR pertaining to the claims denial notice, because the Department of Labor's ERISA claims procedure regulation (29 CFR 2560.503–1) requires (among other things) ERISA-covered group health plans to provide such disclosures automatically to participants and beneficiaries free of charge. Although non-ERISA covered plans, such as certain church plan under Treasury/IRS jurisdiction and plans sponsored by state and local governments that are subject to the PHS Act and under HHS jurisdiction (these plans are discussed under the HHS ICR discussion below) are not required to comply with the ERISA claims procedure regulation, these regulations provide that such plans (and health insurance coverage offered in connection with such plans) will be deemed to satisfy the MHPAEA claims denial disclosure requirement if they comply with the ERISA claims procedure regulation. For purposes of this PRA analysis, the Departments assume that non-ERISA plans will satisfy the safe harbor, because the same third-party administrators and insurers are hired by ERISA- and non-ERISA-covered plans, and these entities provide the same claims denial notifications to participants covered by ERISA- and non-ERISA-covered plans. Therefore, the Departments hereby determine that the hour and cost burden associated with the claims denial notice already is accounted for in the ICR for the ERISA claims procedure regulation that is approved under OMB Control Number 1210–0053.

Currently, the Departments are soliciting comments concerning the medical necessity disclosure. The Departments have submitted a copy of these interim final regulations to OMB in accordance with 44 U.S.C. 3507(d) for review of the information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Employee Benefits Security Administration either by fax to (202) 395–7285 or by e-mail to *oira_submission@omb.eop.gov.* Although comments may be submitted through April 5, 2010, OMB requests that comments be received within 30 days of publication of these interim final regulations to ensure their consideration. A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. E-mail: *ebsa.opr@dol.gov*. ICRs submitted to OMB also are available at reginfo.gov *(http://www.reginfo.gov/public/do/PRAMain).*

The Departments are unable to estimate with certainty the number of requests for medical necessity criteria disclosures that will be received by plan administrators; however, the Departments have assumed that, on average, each plan affected by the rule will receive one request. The Departments estimate that approximately 93 percent of large plans and all small plans administer claims using service providers; therefore, 5.1 percent of the medical necessity criteria disclosures will be done in-house. For PRA purposes, plans using service providers will report the costs as a cost burden, while plans administering claims in-house will report the burden as an hour burden.

The Departments assume that it will take a medically trained clerical staff member five minutes to respond to each request at a wage rate of $27 per hour. This results in an annual hour burden of nearly 1,900 hours and an associated equivalent cost of nearly $51,000 for the approximately 23,000 requests done in-house by plans. The remaining 424,000 medical necessity criteria disclosures will be provided through service providers resulting in a cost burden of approximately $950,000.

The Departments also calculated the cost to deliver the requested medical necessity criteria disclosures. Many insurers and plans already may have the information prepared in electronic form, and the Departments assume that 38 percent of requests will be delivered electronically resulting in a de minimis cost. The Departments estimate that the cost burden associated with distributing the approximately 277,000 medical necessity criteria disclosures sent by paper will be approximately $177,000.[60] The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.[61]

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agencies: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, U.S. Department of the Treasury.

Title: Notice of Medical Necessity Criteria under the Mental Health Parity and Addition Equity Act of 2008.

OMB Number: 1210–NEW; 1545–NEW.

Affected Public: Business or other for-profit; not-for-profit institutions.

Total Respondents: 446,400.

[60] This estimate is based on an average document size of four pages, $.05 cents per page material and printing costs, $.44 cent postage costs.

[61] 5 CFR 1320.1 through 1320.18.

Total Responses: 446,400.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 950 hours (Employee Benefits Security Administration); 950 hours (Internal Revenue Service).

Estimated Total Annual Burden Cost: $562,500 (Employee Benefits Security Administration); $562,500 (Internal Revenue Service).

2. Department of Health and Human Services

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

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

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

ICRs Regarding Parity in Mental Health and Substance Use Disorder Benefits. (45 CFR 146.136(d))

As discussed above, MHPAEA includes two new disclosure provisions for group health plans and health insurance coverage offered in connection with a group health plan. First, the criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available in accordance with regulations by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request ("medical necessity disclosure").

MHPAEA also requires the reason for any denial under a group health plan (or health insurance coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available upon request or as otherwise required by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in accordance with regulations ("claims denial disclosure").

Medical Necessity Disclosure

The Department estimates that there are 29.1 million participants covered by 20,300 state and local public plans that are subject to the MHPAEA disclosure requirements that are employed by employers with more than 50 employees.[62]

The Department is unable to estimate with certainty the number of requests for medical necessity criteria disclosures that will be received by plan administrators; however, the Department has assumed that, on average, each plan affected by the rule will receive one request. CMS estimates that approximately 93 percent of large plans administer claims using third party providers. Furthermore the vast majority of all smaller employers usually are fully insured such that issuers will be administering their claims. Therefore 5.1 percent of claims are administered in-house. For plans that use issuers or third party providers the costs are reported as cost burden while for plans that administer claims in-house the burden is reported as an hour burden. For purposes of this estimate, the Department assumes that it will take a medically trained clerical staff member five minutes to respond to each request at a wage rate of $26.85 per hour. This results in an annual hour burden of 86 hours and an associated equivalent cost of about $2,300 for the approximately 1,000 requests handled by plans. The remaining 19,300 claims (94.9 percent) are provided through a third-party provider or an issuer and results in a cost burden of approximately $43,000.

Claims Denial Disclosure

MHPAEA requires plans to disclose to participants and beneficiaries upon request the reason for any denial under the plan (or coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits. The Department of Labor's ERISA claims procedure regulation (29 CFR 2560.503–1) requires, among other things, such disclosures to be provided automatically to participants and beneficiaries free of charge. Although non-ERISA covered plans, such as plans sponsored by state and local governments that are subject to the PHS Act, are not required to comply with the ERISA claims procedure regulation, the interim final regulations provide that these plans (and health insurance coverage offered in connection with such plans) will be deemed to satisfy the MHPAEA claims denial disclosure requirement if they comply with the ERISA claims procedure regulation.

Using assumptions similar to those used for the ERISA claims procedure regulation, the Department estimates that there will be approximately 29.7 million claims for mental health or substance use disorder benefits with approximately 4.45 million denials that could result in a request for an explanation of reason for denial. The Department has no data on the percent of denials that will result in a request for an explanation, but assumed that ten percent of denials will result in a request for an explanation (445,000 requests).

The Department estimates that a medically trained clerical staff member may require five minutes to respond to each request at a labor rate of $27 per hour. This results in an annual hour burden of nearly 1,900 hours and an associated equivalent cost of nearly $51,000 for the approximately 22,700 requests completed by plans. The remaining 422,300 are provided through an issuer or a third-party provider, which results in a cost burden of approximately $945,000.

In association with the explanation of denial, participants may request a copy of the medical necessity criteria. While the Department does not know how many notices of denial will result in a request for the criteria of medical necessity, the Department assumes that ten percent of those requesting an explanation of the reason for denial will also request the criteria of medical necessity, resulting in 44,500 requests, 2,300 of which will be completed in-house with an hour burden of 190 hours and equivalent cost of $5,000 and 42,000 requests handled by issuers or third-party providers with a cost burden of $95,000.

The Department also calculated the cost to deliver the requested information. Many insurers or plans may already have the information prepared in electronic format, and the Department assumes that requests will be delivered electronically resulting in a

[62] Non-Federal governmental plans may opt-out of MHPAEA and certain other requirements under Section 2721 of the PHS Act. Since past experience has shown that the number of non-Federal governmental plans that opt-out is small, the impact of the opt-out election should be immaterial on the Department's estimates.

de minimis cost.[63] The Department estimates that the cost burden associated with distributing the approximately 135,000 disclosures sent by paper will be approximately $86,000.[64] The Department notes that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.[65]

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Department of Health and Human Services.

Title: Required Disclosures Under the Mental Health Parity and Addition Equity Act of 2008.

OMB Number: 0938–NEW.

Affected Public: State, Local, or Tribal Governments.

Respondents: 20,300.

Responses: 510,000.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 2,200 hours.

Estimated Total Annual Burden Cost: $1,169,000.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, 4140–IFC

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.gov.*

G. Congressional Review Act

These regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rules that may result in annual expenditures of $100 million (as adjusted for inflation) by state, local and tribal governments or the private sector. These rules are not subject to the Unfunded Mandates Reform Act because they are being issued as interim final rules. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, the regulation has been designed to be the least burdensome alternative for state, local and tribal governments, and the private sector, while achieving the objectives of MHPAEA.

I. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these regulations have federalism implications, because they have direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. However, in the Departments' view, the federalism implications of these regulations are substantially mitigated because, with respect to health insurance issuers, the Departments expect that the majority of States have enacted or will enact laws or take other appropriate action resulting in their meeting or exceeding the federal MHPAEA standards.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2723 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the MHPAEA requirements are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of MHPAEA. The conference report accompanying HIPAA indicates that this is intended to be the "narrowest" preemption of State laws. (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.)

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the MHPAEA requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the federal requirements are unlikely to "prevent the application of" MHPAEA, and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in numerous efforts to consult with and work cooperatively with affected State and local officials. It is expected that the Departments will act in a similar fashion in enforcing the MHPAEA requirements.

Throughout the process of developing these regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to MHPAEA, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these regulations, the Departments certify that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached regulations in a meaningful and timely manner.

[63] Following the assumption in the ERISA claims regulation, it was assumed 75 percent of the explanation of denials disclosures would be delivered electronically, while it was assumed that 38 percent of non-denial related requests for the medical necessity criteria would be delivered electronically.

[64] This estimate is based on an average document size of four pages, $.05 cents per page material and printing costs, $.44 cent postage costs.

[65] 5 CFR 1320.1 through 1320.18.

V. Statutory Authority

The Department of the Treasury temporary and final regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor interim final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3765; Public Law 110–460, 122 Stat. 5123; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

The Department of Health and Human Services interim final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Internal Revenue Service

26 CFR Chapter 1

■ Accordingly, 26 CFR parts 54 and 602 are amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read in part as follows:

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

■ **Par. 2.** Section 54.9812–1T is revised to read as follows:

§ 54.9812 Parity in mental health and substance use disorder benefits (temporary).

(a) *Meaning of terms.* For purposes of this section, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

Aggregate lifetime dollar limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a group health plan for any coverage unit.

Coverage unit means coverage unit as described in paragraph (c)(1)(iv) of this section.

Cumulative financial requirements are financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. (However, cumulative financial requirements do not include aggregate lifetime or annual dollar limits because these two terms are excluded from the meaning of financial requirements.)

Cumulative quantitative treatment limitations are treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan, but does not include mental health or substance use disorder benefits. Any condition defined by the plan as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the International Classification of Diseases (ICD) or State guidelines).

Mental health benefits means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any condition defined by the plan as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the ICD, or State guidelines).

Substance use disorder benefits means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or State guidelines).

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan. (See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation.

(b) *Parity requirements with respect to aggregate lifetime and annual dollar limits*—(1)—*General*—(i) *General parity requirement.* A group health plan that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (b)(2), (b)(3), or (b)(6) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/

surgical benefits and mental health or substance use disorder benefits; or

(ii) Not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (For cumulative limits other than aggregate lifetime or annual dollar limits, see paragraph (c)(3)(v) of this section prohibiting separately accumulating cumulative financial requirements or cumulative quantitative treatment limitations.)

(4) *Examples.* The rules of paragraphs (b)(2) and (b)(3) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan has no annual limit on medical/surgical benefits and a $10,000 annual limit on mental health and substance use disorder benefits. To comply with the requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Eliminating the plan's annual dollar limit on mental health and substance use disorder benefits;

(B) Replacing the plan's annual dollar limit on mental health and substance use disorder benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health and substance use disorder benefits); and

(C) Replacing the plan's annual dollar limit on mental health and substance use disorder benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* each of the three options being considered by the plan sponsor would comply with the requirements of this paragraph (b).

Example 2. (i) *Facts.* A plan has a $100,000 annual limit on medical/surgical inpatient benefits and a $50,000 annual limit on medical/surgical outpatient benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Imposing a $150,000 annual limit on mental health and substance use disorder benefits; and

(B) Imposing a $100,000 annual limit on mental health and substance use disorder inpatient benefits and a $50,000 annual limit on mental health and substance use disorder outpatient benefits.

(ii) *Conclusion.* In this *Example 2,* each option under consideration by the plan sponsor would comply with the requirements of this section.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (b)(3) of this section*—(i) *In general.* A group health plan that is not described in paragraph (b)(2) or (b)(3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either—

(A) Impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(B) Impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) *Facts.* A group health plan that is subject to the requirements of this section includes a $100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual dollar limit on any other category of medical/surgical benefits. The plan determines that 40 percent of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that $1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60 percent of payments for medical/surgical benefits.

(ii) *Conclusion.* In this *Example,* the plan is not described in paragraph (b)(3) of this section because there is not one annual dollar limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual dollar limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual dollar limit on mental health or substance use disorder benefits, or to include an annual dollar limit on mental health or substance use disorder benefits that is not less than the weighted average of the annual dollar limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual dollar limit that can be applied to mental health or substance use disorder benefits is $640,000 (40% × $100,000 + 60% × $1,000,000 = $640,000).

(c) *Parity requirements with respect to financial requirements and treatment limitations*—(1) *Clarification of terms*—(i) *Classification of benefits.* When reference is made in this paragraph (c) to a classification of benefits, the term "classification" means a classification as described in paragraph (c)(2)(ii) of this section.

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.

(iii) *Level of a type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a level of a type of financial requirement or treatment limitation, level refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20 percent and 30 percent; different levels of a copayment include $15 and $20; different levels of a deductible include $250 and $500; and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(iv) *Coverage unit.* When reference is made in this paragraph (c) to a coverage unit, coverage unit refers to the way in which a plan groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(2) *General parity requirement*—(i) *General rule.* A group health plan that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) *Classifications of benefits used for applying rules*—(A) *In general.* If a plan provides mental health or substance use disorder benefits in any classification of benefits described in this paragraph (c)(2)(ii), mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a plan must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations. The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c):

(*1*) *Inpatient, in-network.* Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan.

(*2*) *Inpatient, out-of-network.* Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan. This classification includes inpatient benefits under a plan that has no network of providers.

(*3*) *Outpatient, in-network.* Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan.

(*4*) *Outpatient, out-of-network.* Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan. This classification includes outpatient benefits under a plan that has no network of providers.

(*5*) *Emergency care.* Benefits for emergency care.

(*6*) *Prescription drugs.* Benefits for prescription drugs. See special rules for multi-tiered prescription drug benefits in paragraph (c)(3)(iii) of this section.

(B) *Application to out-of-network providers.* See paragraph (c)(2)(ii)(A) of this section, under which a plan that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) *Examples.* The rules of this paragraph (c)(2)(ii) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 1,* because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

Example 2. (i) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 2,* because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

Example 3. (i) *Facts.* Same facts as *Example 2,* except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for—

(A) Benefits in the emergency classification; and

(B) All other benefits.

Example 4. (i) *Facts.* Same facts as *Example 2,* except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(ii) *Conclusion.* In this *Example 4,* because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for—

(A) Inpatient, out-of-network benefits; and

(B) All other benefits.

(3) *Financial requirements and quantitative treatment limitations*—(i) *Determining "substantially all" and "predominant"*—(A) *Substantially all.* For purposes of this paragraph (c), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) *Predominant*—(*1*) If a type of financial requirement or quantitative

treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under paragraph (c)(3)(i)(A) of this section, the level of the financial requirement or quantitative treatment limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(*2*) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) *Portion based on plan payments.* For purposes of this paragraph (c), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes.

(E) *Determining the dollar amount of plan payments.* Subject to paragraph (c)(3)(i)(D) of this section, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(ii) *Application to different coverage units.* If a plan applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(iii) *Special rule for multi-tiered prescription drug benefits.* If a plan applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(iv) *Examples.* The rules of paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

Coinsurance rate	0%	10%	15%	20%	30%	Total
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x
Percent of total plan costs	20%	10%	45%	10%	15%	
Percent subject to coinsurance level	N/A	12.5% (100x/800x)	56.25% (450x/800x)	12.5% (100x/800x)	18.75% (150x/800x)	

The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(ii) *Conclusion.* In this *Example 1,* the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

Example 2. (i) *Facts.* For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

Copayment amount	$0	$10	$15	$20	$50	Total
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x
Percent of total plan costs	20%	20%	20%	30%	10%	
Percent subject to copayments	N/A	25% (200x/800x)	25% (200x/800x)	37.5% (300x/800x)	12.5% (100x/800x)	

The plan projects plan costs of $800x to be subject to copayments ($200x + $200x + $300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(ii) *Conclusion.* In this *Example 2,* the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25 percent; for the $15 copayment, 25 percent; for the $20 copayment, 37.5 percent; and for the $50 copayment, 12.5 percent). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

Example 3. (i) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

Example 4. (i) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as "generic", "preferred brand name", "non-preferred brand name", or "specialty" complies with the rules of paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations).

Tier description	Tier 1	Tier 2	Tier 3	Tier 4
	Generic drugs	Preferred brand name drugs	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives)	Specialty drugs
Percent paid by plan	90%	80%	60%	50%

(ii) *Conclusion.* In this *Example 4,* the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

(v) *No separate cumulative financial requirements or cumulative quantitative treatment limitations.* (A) A group health plan may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The rules of this paragraph (c)(3)(v) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan imposes a combined annual $500 deductible on all medical/surgical, mental health, and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* the combined annual deductible complies with the requirements of this paragraph (c)(3)(v).

Example 2. (i) *Facts.* A plan imposes an annual $250 deductible on all medical/surgical benefits and a separate annual $250 deductible on all mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 2,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 3. (i) *Facts.* A plan imposes an annual $300 deductible on all medical/surgical benefits and a separate annual $100 deductible on all mental health or substance use disorder benefits.

(ii) *Conclusion.* In this *Example 3,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 4. (i) *Facts.* A plan generally imposes a combined annual $500 deductible on all benefits (both medical/surgical benefits and mental health and substance use disorder benefits) except prescription drugs. Certain benefits, such as preventive care, are provided without regard to the deductible. The imposition of other types of financial requirements or treatment limitations varies with each classification. Using reasonable methods, the plan projects its payments for medical/surgical benefits in each classification for the upcoming year as follows:

Classification	Benefits subject to deductible	Total benefits	Percent subject to deductible
Inpatient, in-network	$1,800x	$2,000x	90
Inpatient, out-of-network	1,000x	1,000x	100
Outpatient, in-network	1,400x	2,000x	70
Outpatient, out-of-network	1,880x	2,000x	94
Emergency care	300x	500x	60

(ii) *Conclusion.* In this *Example 4,* the two-thirds threshold of the substantially all standard is met with respect to each classification except emergency care because in each of those other classifications at least two-thirds of medical/surgical benefits are subject to the $500 deductible. Moreover, the $500 deductible is the predominant level in each of those other classifications because it is the only level. However, emergency care mental health and substance use disorder benefits cannot be subject to the $500 deductible because it does not apply to substantially all emergency care medical/surgical benefits.

(4) *Nonquantitative treatment limitations*—(i) *General rule.* A group health plan may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical surgical/benefits in the classification, except to the extent that recognized clinically appropriate standards of care may permit a difference.

(ii) *Illustrative list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) Standards for provider admission to participate in a network, including reimbursement rates;

(D) Plan methods for determining usual, customary, and reasonable charges;

(E) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols); and

(F) Exclusions based on failure to complete a course of treatment.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan limits benefits to treatment that is medically necessary. The plan requires concurrent review for inpatient, in-network mental health and substance use disorder benefits but does not require it for any inpatient, in-network medical/surgical benefits. The plan conducts retrospective review for inpatient, in-network medical/surgical benefits.

(ii) *Conclusion.* In this *Example 1,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—applies to both mental health and substance use disorder benefits and to medical/surgical benefits for inpatient, in-network services, the concurrent review process does not apply to medical/surgical benefits. The concurrent review process is not comparable to the retrospective review process. While such a difference might be permissible in certain individual cases based on recognized clinically appropriate standards of care, it is not permissible for distinguishing between all medical/surgical benefits and all mental health or substance use disorder benefits.

Example 2. (i) *Facts.* A plan requires prior approval that a course of treatment is medically necessary for outpatient, in-network medical/surgical, mental health, and substance use disorder benefits. For mental health and substance use disorder treatments that do not have prior approval, no benefits will be paid; for medical/surgical treatments that do not have prior approval, there will only be a 25 percent reduction in the benefits the plan would otherwise pay.

(ii) *Conclusion.* In this *Example 2,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—is applied both to mental health and substance use disorder benefits and to medical/surgical benefits for outpatient, in-network services, the penalty for failure to obtain prior approval for mental health and substance use disorder benefits is not comparable to the penalty for failure to obtain prior approval for medical/surgical benefits.

Example 3. (i) *Facts.* A plan generally covers medically appropriate treatments. For both medical/surgical benefits and mental health and substance use disorder benefits, evidentiary standards used in determining whether a treatment is medically appropriate (such as the number of visits or days of coverage) are based on recommendations made by panels of experts with appropriate training and experience in the fields of medicine involved. The evidentiary standards are applied in a manner that may differ based on clinically appropriate standards of care for a condition.

(ii) *Conclusion.* In this *Example 3,* the plan complies with the rules of this paragraph (c)(4) because the nonquantitative treatment limitation—medical appropriateness—is the same for both medical/surgical benefits and mental health and substance use disorder benefits, and the processes for developing the evidentiary standards and the application of them to mental health and substance use disorder benefits are comparable to and are applied no more stringently than for medical/surgical benefits. This is the result even if, based on clinically appropriate standards of care, the application of the evidentiary standards does not result in similar numbers of visits, days of coverage, or other benefits utilized for mental health conditions or substance use disorders as it does for any particular medical/surgical condition.

Example 4. (i) *Facts.* A plan generally covers medically appropriate treatments. In determining whether prescription drugs are medically appropriate, the plan automatically excludes coverage for antidepressant drugs that are given a black box warning label by the Food and Drug Administration (indicating the drug carries a significant risk of serious adverse effects). For other drugs with a black box warning (including those prescribed for other mental health conditions and substance use disorders, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the drug is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 4,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits, the plan's unconditional exclusion of antidepressant drugs given a black box warning is not comparable to the conditional exclusion for other drugs with a black box warning.

Example 5. (i) *Facts.* An employer maintains both a major medical program and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions. Participants are eligible for mental health or substance use disorder benefits under the major medical program only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical program.

(ii) *Conclusion.* In this *Example 5,* limiting eligibility for mental health and substance use disorder benefits only after EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because no comparable requirement applies to medical/surgical benefits, the requirement may not be applied to mental health or substance use disorder benefits.

(5) *Exemptions.* The rules of this paragraph (c) do not apply if a group health plan satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(d) *Availability of plan information*—(1) *Criteria for medical necessity determinations.* The criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits must be made available by the plan administrator to any current or potential participant, beneficiary, or contracting provider upon request.

(2) *Reason for denial.* The reason for any denial under a group health plan of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available by the plan administrator to the participant or beneficiary in accordance with this paragraph (d)(2).

(i) *Plans subject to ERISA.* If a plan is subject to ERISA, it must provide the reason for the claim denial in a form and manner consistent with the requirements of 29 CFR 2560.503–1 for group health plans.

(ii) *Plans not subject to ERISA.* If a plan is not subject to ERISA, upon the request of a participant or beneficiary the reason for the claim denial must be provided within a reasonable time and in a reasonable manner. For this purpose, a plan that follows the requirements of 29 CFR 2560.503–1 for group health plans complies with the requirements of this paragraph (d)(2)(ii).

(e) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering medical/surgical benefits and mental health or substance use disorder benefits. If, under an arrangement or arrangements to provide health care benefits by an employer or employee organization (including for this purpose a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), any participant (or beneficiary) can simultaneously receive coverage for medical/surgical benefits and coverage for mental health or substance use disorder benefits, then the requirements of this section (including the exemption provisions in paragraph (g) of this section) apply separately with respect to each combination of medical/surgical benefits and of mental health or substance use disorder benefits that any participant (or beneficiary) can simultaneously receive from that employer's or employee organization's arrangement or arrangements to provide health care benefits, and all such combinations are considered for purposes of this section to be a single group health plan.

(2) *Health insurance issuers.* See 29 CFR 2590.712(e)(2) and 45 CFR 146.136(e)(2), under which a health insurance issuer offering health insurance coverage for mental health or substance use disorder benefits is subject to requirements similar to those applicable to group health plans under this section if the health insurance coverage is offered in connection with a group health plan subject to requirements under 29 CFR 2590.712 or 45 CFR 146.136 similar to those applicable to group health plans under this section.

(3) *Scope.* This section does not—

(i) Require a group health plan to provide any mental health benefits or substance use disorder benefits, and the provision of benefits by a plan for one or more mental health conditions or substance use disorders does not require the plan under this section to provide benefits for any other mental health condition or substance use disorder; or

(ii) Affect the terms and conditions relating to the amount, duration, or scope of mental health or substance use disorder benefits under the plan except as specifically provided in paragraphs (b) and (c) of this section.

(f) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan for a plan year of a small employer. For purposes of this paragraph (f), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (or one in the case of an employer residing in a state that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year. See section 9831(a)(2) and § 54.9831–1(b), which provide that this section (and certain other sections) does not apply to any group health plan for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (f)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(g) *Increased cost exemption*—[Reserved].

(h) *Sale of nonparity health insurance coverage.* See 29 CFR 2590.712(h) and 45 CFR 146.136(h), under which a health insurance issuer may not sell a policy, certificate, or contract of insurance that fails to comply with requirements similar to those under paragraph (b) or (c) of this section, except to a plan for a year for which the plan is exempt from requirements similar to those under paragraph (b) or (c) of this section because the plan meets requirements under paragraph (f) or (g) of 29 CFR 2590.712 or 45 CFR 146.136 similar to those under paragraph (f) or (g) of this section.

(i) *Effective/applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, the requirements of this section are applicable for plan years beginning on or after July 1, 2010.

(2) *Special effective date for certain collectively-bargained plans.* For a group health plan maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of this section do not apply to the plan for plan years beginning before the later of either—

(i) The date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after October 3, 2008); or

(ii) July 1, 2010.

(j) *Expiration date.* This section expires on or before *January 29, 2013.*

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
54.9812–1T	1545–2165
* * * * *	

Approved: January 27, 2010.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

Employee Benefits Security Administration

29 CFR Chapter XXV

■ 29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 is revised to read as follows:

Authority: Secs. 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3765; Public Law 110–460, 122 Stat. 5123; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

Subpart C—Other Requirements

■ 2. Section 2590.712 is revised to read as follows:

§ 2590.712 Parity in mental health and substance use disorder benefits.

(a) *Meaning of terms.* For purposes of this section, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

Aggregate lifetime dollar limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Coverage unit means coverage unit as described in paragraph (c)(1)(iv) of this section.

Cumulative financial requirements are financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. (However, cumulative financial requirements do not include aggregate lifetime or annual dollar limits because these two terms are excluded from the meaning of financial requirements.)

Cumulative quantitative treatment limitations are treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan or health insurance coverage, but does not include mental health or substance use disorder benefits. Any condition defined by the plan as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the International Classification of Diseases (ICD) or State guidelines).

Mental health benefits means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any condition defined by the plan as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the ICD, or State guidelines).

Substance use disorder benefits means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or State guidelines).

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan. (See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation.

(b) *Parity requirements with respect to aggregate lifetime and annual dollar limits*—(1)—*General*—(i) *General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (b)(2), (b)(3), or (b)(6) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or health insurance coverage) does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or health insurance coverage) includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or

(ii) Not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (For cumulative limits other than aggregate lifetime or annual dollar limits, see paragraph (c)(3)(v) of this section prohibiting separately accumulating cumulative financial requirements or cumulative quantitative treatment limitations.)

(4) *Examples.* The rules of paragraphs (b)(2) and (b)(3) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan has no annual limit on medical/surgical benefits and a $10,000 annual limit on mental health and substance use disorder benefits. To comply with the requirements of this paragraph (b), the plan sponsor is considering each of the following options—

(A) Eliminating the plan's annual dollar limit on mental health and substance use disorder benefits;

(B) Replacing the plan's annual dollar limit on mental health and substance use disorder benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health and substance use disorder benefits); and

(C) Replacing the plan's annual dollar limit on mental health and substance use disorder benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* each of the three options being considered by the plan sponsor would comply with the requirements of this paragraph (b).

Example 2. (i) *Facts.* A plan has a $100,000 annual limit on medical/surgical inpatient benefits and a $50,000 annual limit on medical/surgical outpatient benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options—

(A) Imposing a $150,000 annual limit on mental health and substance use disorder benefits; and

(B) Imposing a $100,000 annual limit on mental health and substance use disorder inpatient benefits and a $50,000 annual limit on mental health and substance use disorder outpatient benefits.

(ii) *Conclusion.* In this *Example 2,* each option under consideration by the plan sponsor would comply with the requirements of this section.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (b)(3) of this section*—(i) *In general.* A group health plan (or health insurance coverage) that is not described in paragraph (b)(2) or (b)(3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either—

(A) Impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(B) Impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) *Facts.* A group health plan that is subject to the requirements of this section includes a $100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual dollar limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that $1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) *Conclusion.* In this *Example,* the plan is not described in paragraph (b)(3) of this section because there is not one annual dollar limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual dollar limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual dollar limit on mental health or substance use disorder benefits, or to include an annual dollar limit on mental health or substance use disorder benefits that is not less than the weighted average of the annual dollar limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual dollar limit that can be applied to mental health or substance use disorder benefits is $640,000 (40% × $100,000 + 60% × $1,000,000 = $640,000).

(c) *Parity requirements with respect to financial requirements and treatment limitations*—(1) *Clarification of terms*—(i) *Classification of benefits.* When reference is made in this paragraph (c) to a classification of benefits, the term "classification" means a classification as described in paragraph (c)(2)(ii) of this section.

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.

(iii) *Level of a type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a level of a type of financial requirement or treatment limitation, level refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20 percent and 30 percent; different levels of a copayment include $15 and $20; different levels of a deductible include $250 and $500; and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(iv) *Coverage unit.* When reference is made in this paragraph (c) to a coverage unit, coverage unit refers to the way in which a plan (or health insurance coverage) groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(2) *General parity requirement*—(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not

apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) *Classifications of benefits used for applying rules*—(A) *In general.* If a plan (or health insurance coverage) provides mental health or substance use disorder benefits in any classification of benefits described in this paragraph (c)(2)(ii), mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations. The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c):

(*1*) *Inpatient, in-network.* Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(*2*) *Inpatient, out-of-network.* Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*3*) *Outpatient, in-network.* Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(*4*) *Outpatient, out-of-network.* Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*5*) *Emergency care.* Benefits for emergency care.

(*6*) *Prescription drugs.* Benefits for prescription drugs. See special rules for multi-tiered prescription drug benefits in paragraph (c)(3)(iii) of this section.

(B) *Application to out-of-network providers.* See paragraph (c)(2)(ii)(A) of this section, under which a plan (or health insurance coverage) that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) *Examples.* The rules of this paragraph (c)(2)(ii) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 1,* because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

Example 2. (i) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 2,* because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

Example 3. (i) *Facts.* Same facts as *Example 2,* except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for—

(A) Benefits in the emergency classification; and

(B) All other benefits.

Example 4. (i) *Facts.* Same facts as *Example 2,* except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(ii) *Conclusion.* In this *Example 4,* because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for—

(A) Inpatient, out-of-network benefits; and

(B) All other benefits.

(3) *Financial requirements and quantitative treatment limitations*—(i) *Determining "substantially all" and "predominant"*—(A) *Substantially all.* For purposes of this paragraph (c), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) *Predominant*—(*1*) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under paragraph (c)(3)(i)(A) of this section, the level of the financial requirement or quantitative treatment

limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(*2*) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan (or health insurance issuer) may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) *Portion based on plan payments.* For purposes of this paragraph (c), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes.

(E) *Determining the dollar amount of plan payments.* Subject to paragraph (c)(3)(i)(D) of this section, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(ii) *Application to different coverage units.* If a plan (or health insurance coverage) applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(iii) *Special rule for multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(iv) *Examples.* The rules of paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

Coinsurance rate	0%	10%	15%	20%	30%	Total
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x
Percent of total plan costs	20%	10%	45%	10%	15%	
Percent subject to coinsurance level	N/A	12.5% (100x/800x)	56.25% (450x/800x)	12.5% (100x/800x)	18.75% (150x/800x)	

The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(ii) *Conclusion.* In this *Example 1,* the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

Example 2. (i) *Facts.* For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

Copayment amount	$0	$10	$15	$20	$50	Total
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x
Percent of total plan costs	20%	20%	20%	30%	10%	
Percent subject to copayments	N/A	25% (200x/800x)	25% (200x/800x)	37.5% (300x/800x)	12.5% (100x/800x)	

The plan projects plan costs of $800x to be subject to copayments ($200x + $200x +$300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(ii) *Conclusion.* In this *Example 2,* the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

Example 3. (i) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

Example 4. (i) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as "generic", "preferred brand name", "non-preferred brand name", or "specialty" complies with the rules of paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations).

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives)	Specialty drugs
Percent paid by plan	90%	80%	60%	50%

(ii) *Conclusion.* In this *Example 4,* the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

(v) *No separate cumulative financial requirements or cumulative quantitative treatment limitations*—(A) A group health plan (or health insurance coverage offered in connection with a group health plan) may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The rules of this paragraph (c)(3)(v) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan imposes a combined annual $500 deductible on all medical/surgical, mental health, and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* the combined annual deductible complies with the requirements of this paragraph (c)(3)(v).

Example 2. (i) *Facts.* A plan imposes an annual $250 deductible on all medical/surgical benefits and a separate annual $250 deductible on all mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 2,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 3. (i) *Facts.* A plan imposes an annual $300 deductible on all medical/surgical benefits and a separate annual $100 deductible on all mental health or substance use disorder benefits.

(ii) *Conclusion.* In this *Example 3,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 4. (i) *Facts.* A plan generally imposes a combined annual $500 deductible on all benefits (both medical/surgical benefits and mental health and substance use disorder benefits) except prescription drugs. Certain benefits, such as preventive care, are provided without regard to the deductible. The imposition of other types of financial requirements or treatment limitations varies with each classification. Using reasonable methods, the plan projects its payments for medical/surgical benefits in each classification for the upcoming year as follows:

Classification	Benefits subject to deductible	Total benefits	Percent subject to deductible
Inpatient, in-network	$1,800x	$2,000x	90
Inpatient, out-of-network	1,000x	1,000x	100
Outpatient, in-network	1,400x	2,000x	70
Outpatient, out-of-network	1,880x	2,000x	94
Emergency care	300x	500x	60

(ii) *Conclusion.* In this *Example 4,* the two-thirds threshold of the substantially all standard is met with respect to each classification except emergency care because in each of those other classifications at least two-thirds of medical/surgical benefits are subject to the $500 deductible. Moreover, the $500 deductible is the predominant level in each of those other classifications because it is the only level. However, emergency care mental health and substance use disorder benefits cannot be subject to the $500 deductible because it does not apply to substantially all emergency care medical/surgical benefits.

(4) *Nonquantitative treatment limitations*—(i) *General rule.* A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical surgical/benefits in the classification, except to the extent that recognized clinically appropriate standards of care may permit a difference.

(ii) *Illustrative list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) Standards for provider admission to participate in a network, including reimbursement rates;

(D) Plan methods for determining usual, customary, and reasonable charges;

(E) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols); and

(F) Exclusions based on failure to complete a course of treatment.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan limits benefits to treatment that is medically necessary. The plan requires concurrent review for inpatient, in-network mental health and substance use disorder benefits but does not require it for any inpatient, in-network medical/surgical benefits. The plan conducts retrospective review for inpatient, in-network medical/surgical benefits.

(ii) *Conclusion.* In this *Example 1,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—applies to both mental health and substance use disorder benefits and to medical/surgical benefits for inpatient, in-network services, the concurrent review process does not apply to medical/surgical benefits. The concurrent review process is not comparable to the retrospective review process. While such a difference might be permissible in certain individual cases based on recognized clinically appropriate standards of care, it is not permissible for distinguishing between all medical/surgical benefits and all mental health or substance use disorder benefits.

Example 2. (i) *Facts.* A plan requires prior approval that a course of treatment is medically necessary for outpatient, in-network medical/surgical, mental health, and substance use disorder benefits. For mental health and substance use disorder treatments that do not have prior approval, no benefits will be paid; for medical/surgical treatments that do not have prior approval, there will only be a 25 percent reduction in the benefits the plan would otherwise pay.

(ii) *Conclusion.* In this *Example 2,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—is applied both to mental health and substance use disorder benefits and to medical/surgical benefits for outpatient, in-network services, the penalty for failure to obtain prior approval for mental health and substance use disorder benefits is not comparable to the penalty for failure to obtain prior approval for medical/surgical benefits.

Example 3. (i) *Facts.* A plan generally covers medically appropriate treatments. For both medical/surgical benefits and mental health and substance use disorder benefits, evidentiary standards used in determining whether a treatment is medically appropriate (such as the number of visits or days of coverage) are based on recommendations made by panels of experts with appropriate training and experience in the fields of medicine involved. The evidentiary standards are applied in a manner that may differ based on clinically appropriate standards of care for a condition.

(ii) *Conclusion.* In this *Example 3,* the plan complies with the rules of this paragraph (c)(4) because the nonquantitative treatment limitation—medical appropriateness—is the same for both medical/surgical benefits and mental health and substance use disorder benefits, and the processes for developing the evidentiary standards and the application of them to mental health and substance use disorder benefits are comparable to and are applied no more stringently than for medical/surgical benefits. This is the result even if, based on clinically appropriate standards of care, the application of the evidentiary standards does not result in similar numbers of visits, days of coverage, or other benefits utilized for mental health conditions or substance use disorders as it does for any particular medical/surgical condition.

Example 4. (i) *Facts.* A plan generally covers medically appropriate treatments. In determining whether prescription drugs are medically appropriate, the plan automatically excludes coverage for antidepressant drugs that are given a black box warning label by the Food and Drug Administration (indicating the drug carries a significant risk of serious adverse effects). For other drugs with a black box warning (including those prescribed for other mental health conditions and substance use disorders, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the drug is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 4,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits, the plan's unconditional exclusion of antidepressant drugs given a black box warning is not comparable to the conditional exclusion for other drugs with a black box warning.

Example 5. (i) *Facts.* An employer maintains both a major medical program and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions. Participants are eligible for mental health or substance use disorder benefits under the major medical program only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical program.

(ii) *Conclusion.* In this *Example 5,* limiting eligibility for mental health and substance use disorder benefits only after EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because no comparable requirement applies to medical/surgical benefits, the requirement may not be applied to mental health or substance use disorder benefits.

(5) *Exemptions.* The rules of this paragraph (c) do not apply if a group health plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(d) *Availability of plan information*—(1) *Criteria for medical necessity determinations.* The criteria for medical

necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request.

(2) *Reason for any denial.* The reason for any denial under a group health plan (or health insurance coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in a form and manner consistent with the rules in § 2560.503–1 of this Part for group health plans.

(e) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering medical/surgical benefits and mental health or substance use disorder benefits. If, under an arrangement or arrangements to provide medical care benefits by an employer or employee organization (including for this purpose a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), any participant (or beneficiary) can simultaneously receive coverage for medical/surgical benefits and coverage for mental health or substance use disorder benefits, then the requirements of this section (including the exemption provisions in paragraph (g) of this section) apply separately with respect to each combination of medical/surgical benefits and of mental health or substance use disorder benefits that any participant (or beneficiary) can simultaneously receive from that employer's or employee organization's arrangement or arrangements to provide medical care benefits, and all such combinations are considered for purposes of this section to be a single group health plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for mental health or substance use disorder benefits in connection with a group health plan subject to paragraph (e)(1) of this section.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits or substance use disorder benefits, and the provision of benefits by a plan (or health insurance coverage) for one or more mental health conditions or substance use disorders does not require the plan or health insurance coverage under this section to provide benefits for any other mental health condition or substance use disorder; or

(ii) Affect the terms and conditions relating to the amount, duration, or scope of mental health or substance use disorder benefits under the plan (or health insurance coverage) except as specifically provided in paragraphs (b) and (c) of this section.

(f) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (f), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (or one in the case of an employer residing in a state that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year. See section 732(a) of ERISA and § 2590.732(b) of this Part, which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (f)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Code are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(g) *Increased cost exemption*—[Reserved]

(h) *Sale of nonparity health insurance coverage.* A health insurance issuer may not sell a policy, certificate, or contract of insurance that fails to comply with paragraph (b) or (c) of this section, except to a plan for a year for which the plan is exempt from the requirements of this section because the plan meets the requirements of paragraph (f) or (g) of this section.

(i) *Applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, the requirements of this section are applicable for plan years beginning on or after July 1, 2010.

(2) *Special effective date for certain collectively-bargained plans.* For a group health plan maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of this section do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the later of either—

(i) The date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after October 3, 2008); or

(ii) July 1, 2010.

Signed at Washington, DC, this 26th day of January 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Department of Health and Human Services

45 CFR Subtitle A

■ For the reasons set forth in the preamble, the Department of Health and Human Services is amending 45 CFR Subtitle A, Subchapter B, Part 146, Subpart C as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92).

■ 2. Section 146.136 is revised to read as follows:

§ 146.136 Parity in mental health and substance use disorder benefits.

(a) *Meaning of terms.* For purposes of this section, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

Aggregate lifetime dollar limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or health

insurance coverage offered in connection with such a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Coverage unit means coverage unit as described in paragraph (c)(1)(iv) of this section.

Cumulative financial requirements are financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. (However, cumulative financial requirements do not include aggregate lifetime or annual dollar limits because these two terms are excluded from the meaning of financial requirements.)

Cumulative quantitative treatment limitations are treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan or health insurance coverage, but does not include mental health or substance use disorder benefits. Any condition defined by the plan as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the International Classification of Diseases (ICD) or State guidelines).

Mental health benefits means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any condition defined by the plan as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the ICD, or State guidelines).

Substance use disorder benefits means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or State guidelines).

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan. (*See* paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation.

(b) *Parity requirements with respect to aggregate lifetime and annual dollar limits*—(1)—*General*—(i) *General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (b)(2), (b)(3), or (b)(6) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or health insurance coverage) does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or health insurance coverage) includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or

(ii) Not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (For cumulative limits other than aggregate lifetime or annual dollar limits, see paragraph (c)(3)(v) of this section prohibiting separately accumulating cumulative financial requirements or cumulative quantitative treatment limitations.)

(4) *Examples.* The rules of paragraphs (b)(2) and (b)(3) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan has no annual limit on medical/surgical benefits and a $10,000 annual limit on mental health and substance use disorder benefits. To comply with the requirements of this paragraph (b), the plan sponsor is considering each of the following options—

(A) Eliminating the plan's annual dollar limit on mental health and substance use disorder benefits;

(B) Replacing the plan's annual dollar limit on mental health and substance use disorder benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health and substance use disorder benefits); and

(C) Replacing the plan's annual dollar limit on mental health and substance use disorder benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* each of the three options being considered by the plan sponsor would comply with the requirements of this paragraph (b).

Example 2. (i) *Facts.* A plan has a $100,000 annual limit on medical/surgical inpatient benefits and a $50,000 annual limit on medical/surgical outpatient benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options—

(A) Imposing a $150,000 annual limit on mental health and substance use disorder benefits; and

(B) Imposing a $100,000 annual limit on mental health and substance use disorder inpatient benefits and a $50,000 annual limit on mental health and substance use disorder outpatient benefits.

(ii) *Conclusion.* In this *Example 2,* each option under consideration by the plan sponsor would comply with the requirements of this section.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of

medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (b)(3) of this section*—(i) *In general.* A group health plan (or health insurance coverage) that is not described in paragraph (b)(2) or (b)(3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either—

(A) Impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(B) Impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) *Facts.* A group health plan that is subject to the requirements of this section includes a $100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual dollar limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that $1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) *Conclusion.* In this *Example,* the plan is not described in paragraph (b)(3) of this section because there is not one annual dollar limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual dollar limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual dollar limit on mental health or substance use disorder benefits, or to include an annual dollar limit on mental health or substance use disorder benefits that is not less than the weighted average of the annual dollar limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual dollar limit that can be applied to mental health or substance use disorder benefits is $640,000 (40% × $100,000 + 60% × $1,000,000 = $640,000).

(c) *Parity requirements with respect to financial requirements and treatment limitations*—(1) *Clarification of terms*—(i) *Classification of benefits.* When reference is made in this paragraph (c) to a classification of benefits, the term "classification" means a classification as described in paragraph (c)(2)(ii) of this section.

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.

(iii) *Level of a type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a level of a type of financial requirement or treatment limitation, level refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20 percent and 30 percent; different levels of a copayment include $15 and $20; different levels of a deductible include $250 and $500; and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(iv) *Coverage unit.* When reference is made in this paragraph (c) to a coverage unit, coverage unit refers to the way in which a plan (or health insurance coverage) groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(2) *General parity requirement*—(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) *Classifications of benefits used for applying rules*—(A) *In general.* If a plan (or health insurance coverage) provides mental health or substance use disorder benefits in any classification of benefits described in this paragraph (c)(2)(ii), mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in

the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations. The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c):

(*1*) *Inpatient, in-network.* Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(*2*) *Inpatient, out-of-network.* Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*3*) *Outpatient, in-network.* Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(*4*) *Outpatient, out-of-network.* Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*5*) *Emergency care.* Benefits for emergency care.

(*6*) *Prescription drugs.* Benefits for prescription drugs. See special rules for multi-tiered prescription drug benefits in paragraph (c)(3)(iii) of this section.

(B) *Application to out-of-network providers.* See paragraph (c)(2)(ii)(A) of this section, under which a plan (or health insurance coverage) that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) *Examples.* The rules of this paragraph (c)(2)(ii) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 1,* because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

Example 2. (i) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 2,* because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

Example 3. (i) *Facts.* Same facts as *Example 2,* except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for—

(A) Benefits in the emergency classification; and

(B) All other benefits.

Example 4. (i) *Facts.* Same facts as *Example 2,* except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(ii) *Conclusion.* In this *Example 4,* because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for—

(A) Inpatient, out-of-network benefits; and

(B) All other benefits.

(3) *Financial requirements and quantitative treatment limitations*—(i) *Determining "substantially all" and "predominant"*—(A) *Substantially all.* For purposes of this paragraph (c), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) *Predominant*—(*1*) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under paragraph (c)(3)(i)(A) of this section, the level of the financial requirement or quantitative treatment limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(*2*) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan (or health insurance issuer) may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) *Portion based on plan payments.* For purposes of this paragraph (c), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under

the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes.

(E) *Determining the dollar amount of plan payments.* Subject to paragraph (c)(3)(i)(D) of this section, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(ii) *Application to different coverage units.* If a plan (or health insurance coverage) applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(iii) *Special rule for multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(iv) *Examples.* The rules of paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

Coinsurance rate	0%	10%	15%	20%	30%	Total
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x
Percent of total plan costs	20%	10%	45%	10%	15%	
Percent subject to coinsurance level	N/A	12.5% (100x/800x)	56.25% (450x/800x)	12.5% (100x/800x)	18.75% (150x/800x)	

The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(ii) *Conclusion.* In this *Example 1,* the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

Example 2. (i) *Facts.* For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

Copayment amount	$0	$10	$15	$20	$50	Total
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x
Percent of total plan costs	20%	20%	20%	30%	10%	
Percent subject to copayments	N/A	25% (200x/800x)	25% (200x/800x)	37.5% (300x/800x)	12.5% (100x/800x)	

The plan projects plan costs of $800x to be subject to copayments ($200x + $200x + $300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(ii) *Conclusion.* In this *Example 2,* the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

Example 3. (i) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other

financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

Example 4. (i) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as "generic", "preferred brand name", "non-preferred brand name", or "specialty" complies with the rules of paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations).

Tier description	Tier 1	Tier 2	Tier 3	Tier 4
	Generic drugs	Preferred brand name drugs	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives)	Specialty drugs
Percent paid by plan	90%	80%	60%	50%

(ii) *Conclusion.* In this *Example 4,* the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

(v) *No separate cumulative financial requirements or cumulative quantitative treatment limitations*—(A) A group health plan (or health insurance coverage offered in connection with a group health plan) may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The rules of this paragraph (c)(3)(v) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan imposes a combined annual $500 deductible on all medical/surgical, mental health, and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* the combined annual deductible complies with the requirements of this paragraph (c)(3)(v).

Example 2. (i) *Facts.* A plan imposes an annual $250 deductible on all medical/surgical benefits and a separate annual $250 deductible on all mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 2,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 3. (i) *Facts.* A plan imposes an annual $300 deductible on all medical/surgical benefits and a separate annual $100 deductible on all mental health or substance use disorder benefits.

(ii) *Conclusion.* In this *Example 3,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 4. (i) *Facts.* A plan generally imposes a combined annual $500 deductible on all benefits (both medical/surgical benefits and mental health and substance use disorder benefits) except prescription drugs. Certain benefits, such as preventive care, are provided without regard to the deductible. The imposition of other types of financial requirements or treatment limitations varies with each classification. Using reasonable methods, the plan projects its payments for medical/surgical benefits in each classification for the upcoming year as follows:

Classification	Benefits subject to deductible	Total benefits	Percent subject to deductible
Inpatient, in-network	$1,800x	$2,000x	90
Inpatient, out-of-network	1,000x	1,000x	100
Outpatient, in-network	1,400x	2,000x	70
Outpatient, out-of-network	1,880x	2,000x	94
Emergency care	300x	500x	60

(ii) *Conclusion.* In this *Example 4,* the two-thirds threshold of the substantially all standard is met with respect to each classification except emergency care because in each of those other classifications at least two-thirds of medical/surgical benefits are subject to the $500 deductible. Moreover, the $500 deductible is the predominant level in each of those other classifications because it is the only level. However, emergency care mental health and substance use disorder benefits cannot be subject to the $500 deductible because it does not apply to substantially all emergency care medical/surgical benefits.

(4) *Nonquantitative treatment limitations*—(i) *General rule.* A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical surgical/benefits in the classification, except to the extent that recognized clinically appropriate standards of care may permit a difference.

(ii) *Illustrative list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards limiting or excluding benefits based on

medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) Standards for provider admission to participate in a network, including reimbursement rates;

(D) Plan methods for determining usual, customary, and reasonable charges;

(E) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols); and

(F) Exclusions based on failure to complete a course of treatment.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan limits benefits to treatment that is medically necessary. The plan requires concurrent review for inpatient, in-network mental health and substance use disorder benefits but does not require it for any inpatient, in-network medical/surgical benefits. The plan conducts retrospective review for inpatient, in-network medical/surgical benefits.

(ii) *Conclusion.* In this *Example 1,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—applies to both mental health and substance use disorder benefits and to medical/surgical benefits for inpatient, in-network services, the concurrent review process does not apply to medical/surgical benefits. The concurrent review process is not comparable to the retrospective review process. While such a difference might be permissible in certain individual cases based on recognized clinically appropriate standards of care, it is not permissible for distinguishing between all medical/surgical benefits and all mental health or substance use disorder benefits.

Example 2. (i) *Facts.* A plan requires prior approval that a course of treatment is medically necessary for outpatient, in-network medical/surgical, mental health, and substance use disorder benefits. For mental health and substance use disorder treatments that do not have prior approval, no benefits will be paid; for medical/surgical treatments that do not have prior approval, there will only be a 25 percent reduction in the benefits the plan would otherwise pay.

(ii) *Conclusion.* In this *Example 2,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—is applied both to mental health and substance use disorder benefits and to medical/surgical benefits for outpatient, in-network services, the penalty for failure to obtain prior approval for mental health and substance use disorder benefits is not comparable to the penalty for failure to obtain prior approval for medical/surgical benefits.

Example 3. (i) *Facts.* A plan generally covers medically appropriate treatments. For both medical/surgical benefits and mental health and substance use disorder benefits, evidentiary standards used in determining whether a treatment is medically appropriate (such as the number of visits or days of coverage) are based on recommendations made by panels of experts with appropriate training and experience in the fields of medicine involved. The evidentiary standards are applied in a manner that may differ based on clinically appropriate standards of care for a condition.

(ii) *Conclusion.* In this *Example 3,* the plan complies with the rules of this paragraph (c)(4) because the nonquantitative treatment limitation—medical appropriateness—is the same for both medical/surgical benefits and mental health and substance use disorder benefits, and the processes for developing the evidentiary standards and the application of them to mental health and substance use disorder benefits are comparable to and are applied no more stringently than for medical/surgical benefits. This is the result even if, based on clinically appropriate standards of care, the application of the evidentiary standards does not result in similar numbers of visits, days of coverage, or other benefits utilized for mental health conditions or substance use disorders as it does for any particular medical/surgical condition.

Example 4. (i) *Facts.* A plan generally covers medically appropriate treatments. In determining whether prescription drugs are medically appropriate, the plan automatically excludes coverage for antidepressant drugs that are given a black box warning label by the Food and Drug Administration (indicating the drug carries a significant risk of serious adverse effects). For other drugs with a black box warning (including those prescribed for other mental health conditions and substance use disorders, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the drug is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 4,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits, the plan's unconditional exclusion of antidepressant drugs given a black box warning is not comparable to the conditional exclusion for other drugs with a black box warning.

Example 5. (i) *Facts.* An employer maintains both a major medical program and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions. Participants are eligible for mental health or substance use disorder benefits under the major medical program only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical program.

(ii) *Conclusion.* In this *Example 5,* limiting eligibility for mental health and substance use disorder benefits only after EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because no comparable requirement applies to medical/surgical benefits, the requirement may not be applied to mental health or substance use disorder benefits.

(5) *Exemptions.* The rules of this paragraph (c) do not apply if a group health plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(d) *Availability of plan information*—(1) *Criteria for medical necessity determinations.* The criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request.

(2) *Reason for denial.* The reason for any denial under a non-Federal governmental plan (or health insurance coverage offered in connection with such plan) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available within a reasonable time and in a reasonable manner by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary upon request. For this purpose, a non-Federal governmental plan (or health insurance coverage offered in connection with such plan) that provides the reason for the claim denial in a form and manner consistent with the requirements of 29 CFR 2560.503–1 for group health plans complies with the requirements of this paragraph (d)(2).

(e) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering medical/surgical benefits and mental health or substance use disorder benefits. If, under an arrangement or arrangements to provide medical care benefits by an employer or employee organization (including for this purpose a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), any participant (or beneficiary) can

simultaneously receive coverage for medical/surgical benefits and coverage for mental health or substance use disorder benefits, then the requirements of this section (including the exemption provisions in paragraph (g) of this section) apply separately with respect to each combination of medical/surgical benefits and of mental health or substance use disorder benefits that any participant (or beneficiary) can simultaneously receive from that employer's or employee organization's arrangement or arrangements to provide medical care benefits, and all such combinations are considered for purposes of this section to be a single group health plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for mental health or substance use disorder benefits in connection with a group health plan subject to paragraph (e)(1) of this section.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits or substance use disorder benefits, and the provision of benefits by a plan (or health insurance coverage) for one or more mental health conditions or substance use disorders does not require the plan (or health insurance coverage) under this section to provide benefits for any other mental health condition or substance use disorder; or

(ii) Affect the terms and conditions relating to the amount, duration, or scope of mental health or substance use disorder benefits under the plan (or health insurance coverage) except as specifically provided in paragraphs (b) and (c) of this section.

(f) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (f), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year (except that for purposes of this paragraph, a small employer shall include an employer with one employee in the case of an employer residing in a State that permits small groups to include a single individual). See also section 2721(a) of the PHS Act and § 146.145(b) of this Part, which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (f)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414) are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(g) *Increased cost exemption*—[Reserved]

(h) *Sale of nonparity health insurance coverage.* A health insurance issuer may not sell a policy, certificate, or contract of insurance that fails to comply with paragraph (b) or (c) of this section, except to a plan for a year for which the plan is exempt from the requirements of this section because the plan meets the requirements of paragraph (f) or (g) of this section.

(i) *Applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, the requirements of this section are applicable for plan years beginning on or after July 1, 2010.

(2) *Special effective date for certain collectively-bargained plans.* For a group health plan maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of this section do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the later of either—

(i) The date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after October 3, 2008); or

(ii) July 1, 2010.

Approved: November 12, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 2, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–2167 Filed 1–29–10; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–120692–09]

RIN 1545–BI70

Regulations Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and withdrawal of notice of proposed rulemaking.

SUMMARY: Elsewhere in this issue of the **Federal Register,** the IRS is issuing temporary regulations under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). MHPAEA prohibits group health plans providing mental health or substance use disorder benefits along with medical/surgical benefits from imposing more restrictive financial requirements or treatment limitations with respect to the mental health or substance use disorder benefits than the predominant ones imposed with respect to substantially all medical/surgical benefits. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to MHPAEA for group health plans and issuers of health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers and group health plans relating to the group health plan mental health and substance use disorder parity requirements. The text of those temporary regulations also serves as the text of these proposed regulations. This document also withdraws the notice of proposed rulemaking relating to mental health parity requirements for group health plans that was published on December 22, 1997 (REG–109704–97, 62 FR 66967).

DATES: Written or electronic comments and requests for a public hearing must be received by May 3, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120692–09), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG–120692–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–120692–09).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer at 202–622–6080; concerning submissions of comments, *Richard.A.Hurst@irscounsel.treas.gov,* 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by April 5, 2010. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the proposed collections of information (see the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information are in § 54.9812–1 (see the temporary regulations published elsewhere in this issue of the **Federal Register**). MHPAEA includes two new disclosure provisions. First, the criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits must be made available in accordance with regulations by the plan administrator to any current or potential participant, beneficiary, or contracting provider upon request. MHPAEA also requires the reason for any denial under a group health plan of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available upon request or as otherwise required by the plan administrator to the participant or beneficiary in accordance with regulations. The likely respondents are business or other for-profit institutions, and nonprofit institutions. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** revise § 54.9812–1T to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collections of

information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The proposed rule generally applies to employers who provide health coverage through group health plans to employees that include benefits for mental health or substance use disorder conditions. The IRS expects that the rules to reduce the compliance burden imposed on plans and issurers by clarifying definitions and terms contained in the statute and providing examples of acceptable methods to comply with specific provisions. MHPAEA and the regulations under it do not apply to employers with 50 or fewer employees. Moreover, small employers subject to the rule that have more than 50 employees will generally provide any health coverage through insurance or a third-party administrator. The issuers of insurance or other third-party administrators of the health plans, rather than the small employers, will as a practical matter, satisfy the requirements of the rules in order to provide a marketable product. For this reason, the burden imposed by the reporting requirement of the statute and this notice of proposed rulemaking on small entities is expected to be near zero. For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–109704–97) that was published in the **Federal Register** on Monday, December 22, 1997 (62 FR 66967) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read as follows:

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

Section 54.9812–1 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9812–1 is added to read as follows:

§ 54.9812–1 Parity in mental health and substance use disorder benefits.

[The text of proposed § 54.9812–1 is the same as the text of § 54.9812–1T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–2166 Filed 1–29–10; 8:45 am]

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Federal Register

Tuesday,
February 2, 2010

Part V

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403

Rescission of Form T–1, Trust Annual Report; Require Subsidiary Organization Reporting on the Form LM–2, Labor Organization Annual Report; LMRDA Coverage of Intermediate Labor Organizations; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB75

Rescission of Form T–1, Trust Annual Report; Require Subsidiary Organization Reporting on the Form LM–2, Labor Organization Annual Report; LMRDA Coverage of Intermediate Labor Organizations

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Labor-Management Standards proposes to amend its regulations which require labor organizations to file the Form T–1, Trust Annual Report, about certain trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The Department of Labor (Department) proposes to amend these regulations because it believes that the trust reporting required under the rule is overly broad and is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Moreover, the Department views separate trust reporting requirements as unnecessary, in part because the Department also proposes to return "subsidiary organization" reporting to the Form LM–2 reporting requirements, which it believes is necessary to satisfy the purposes of the LMRDA. Finally, in interpreting the definition of "labor organization" under the LMRDA, the Department proposes to return to its long held view that the statute's coverage does not encompass intermediate bodies that are wholly composed of public sector organizations. In so doing, the Department has reconsidered a definitional interpretation that it adopted in 2003, which the Department now considers to have been insufficiently supported during the rulemaking process. The Department seeks comment on each of these proposals.

DATES: Comments must be received on or before April 5, 2010.

ADDRESSES: You may submit comments, identified by RIN 1215–AB75, only by the following methods:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.* To locate the proposed rule, use key words such as "Labor-Management Standards" or "Labor Organization Annual Financial Reports" to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Delivery: Comments should be sent to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov,* hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1185 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rescission of the 2008 Form T–1 rule, the proposed union reporting requirements concerning subsidiary organizations, and the proposed interpretation relating to the coverage of public sector intermediate body labor unions under LRMDA section 3(j), 29 U.S.C. 402, are made pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions, and also includes authority to issue rules "prescribing reports concerning trusts in which a labor organization is interested" as she may "find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438. Additionally, Secretary's Order No. 1–2008, issued May 30, 2008, and published in the **Federal Register** on June 6, 2008, 73 FR 32424 (Jun. 6, 2008), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority.

II. Background

In enacting the LMRDA in 1959, Congress sought to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers, employees, and representatives. The LMRDA was the direct outgrowth of a congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee. The LMRDA addressed various ills through a set of integrated provisions aimed at labor-management relations governance and management. These provisions include LMRDA Title II financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. *See* 29 U.S.C. 431–36, 441.

The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. The labor organization annual financial reports required by section 201(b) of the Act, 29 U.S.C. 431(b) (Form LM–2, Form LM–3, and Form LM–4), are to contain information about a labor organization's assets, liabilities, receipts, and disbursements "as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year." The Form LM–2 Annual Report, the most detailed of the annual labor organization reports and that required to be filed by labor organizations with $250,000 or more in annual receipts, must include reporting of loans to officers, employees and business enterprises; payments to each officer; and payments to each employee of the labor organization paid more than $10,000 during the fiscal year, in addition to other information.

In addition to prescribing the form and publication of the LMRDA reports, the Secretary is authorized to issue regulations that prevent labor unions

and others from avoiding their reporting responsibilities. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions, including "prescribing reports concerning trusts in which a labor organization is interested" as she may "find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438.

Historically, the Department's LMRDA reporting program had not provided for separate trust reporting by unions. However, there was a long history of reporting on "subsidiary organization[s]." Part VIII of the 1962 Instructions for Form LM–2 provided for reporting concerning these entities, which were defined in the Form LM–2 instructions as "any separate organization in which the ownership is wholly vested in the labor organization or its officers or its membership, which is governed or controlled by the officers, employees or members of the labor organization, and which is wholly financed by the labor organization."

On July 21, 2009, the Department held a public meeting to solicit comments from representatives of the community that would be affected by the Department's proposed changes. The Department developed its proposal with these discussions in mind and it requests comments from this community and other members of the public on any and all aspects of the proposal.

III. Proposal To Rescind the October 2, 2008 Final Rule Establishing the Form T–1

A. History of the Form T–1

The Form T–1 report was first proposed on December 27, 2002, as one part of a proposal to extensively change the Form LM–2. 67 FR 79279 (Dec. 27, 2002). The rule was proposed under the authority of Section 208, which permits the Secretary to issue rules "prescribing reports concerning trusts in which a labor organization is interested" as she may "find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438. Following consideration of public comments, on October 9, 2003, the Department published a final rule enacting extensive changes to the Form LM–2 and establishing a Form T–1. 68 FR 58374 (Oct. 9, 2003) (2003 Form T–1 rule). The 2003 Form T–1 rule eliminated the requirement that unions report on subsidiary organizations on the Form LM–2, but it mandated that each labor organization filing a Form LM–2 report also file separate reports to "disclose assets, liabilities, receipts, and disbursements of a significant trust in which the labor organization is interested." 68 FR at 58477. The reporting labor organization would make this disclosure by filing a separate Form T–1 for each significant trust in which it was interested. *Id.* at 58524.

The 2003 Form T–1 rule defined the phrase "significant trust in which the labor organization is interested" by utilizing the § 3(l) statutory definition of "a trust in which a labor organization is interested" and an administrative determination of when a trust is deemed "significant." 68 FR at 58477–78. The LMRDA definition of a "trust in which a labor organization is interested," is:

> A trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

Id. (quoting 29 U.S.C. 402(l)).

The 2003 Form T–1 rule set forth an administrative determination that stated that a "trust will be considered significant" and therefore subject to the Form T–1 reporting requirement under the following conditions:

> (1) The labor organization had annual receipts of $250,000 or more during its most recent fiscal year, and (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually.

Id. at 58478.

The portions of the 2003 rule relating to the Form T–1 were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in *AFL–CIO* v. *Chao,* 409 F.3d 377, 389–391 (D.C. Cir. 2005). The court held that the form "reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade reporting requirements by, for example, permitting a union to maintain control of funds." *Id.* at 389. The court also vacated the Form T–1 portions of the 2003 rule because its test failed to establish reporting based on domination or managerial control of assets subject to LMRDA Title II jurisdiction. The court reasoned that the Department failed to explain how the test promulgated—selection of one member of a board and a $10,000 contribution to a trust with $250,000 in receipts—could result in union domination and control sufficient to give rise to circumvention or evasion of Title II reporting requirements. *Id.* at 390. In so holding, the court emphasized that Section 208 authority is the only basis for LMRDA trust reporting, that this authority is limited to preventing circumvention or evasion of Title II reporting, and that "the statute doesn't provide general authority to require trusts to demonstrate that they operate in a manner beneficial to union members." *Id.* at 390.

Following the 2003 vacatur of the provision of the final rule relating to the Form T–1, the Department issued a revised Form T–1 final rule on September 9, 2006. 71 FR 57716 (Sept. 9, 2006) (2006 Form T–1 rule). The U.S. District Court for the District of Columbia vacated this rule due to a failure to provide a new notice and comment period. *AFL–CIO* v. *Chao,* 496 F. Supp. 76 (D.C. 2007). The district court did not engage in a substantive review of the 2006 rule, but the court noted that the AFL–CIO demonstrated that "the absence of a fresh comment period constituted prejudicial error" and that the AFL–CIO objected with "reasonable specificity" to warrant relief vacating the rule. *Id.* at 90–92.

The Department issued a proposed rule for a revised Form T–1 on March 4, 2008. 73 FR 11754 (Mar. 4, 2008). After notice and comment, the 2008 Form T–1 rule was issued on October 2, 2008. 73 FR 57412. This rule attempted to remedy the failings of the Department's 2003 and 2006 efforts in implementing a Form T–1. 73 FR at 57413. The 2008 Form T–1 rule became effective on December 31, 2008. Under this rule, Form T–1 reports would be filed no earlier than March 31, 2010 for fiscal years that begin no earlier than January 1, 2009.

The 2008 Form T–1 rule stated that labor organizations with total annual receipts of $250,000 or more must file a Form T–1 for those section 3(l) trusts in which the labor organization, either alone or in combination with other labor organizations, had management control or financial dominance. 73 FR at 57411. For purposes of the rule, a labor organization had management control if the labor organization alone, or in combination with other labor organizations, selected or appointed the majority of the members of the trust's governing board. Further, for purposes of the rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the

trust's receipts during the annual reporting period. Significantly, the rule treated contributions made to a trust by an employer pursuant to a collective bargaining agreement as constituting contributions by the labor organization.

Additionally, the 2008 Form T–1 rule provided exceptions to the Form T–1 filing requirements. No Form T–1 was required for a trust: Established as a political action committee (PAC) fund if publicly available reports on the PAC fund were filed with federal or state agencies; established as a political organization for which reports are filed with the IRS under section 527 of the IRS code; required to file a Form 5500 under the ERISA; constituting a federal employee health benefit plan that is subject to the provisions of the Federal Employees Health Benefits Act (FEHBA). Similarly, the rule clarified that no Form T–1 was required for any trust that met the statutory definition of a labor organization and files a Form LM–2, Form LM–3, or Form LM–4 or trust that the LMRDA exempted from reporting, such as an organization composed entirely of state or local government employees or a state or local central body.

B. Reasons for the Proposal To Rescind the October 2, 2008 Form T–1 Final Rule

The Department is proposing to rescind the 2008 Form T–1 rule because it believes that the trust reporting required under the rule is overly broad and that such trust reporting is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Moreover, the Department has reviewed the 2008 rulemaking record and no longer views the separate reporting requirements as set forth in the 2008 Form T–1 rule as justified in light of the burden they impose.

Under the Act, the Secretary has the authority to "issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements." 29 U.S.C. 438. The Secretary's regulatory authority thus includes the reporting mandated by the Act and discretionary authority to require reporting on trusts falling within the statutory definition of a trust "in which a labor organization is interested." 29 U.S.C. 402(l). The Secretary's discretion to require separate trust reporting applies to trusts if: (1) The union has an interest in a trust as defined by 29 U.S.C. 402(l) *and* (2) reporting is determined to be necessary to prevent the circumvention or evasion of Title II reporting requirements. 29 U.S.C. 438. As both the Department and the court recognized, this is a two part requirement. *See AFL–CIO* v. *Chao,* 409 F.3d 377, 386–87 (D.C. Cir. 2005) (discussion of two-part test).

A key feature of the Secretary's discretionary authority to require trust reporting is the requirement that the Secretary conclude that such reporting is "necessary" to prevent circumvention or evasion of a labor organization's requirement to report on its finances under the LMRDA. The Department now believes that the 2008 Form T–1 rule was overly broad, requiring financial reporting by many trusts, including trusts funded by employers pursuant to collective bargaining agreements, without an adequate showing that such a change is necessary to prevent circumvention or evasion of the reporting requirements.

The Department proposes to rescind the 2008 Form T–1 rule, because the Department now believes that the final rule is not necessary to prevent circumvention or evasion of existing reporting requirements and that an adequate assessment of the interaction between labor organizations and section 3(l) trusts would be needed to justify additional reporting. However, it is the Department's position, consistent with the D.C. Court of Appeals' opinion in *AFL–CIO* v. *Chao,* that the Department retains the authority to regulate trust reporting when the two-part test is satisfied. *AFL–CIO* v. *Chao,* 409 F.3d at 386–87 (D.C. Cir. 2005). In this proposal, the Department simply suggests that based on its review of the 2008 Form T–1 rule and its rulemaking record, the imposition of a separate reporting requirement for unions on their section 3(l) trusts is not necessary to prevent circumvention or evasion of the reporting requirements.

In particular, the rule provided that, for purposes of evaluating whether payments to a trust indicate that the union is financially dominant over the trust, payments made by employers to set up trusts under Section 302(c) of the LMRA, 29 U.S.C. 186(c) (Taft-Hartley funds), should be treated as funds of the union. Taft-Hartley funds are created and maintained through employer contributions paid to a trust fund, pursuant to a collective bargaining agreement, and must have equal numbers of union and management trustees, who owe a duty of loyalty to the trust. Taft-Hartley funds are established for the "sole and exclusive benefit of the employees" and are excepted from the statutory prohibition against an employer paying money to employees, representatives, or labor organizations. *See* 29 U.S.C. 186(a) and (c)(5).

The Department recognizes that its authority under section 3(l) to require reporting of trusts in which a union is interested is sufficiently broad to encompass Taft-Hartley plans funded by employer contributions. However, as explained above, this is only the first part of the section 208 analysis. The second part of the analysis requires that the Secretary determine that the reporting is necessary to prevent circumvention or evasion of the reporting of union money subject to Title II.

As explained in the 2008 Form T–1 rule, section 201 of the LMRDA requires that unions "file annual, public reports with the Department, detailing the labor organization's financial condition and operations during the reporting period, and, as implemented, identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements." 73 FR at 57413 (citing 29 U.S.C. 431(b)). Further, section 201 requires that such information shall be filed "in such detail as may be necessary to disclose [a labor organization's] financial condition and operations." 73 FR at 57414 (citing *Id.*). Significantly, each listed reportable financial transactions to be reported is one that reflects upon the union's financial condition and operations, not solely the financial condition and operations of another entity.

Thus, under the Act, the Secretary may require trust reporting when she concludes it is necessary to prevent the circumvention or evasion of labor organization's Title II reporting requirements. *See* 29 U.S.C. 208. The Title II reporting requirements for a labor organization require it "to disclose *its* financial condition and operations." 29 U.S.C. 201(b) (emphasis added). Consequently, trust reporting is permissible to prevent a labor union from using a trust to circumvent reporting of the *labor union's* finances.

The 2008 Form T–1 rule did not adequately address the second part of the two-part test when it presumed that employer contributions establish labor union financial domination of a trust. Indeed, the money contributed by the employer to a Taft-Hartley fund is not generally the property of the union, and

thus its disclosure by a union would not "disclose *its* financial condition and operations." 29 U.S.C. 201(b) (emphasis added). Conversely, a union's nondisclosure of such funds would not be an evasion of the union's reporting requirement. Such ordinary employer funds, not within the control of the union, would in no instance be reported by a union under the LMRDA reporting requirements. Such payments are generally paid by the employer to the Taft-Hartley trust for the sole and exclusive benefit of the employees, and it appears that the payment and use of these moneys would not ordinarily relate to the condition and operations of the union. Consequently, the Department now believes that the 2008 Form T–1 rule was overly broad, requiring reporting in instances where a union is not in a position to use a trust to circumvent or evade its reporting requirement.

In an apparent acknowledgement that the 2008 Form T–1 rule was premised upon policies in addition to preventing circumvention of Title II reporting, the final rule stated that, "by requiring that labor organizations file the Form T–1 for specific section 3(l) trusts, labor organization members and the public will receive some of the same benefit of transparency regarding the trust that they now receive under the Form LM–2, thereby preventing a labor organization from using the trust to circumvent or evade its reporting requirements." 73 FR at 57413. This rationale indicates that the rule may have provided for more general reporting than would be "necessary to prevent" the circumvention of LMRDA reporting requirements.

The 2008 NPRM asserted that "money paid into the trusts reflects payments that otherwise could be made directly to employees as wages, benefits, or both, but for their assignment to the trusts." 73 FR 11761 (NPRM) 73 FR 57417 (final rule). Assuming this is so, these underlying wages and benefits would not have been reported on a Form LM–2. Therefore it is not apparent that payment of these wages and benefits to a trust involves the circumvention or evasion of Title II reporting, regardless of the purported control a union exercises with an employer concerning such a trust. Thus, with respect to these funds, it is not clear from the final rule how the Form T–1 "provides transparency of *labor organization finances* and effectuates the goals of the LMRDA." (emphasis added) 73 FR 57414.

In addition, the final rule states that the Form T–1 will prevent union officials or others with influence over the union from "avoid[ing], simply by transferring money from the labor organization's books to the trust's books, the basic reporting obligation that would apply if the funds had been retained by the labor organization." 73 FR 57414. The Department acknowledges that such transfers of money to a Taft-Hartley trust may constitute circumvention or evasion of the union's reporting requirements, but the final rule did not distinguish between those Taft-Hartley trusts that are exclusively funded by employers from those in which the union does transfer money. Only in the latter instance would the Form T–1 capture a union's circumvention of its Title II reporting requirements. Instead, the final rule covers all Taft-Hartley plans through its "financial domination" test.

In *AFL–CIO* v. *Chao,* the Court of Appeals for the D.C. Circuit held that the first "Form T–1 reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements." *AFL–CIO* v. *Chao,* 409 F.3d at 389. The Department proposes that the 2008 Form T–1 rule may be overly broad in the same manner, requiring many labor organizations to file the Form T–1 for independent trusts, even where there is no apparent means by which the union could use the trust as a means of circumventing or evading its Title II reporting requirements.

In sum, the Department proposes to withdraw the rule implementing the Form T–1, because it believes that the trust reporting required under the rule is overly broad and is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. The Department invites comments on its proposal to rescind the 2008 Form T–1 rule.

IV. Proposal To Reinstate Subsidiary Organization Reporting on the Form LM–2

As part of the requirement to report on independent trusts, the 2008 Form T–1 rule established Form T–1 reporting obligations for labor union subsidiary organizations, entities wholly owned, controlled, and financed by a single union. The Department believes that a substantial number of Form T–1 reports it would have received would have been for subsidiary organizations. During the 2004 reporting year, the last year in which unions filed annual reports on the old Form LM–2, approximately 1,087 filers indicated that they had at least one subsidiary organization. Additionally, in the Department's experience about half of the approximately 100 largest labor organizations have multiple subsidiaries, with these 50 unions having about two additional subsidiaries. Thus, the Department estimates approximately 1,187 subsidiaries for Form LM–2 filers (the 1,087 filers with subsidiaries plus an additional 100 for the 50 unions with two additional subsidiaries). Further, the Form T–1 final rule estimated an average of 3,131 Form T–1 reports per fiscal year. 73 FR at 57441. Therefore, the Department estimates that more than one-third of Form T–1 reports would have been for subsidiary organizations. *See* Paperwork Reduction Act Analysis.

Prior to the 2003 Form LM–2 changes, labor organizations were required to report under the Form LM–2 reporting requirements.[1] Subsidiary organizations were defined in the Form LM–2 instructions as "any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization." *See* pre-2003 Form LM–2 Instructions, Section X.[2] This requirement was dropped in the October 2003 modifications to the Form LM–2. *See* 68 FR at 58414. While not made explicit in the final regulation, the Department's assumption at that time was that the prior subsidiary organization reporting would be captured by the new requirement for trust reporting on the Form T–1, which was also introduced in that final rule. This result is implied by the Department's comment in the 2008 Form T–1 rule that "the Form T–1 closes a reporting gap under the Department's former rule whereby labor organizations were only required to report on 'subsidiary organizations.'" 73 FR at 57412.

However, the Department believes that subsidiary reporting is more appropriate on the Form LM–2, rather than the Form T–1, because subsidiaries are properties of labor organizations similar to any other account, fund, or

[1] The 2003 changes retained the requirement for labor organizations to include the receipts of their subsidiaries when determining if they have met the $250,000 filing threshold. *See* Form LM–2 Instructions, Part II.

[2] The pre-2003 Form LM–2 Instructions can be viewed at *http://www.regulations.gov*.

asset.[3] As a result, for a union's Form LM–2 to be complete, the Department believes that form should contain information on subsidiaries, as this will result in a Form LM–2 reporting scheme that treats all assets of the union uniformly, i.e., with the same reporting threshold and level of itemization. By including subsidiaries on the Form LM–2 and treating all union assets uniformly, the Department believes that the Form LM–2 will produce a more comprehensive and accurate report of a union's financial condition. This proposal would also align the Form LM–2 with the Form LM–3, which was unaffected by the Form T–1 and has continued to include subsidiary reporting. Finally, the inclusion of subsidiaries on the Form LM–2 will alleviate potential misunderstandings relating to the reporting of a union's total annual receipts. Currently, for purposes of determining whether a particular union must file a Form LM–2 (receipts of $250,000 or more) or a Form LM–3 (receipts less than $250,000), receipts of subsidiaries are included, even though these receipts are reported on the Form T–1 and are not reported on the Form LM–2. Thus, some unions with subsidiaries are required to file an LM–2, even though they may report receipts of less than $250,000, once the subsidiary's receipts are subtracted. This may lead to confusion on the part of union members and the public. For these reasons, explained more fully below, the Department proposes that incorporating subsidiaries on the Form LM–2 provides more information about the subsidiaries and a more accurate report of the union as a whole, reducing the potential for misunderstandings by union members and the public.

The 2008 Form T–1 actually reduced the level of disclosure of core union financial activities through subsidiaries. First, the Form T–1 reduces transparency regarding the reporting of assets and liabilities of subsidiary organizations. The Form LM–2 includes Schedules 1 through 10, which require detailed itemization of the union's assets and liabilities. The Form T–1 requires that unions report their assets and liabilities only in the aggregate at Items 21 and 22. Thus, a report on a subsidiary's assets and liabilities will have more information when the filer uses a Form LM–2, rather than a Form T–1. Second, the Form T–1 reduces the level of transparency and disclosure of these entities, because it has a higher reporting threshold for receipts and disbursements. The Form LM–2 requires that all union assets, liabilities, receipts and disbursements exceeding $5,000 in value be itemized and reported. The Form T–1 has a reporting threshold of $10,000. A union, therefore, reporting on a subsidiary's financial transaction will disclose a greater number of transactions using the Form LM–2, as compared to the Form T–1.

The return of subsidiary organizations to the Form LM–2 reporting requirements will restore the prior status quo concerning the financial disclosure of such entities, which was that a union must disclose the financial information of its subsidiary to the same level of detail as other assets of the union, even if the union chose to file a separate Form LM–2 report for the subsidiary or to file an audit for the entity. *See* pre-2003 Form LM–2 Instructions, Section X.

A labor union using the pre-2003 Form LM–2 could report on its subsidiary organizations in one of three ways. The filer could (1) Consolidate the financial information for the subsidiary and the labor organization in a single Form LM–2; (2) file a separate Form-2 report for the subsidiary organization, along with a Form LM–2 for the union; or (3) file along with a Form LM–2 for the union a regular annual report of the financial condition and operations of the subsidiary organization. As explained in more detail below, the Department proposes to allow Form LM–2 filers two options regarding the reporting of their subsidiaries, rather than the three options formerly permitted in the pre-2003 Form LM–2 Instructions. The Department proposes that Form LM–2 filers can either consolidate their subsidiaries' financial information on their Form LM–2 report, or they can file, with their Form LM–2 report, a regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

The Department proposes to remove one previous option for filers—that of filing a separate Form LM–2 report with only the subsidiary's financial information. This reporting option, which results in a union filing more than one Form LM–2 report for a single fiscal year, may create confusion for union members and the public. First, because there is only one version of the Form LM–2, it would be difficult to tell whether a report is for a subsidiary, for a labor union, or both and as a result, an individual looking at a union's Form LM–2 may not be aware that the union has a subsidiary, and that a separate form exists for that entity. Second, having an entity that is not a labor organization reporting on a form for labor organizations also may create confusion for the Department. The Department relies upon the database of Form LM–2 filers for informational, policy, and enforcement purposes. To the extent that subsidiary organizations file separate Form LM–2 reports, the Department believes that the data will not accurately reflect the universe of labor organizations. Third, where a union changes its reporting practices, one year including the subsidiary and filing a separate form the next, conducting a year-to-year comparison becomes difficult, which also affects the Department's ability to rely upon the Form LM–2 filer database for policy and enforcement decisions. Finally, in some cases, transparency may be increased when the union and the subsidiary share certain expenses that standing alone fall below the itemization threshold, but when combined in a single report, will then be itemized. In sum, consolidation has the virtue of including all financial information (that of the union and the subsidiary) on one report, which eliminates potential confusion among union members, presents the Department with a more reliable database of Form LM–2 filers, and increases overall transparency. Thus, the Department proposes to permit a union to consolidate on its Form LM–2 the financial information of the union with the financial information of the subsidiary, as well as the option to file a separate financial statement certified by a public accountant. The Department seeks comment on these choices for filers.

At the same time, the Department proposes to revise the Form LM–3 subsidiary organization instructions to conform with the instructions proposed for the Form LM–2. Labor organizations filing Form LM–3 reports are required to report concerning their subsidiary organizations and now have the option of using one of three reporting methods. The Form LM–3 filers may (1)

[3] Indeed, in *U.S.* v. *Hartsel,* the Sixth Circuit held that a charitable organization with a separate not-for-profit tax status constituted a fund of a labor organization for purposes of section 501(c) of the Act, as the union in question created the fund, financed it by soliciting contributions from the members, and managed and controlled it by appointing its officers. *U.S.* v. *Hartsel,* 199 F.3d 812, 819–820 (6th Cir. 1999); *see also U.S.* v. *LaBarbara,* 129 F.3d 81 (2d Cir. 1987) (holding that assets of a not-for-profit building corporation controlled by a union comprise the assets of a labor organization under section 501).

consolidate the financial information for the subsidiary organization and the labor organization in a single Form LM–3; (2) file a separate Form-3 report for the subsidiary organization with the union's Form LM–3 report; or (3) file with the union's Form LM–3 report the regular annual report of the financial condition and operations of the subsidiary organization. For the reasons discussed above, the Department proposes to eliminate the second option and seeks comments on this proposal.

V. Specific Proposed Changes to the Form LM–2 and Instructions

The text of the Form LM–2, its Instructions pertaining to some sections, and certain Schedules will be changed to address the proposal to require reporting of subsidiary organizations. These include Sections II, VIII, X, and XI. The proposed modified instructions are included in an appendix to the NPRM, and the following is a section by section overview of the changes.

Section II. What Form to File: The Department proposes to revise the instructions to indicate that all special funds and funds of subsidiary organizations should be included in the "total annual receipts" of the labor organization. Cites to revised Section VIII (Funds to be Reported) and Section X (Labor Organizations with Subsidiary Organizations) are included in the proposed instructions. Additionally, the instructions specify that receipts of section 3(l) trusts are not to be included in "total annual receipts," unless such 3(l) trusts are subsidiary organizations of the union. Since the Department proposes to return to the prior Form LM–2 reporting regime for subsidiaries, the proposed instructions remove the current references to trusts that are "wholly owned, wholly controlled, and wholly financed by the labor organization," as such entities are now "subsidiary organizations."

Section VIII—Funds to be Reported: The Department proposes to revise this section to remove any reference to the Form T–1, and to clarify that "special purpose funds" include those of subsidiary organizations (with a cite to revised Section X: Labor Organizations with Subsidiary Organizations).

Section X—Labor Organizations with Subsidiary Organizations: The Department proposes to eliminate the current Section X, which provides information on section 3(l) trusts and the Form T–1, replacing this with information on subsidiary organizations, including its definition and the requirement to include its financial information on the Form LM–2, and ways in which a labor organization can properly report on their Form LM–2 the necessary information about such subsidiaries. The instructions are similar to the pre-2003 instructions for subsidiaries, with the primary difference being that, as explained above, the Department proposes that unions are provided two options instead of three for filing information on subsidiaries: Option one, consolidation, or option two, the attachment of an audit. Unions would not file a separate Form LM–2 report for the subsidiary. The proposed Section X also includes information on what each option requires.

Section XI—Completing Form LM–2: The Department proposes changes to the instructions to Items 10 and 11. The instructions for Item 10 would be changed to remove any reference to the Form T–1, although basic information about the trust would still be required, as would a cite to any report filed for the trust with another government agency, such as the Department's Employee Benefits Security Administration (EBSA).

The Department proposes to split Item 11 into two parts: Item 11(a), which is the current Item 11 referencing political action committees (PACs), and Item 11(b), which would ask unions to indicate if they had a subsidiary organization during the reporting period. The Department believes that since PACs may be subsidiary organizations, it is reasonable to include each of these in the same item on the form. The instructions for Item 11 will become the instructions for Item 11(a), while the proposed new instructions for Item 11(b) will simply state that unions must check this item if they have a subsidiary organization and must detail the name, address, and purpose of each of its subsidiary in Item 69 (Additional Information), including which filing method was chosen. The instructions would also reference proposed Section X of the instructions for more information on subsidiaries.

Schedules and Instructions for Schedules: The Department proposes revisions to certain Form LM–2 Schedules and Instructions to reflect the rescission of Form T–1 trust reporting and the reinstatement of subsidiary organization reporting on the Form LM–2, as proposed in the NPRM. Specifically, these Schedules and Instructions include:

- Schedule 5—Investments Other Than U.S. Treasury Securities, Item 6
- Instructions for Schedule 2—Loans Receivable,
- Instructions for Schedule 5—Investments Other Than U.S. Treasury Securities,
- Instructions for Schedule 7—Other Assets, and
- Instructions for Schedule 12—Disbursements to Employees.

The Department seeks comments on its proposed changes to the Form LM–2 and Instructions.

VI. Specific Proposed Changes to the Form LM–3 and Instructions

The text of the Form LM–3 and Instructions pertaining to some sections will be changed to address the reporting of subsidiary organizations. With respect to the Form, the Department proposes to remove Item 3(c), which currently requires a reporting labor organization to identify if the report is exclusively filed for a subsidiary organization, as the Department proposes to remove this option, as described above. The proposed revised Form LM–3 Instructions include changes to sections VIII and X.

Regarding Section VIII, the only proposed change would clarify that filers have only two options, rather than the current three: Either consolidation or attaching a separate report, that of an audit by a certified public accountant. Filers can no longer attach a separate Form LM–3 for the subsidiary. The proposed Section VIII also references Section X of the Form LM–3 instructions for more information on subsidiaries and subsidiary reporting.

The proposed changes to Section X, Labor Organizations with Subsidiaries, are virtually identical to the changes proposed to the corresponding Section X of the Form LM–2. Specifically, proposed section X would provide information on subsidiary organizations, including its definition and the requirement to include its financial information on the Form LM–3, and ways in which a labor organization can properly report on their Form LM–3 the necessary information about such subsidiaries. The instructions are similar to the current instructions for subsidiaries, with the primary difference being that, as explained above, the Department proposes that unions have only two options instead of three for filing information on subsidiaries: Option one, consolidation, or option two, the attachment of an audit. Unions no longer would have the option of filing a separate Form LM–3 report for the subsidiary. The proposed Section X also includes information on what each option requires.

The Department seeks comments on its proposed revisions to the Form LM–3 and instructions.

VII. Proposal To Revise the Interpretation Regarding Public Sector Intermediate Bodies

The Department proposes to revise its recently articulated policy regarding LMRDA coverage of certain public sector intermediate bodies, which was based on an interpretation of the definition of "labor organization" found in Section 3(i) and (j) of the LMRDA, 29 U.S.C. 402(i) and (j), by returning to the interpretation the Department held for nearly 40 years. The definitional criteria for "labor organization" in the statute are patently ambiguous, and therefore susceptible to two legally permissible interpretations. *See Alabama Education Ass'n* v. *Chao,* 455 F.3d 386 (D.C. Cir. 2006). The Department now considers, for the reasons set forth below, that its long-held interpretation, which excludes from coverage certain intermediate labor organizations that have as members only public sector local unions, better serves the purposes of the statute. The Department seeks comments from the public on this change.

Between 1963 and 2003, the Department's interpretation of the LMRDA excluded from coverage intermediate labor organizations composed solely of public sector labor unions.[4] In 2003, the Department revised its interpretation, thereby imposing on these never-before covered public-sector intermediate bodies financial reporting obligations under the statute.[5] The Department's revised statutory interpretation was offered as a construction of the "which includes" clause in Section 3(j)(5), 29 U.S.C. 402(j)(5).[6] In its 2003 interpretation the Department read the clause to modify the phrase "national or international labor organization," thus establishing coverage over an intermediate body that did not itself include a private sector local labor organization, so long as the national or international labor organization to which it was subordinate included a private sector labor organization.[7] Newly covered intermediate bodies challenged the 2003 interpretation in court, and years of litigation ensued.[8] The Department has recently undertaken a review of the revised interpretation of Section 3(i) and (j)(5) adopted in 2003 and the policy justifications for implementing it. The Department now considers that its prior long-standing policy is preferred. This policy is consistent with the conclusion that the 'which includes' condition modifies the statutory list of intermediate bodies, thereby establishing coverage over only those intermediate bodies that are subordinate to a national or international labor organization and that themselves include one or more private sector labor organizations. The Department seeks input from the public on this issue.

The grounds for the Department's 2003 interpretative change have been the subject of significant criticism during the rulemaking and litigation processes. During the comment period for the NPRM, several labor organizations, including the AFL–CIO, the American Federation of Teachers (AFT), the National Education Association (NEA) and the International Association of Firefighters, challenged the change in interpretation. The primary contention of these comments was that the Department's interpretation improperly expanded the statute's well-established coverage limitations over private-sector labor organizations to include those labor organizations that had no private sector members at all. For instance, the NEA noted that although its local affiliates primarily represent public school teachers, certain local affiliates also represent a small number of private-sector employees, and this fact justified the national organization's coverage under the LMRDA. However, with regard to its state-level affiliates, the NEA indicated that the new interpretation would impose significant recordkeeping and reporting burdens on state labor organization affiliates that are composed only of public sector members. The AFT's comment similarly criticized the Department for over-reaching with regard to state-level affiliates composed solely of public-sector members. Labor organization commenters also criticized the legal reasoning behind the Department's new interpretation.

The textual basis for the Department's revised interpretation was upheld by the Court of Appeals for the DC Circuit, but not without skepticism. *See Alabama Education,* 455 F.3d at 396 (plaintiff labor organizations "may have the better reading of the statute * * *").[9] Ultimately, the appellate court determined that the Department's new statutory interpretation was not supported by a justification adequate to sustain the policy change, and thus the court remanded the case to the Department for further explanation of the policy rationale supporting the changed interpretation. *Id.* at *396–397.* In reviewing the Department's newly developed policy rationale on remand, the district court stated that it would withhold comment on whether "the Secretary is hitting a gnat with a hammer[,]" suggesting that the labor

[4] Section 3(i) of the LMRDA, 29 U.S.C. 402(i), defines a "labor organization" as (1) any organization "engaged in an industry affecting commerce * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment," or (2) "any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization other than a State or local central body." The first clause of Section 3(i) applies to entities that exist, at least in part, to deal with employers concerning terms and conditions of employment. Although "employer" is defined broadly in the Act, the United States, States and local governments are expressly excluded from this definition. 29 U.S.C. 402(e). Thus, an organization is not covered under the first clause of Section 3(i), which requires that the organization deal with a statutory "employer," if it deals only with federal, state or local governments. The second clause of the definition applies to conferences, general committees, joint or system boards or joint councils—entities that are known as "intermediate" labor organizations. See 29 CFR 451.4(f).

[5] Although the revision of the Department's interpretation was initiated in 2002, it was completed in 2003 with the publication of the final rule, 68 FR 58,374 (Oct. 9, 2003). See footnote 7, *infra.*

[6] Section 3(j) of the LMRDA, 29 U.S.C. 402(j), sets forth the circumstances under which labor organizations will be "deemed to be engaged in an industry affecting commerce" under the Act. In particular, Section 3(j)(5) of the Act provides that an intermediate labor organization is deemed "engaged in an industry affecting commerce" if it is "a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, *which includes* a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body." 29 U.S.C. 402(j)(5) (emphasis added).

[7] See Labor Organization Annual Financial Reports, 67 FR 79,280 (Dec. 21, 2002) (NPRM); Labor Organization Annual Financial Reports, 68 FR 58,374 (Oct. 9, 2003) (Final Rule); Labor Organization Annual Financial Reports Policy Statement; Interpretation, 72 FR 3735 (Jan. 26, 2007) (court-ordered analysis supporting Department's interpretative change).

[8] *See Alabama Education Ass'n* v. *Chao,* 2005 WL 736535 (D.D.C. Mar 31, 2005) (holding new interpretation invalid); 455 F.3d 386 (2006) (reversing lower court and remanding to Department for further explanation of policy justifications for new interpretation); 539 F.Supp 2d 378 (D.D.C. 2008) (upholding Department's policy justification for interpretive change), 595 F.Supp. 2d 93 (D.D.C. 2009) (denial of reconsideration). The plaintiff state affiliates have appealed the most recent decision of the district court in this litigation, but on May 5, 2009, the DC Circuit granted the Department's motion to stay the appeals pending resolution of this regulatory proceeding.

[9] The court reviewed the Department's interpretation under the "two-step analysis" of *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). Addressing Chevron's step one, the Court concluded that the text of Section 3(j)(5) and the application of the "which includes" clause was ambiguous, and that the LMRDA's legislative history "merely confirm[ed] the inherent ambiguity of the statute." 455 F.3d at 394 and n.*. Accordingly, the Court concluded that nothing in LMRDA Section 3 "forecloses the possibility that a body without private sector members may be subject to the LMRDA if it is subordinate to or part of a larger organization that does have private sector members." *Id.* at 394–395.

organization transparency problems identified by the Department were insignificant in comparison to the demands of coverage imposed on the newly covered intermediate labor unions. *Alabama Education,* 539 F.Supp.2d at 385. The district court also noted that the State affiliates' challenges to the Department's policy justifications raise "serious issues" that "might convince the court, were it the [policy] decisionmaker" and not limited by a narrow standard of review, to reject the Department's rationales for the new interpretation. *Id.* at 379. The limited nature of the court's review also caused the district court to overlook the "multitude of practical objections" to the new policy. *Id.* at 380 n. 2.

Unlike the reviewing courts, the Department's role as administrator of the statute is not so circumscribed that it can or should continue to ignore the "serious issues" or "multitude of practical objections" associated with the policy shift. Indeed, the Department's administrative and enforcement functions demand a reevaluation of the policy underlying its 2003 interpretation in light of the criticisms from both the regulated community and the reviewing courts. Therefore, the Department now considers other factors that militate against the imposition of the LMRDA, including its reporting obligations, on intermediate labor organizations without private sector members.

It is well-settled that the LMRDA was enacted to promote democracy and transparency in labor organizations that act on behalf of employees employed in the private sector. 29 U.S.C. 401(b), (c). It is equally settled that Congress intended to exclude from coverage local, national, and international labor organizations representing only employees in the public sector, and the overall thrust of the statute comports with that private-sector-only coverage. *See Alabama Education,* 455 F.2d at 394–95; *see also Thompson* v. *McCombe,* 99 F.3d 352, 353 (9th Cir. 1996) ("A labor organization composed entirely of public sector employees is not a labor organization for purposes of the LMRDA.").

Nevertheless, the Department justified its 2003 policy shift in part by suggesting that reading the statute's coverage provisions as broadly as possible offered increased transparency and accountability. 72 FR at 3738. Transparency and accountability of labor organizations are indeed valued goals, but they are not the sole, overriding purpose of the statute, and LMRDA coverage for the purpose of reporting and disclosure also exposes covered labor organizations to the full scope of federal regulation under the Act. Taken as a whole, the Department's 2003 policy shift lacks consistency and coherence. For example, the Department's 2003 policy shift resulted in the coverage of wholly public sector intermediate bodies, although not wholly public sector international or local unions. Upon reconsideration, the proper balance between the goals of robust union transparency and limited regulation of public sector unions should not result in an illogical dichotomy between types of public sector labor unions or reporting burdens that hinge solely on the particular tier a public sector union is placed. The Department now concludes that when enlarged coverage for more expansive transparency is balanced with the emphasis on minimizing regulatory burdens on unions representing exclusively public sector employees, it is not the better policy alternative.

The Department noted as an additional justification for its 2003 policy shift that labor organizations' structural and financial complexity has increased in recent decades, and this complexity supported the expansion of coverage. 72 FR at 3738. The district court reviewing the Department's policy rationales described this explanation as "entirely a make-weight." 539 F.Supp. 2d at 384. Indeed, upon reexamination, the Department's theory that local union members not only need to, but want to, "ascertain[] the endpoint of his or her dues cast into the stream of affiliate expenditures" in order to assure financial regularity, *id.,* overstates the ends to which one must go to sustain labor organization transparency and accountability. There has been no clear indication that such meticulous tracing of individual membership dues "in the stream of expenditures" is required to understand a labor organization's financial state.

In support of the 2003 policy shift, and in part to address the congressional concern that wholly public sector unions be excluded from the Act, the Department provided data that traced "to the endpoint" dues of local union members employed in the private sector to their locals' national affiliate and back to the newly covered public sector intermediate affiliates. These data purportedly strengthened the tenuous link between undisputedly covered labor organizations representing employees in the private sector and their public sector intermediate affiliates. Thus, the Department's expansion of coverage was justified to require "the disclosure of assets and expenditures of intermediate labor bodies whose funds are derived, at least in part, from private sector employees." 72 FR at 3739. Furthermore, the Department intended that this tracing of money would illustrate that "the so-called 'wholly public sector' intermediate body loses that attribute to a great extent (despite its composition) when it is subordinate to, and accepting contributions from, covered national and international labor organizations whose funds are derived, in part, from employees in the private sector." 72 FR at 3737.

In justifying the 2003 policy choice, the Department examined the incoming local membership contributions and outgoing disbursements of only two national labor organizations to conclude, as a broad proposition, that all public sector intermediate affiliates subordinate to a covered national or international labor organization should be covered. In one of the two cases, the money distributed by the national labor organization to the state affiliate was minute—just $15,000—as compared to both the disbursing national's and the receiving state affiliate's multimillion dollar budgets. The second national labor organization examined collected dues from local affiliates representing employees in the private sector and then routinely made disbursements to many of its state affiliates. However, that union subsequently implemented measures to keep private sector dues money in a separate segregated fund that is not disbursed to wholly public sector intermediate bodies. Any meaningful link between the union's private sector funds and the financial operations of its public sector intermediate bodies, at first somewhat tenuous and theoretical, is now remote. The Department would not, of course, base this proposed rule on the current (and perhaps temporary) practices of a single union. The original rule, however, was based on only two examples concerning the flow of money in two unions.

Where a rulemaking is to be supported by data, and those data are offered as proof of a problem, weakness and deficiencies in the data cast doubt on the necessity of the asserted policy. As a result, a second look at the data relied upon by the Department to bolster its 2003 interpretative change appears not to support the conclusion that "following dues to their endpoint" justifies "the so-called 'wholly public sector' intermediate body" losing that attribute, thus warranting the expansion of LMRDA coverage undertaken by the Department in 2003. Rather, the Department concludes that the stated concern should be sustained only if an

analysis of a broader array of national and international labor organizations, which have both local members employed in the private sector and state affiliates composed of members in the public sector, reflects more than a *de minimis* financial association between the two. We now believe that the data upon which the Department relied in its 2007 Policy Statement do not adequately demonstrate such an association.

A second look at the "dues endpoint" theory and data also indicates that the 2003 coverage expansion is overly broad. Despite the stated rationale that the coverage expansion was justified by following membership dues from local union members in the private sector to state affiliates, the change in interpretation would result in significant and costly reporting obligations on some public sector intermediate bodies that may not receive any private-sector membership dues from their national affiliate. This overbreadth problem is clear as it pertains to the national labor organizations examined by the Department in its policy statement, which have state affiliates that receive no disbursements from the national organization but which would nevertheless be required to submit annual financial reports. In addition, the overly broad result may well pertain to other intermediate labor organizations that were not the subject of the Department's purported empirical analysis and that do not receive disbursements from their national affiliate or, if they do, such disbursements may not be derived from dues of local members employed in the private sector.

As noted above, given the nature of the data presented, the scope of the private-sector-dues-to-public-affiliate scenario may be *de minimis,* and the fix undertaken to address it appears burdensome and overbroad *Alabama Education,* 539 F.Supp.2d at 385. In this new light, the Department proposes a return to its prior interpretation regarding the statutory criteria governing the coverage of intermediate bodies. The Department invites comments on this proposal.

VIII. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. In the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the proposed rule will result in a total burden on labor unions of less than $3 million. In addition, we believe that the elimination of the Form T–1 reporting requirements will significantly reduce compliance costs for labor organizations. In our 2008 final rule, for example, we estimated that the projected total cost on filers in the first year would be over $15 million in the first year and at least $8 million in subsequent years. This rule is a significant regulatory action and was reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

This proposed rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the federal government, the rule 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."

Analysis of Costs for Paperwork Reduction Act and Regulatory Flexibility Act

In order to meet the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., Executive Order 13272, and the PRA, 44 U.S.C. 3501 et seq., and the PRA's implementing regulations, 5 CFR Part 1320, the Department has undertaken an analysis of the financial burdens to covered labor organizations associated with complying with the requirements contained in this proposed rule. The focus of the RFA and Executive Order 13272 is to ensure that agencies "review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA]." Executive Order 13272, Sec. 1. The more specific focus of the PRA is "to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government." 5 CFR 1320.1.

Compliance with the requirements of this proposed rule involves essentially information recordkeeping and information reporting tasks. Therefore, the overall impact to covered labor organizations, and in particular, to small labor organizations that are the focus of the RFA, is essentially equivalent to the financial impact to labor organizations assessed for the purposes of the PRA. As a result, the Department's assessment of the compliance costs to covered labor organizations for the purposes of the PRA is used as a basis for the analysis of the impact of those compliance costs to small entities addressed by the RFA. The Department's analysis of PRA costs, and the quantitative methods employed to reach conclusions regarding costs, are presented here first. The conclusions regarding compliance costs in the PRA analysis are then employed to assess the impact on small entities for the purposes of the RFA analysis, which follows.

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501. As discussed in the preamble, this proposed rule would implement an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting

labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is "appropriate to the purpose for which the information is to be collected"; and (9) the changes implemented by this rule make extensive, appropriate use of information technology "to reduce burden and improve data quality, agency efficiency and responsiveness to the public." 5 CFR 1320.9; see also 44 U.S.C. 3506(c).

A. Summary of the Rule: Need and Economic Impact

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion of various aspects of the proposal is found in the preamble.

The proposed rule would rescind the Form T–1 Trust Annual Report established by final rule on October 2, 2008, and would amend the Form LM–2 Labor Organization Annual Report to require unions to include on that report information concerning its wholly owned, controlled, and financed subsidiary organizations. (Under the Form T–1 reporting regime, these subsidiaries would have been included on a Form T–1 report, rather than on the union's annual report.). The proposed rule also would amend the Form LM–3 Labor Organization Annual Report to conform its subsidiary organization reporting to those proposed for the Form LM–2. Finally, the proposed rule also would return the Department to a prior interpretation of the Labor-Management Reporting and Disclosure Act (LMRDA), which excludes wholly public sector intermediate bodies from coverage under the Act. *See* section 3(j)(5), 29 U.S.C. 402(j)(5).

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations and others as set forth in Title II of the Act. See 29 U.S.C. 431–36, 441. Under Section 201(b) of the Act, 29 U.S.C. 431(b), labor organizations are required to file for public disclosure annual financial reports, which are to contain information about a labor organization's assets, liabilities, receipts, and disbursements.

The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. The Form LM–2 Annual Report, the most detailed of the annual labor organization reports, and that required to be filed by labor organizations with $250,000 or more in annual receipts, must include reporting of loans to officers, employees and business enterprises; payments to each officer; and payments to each employee of the labor organization paid more than $10,000, in addition to other information. The Secretary also has prescribed simplified annual reports for smaller labor organizations. Form LM–3 may be filed by unions with $10,000 or more, but less than $250,000 in annual receipts, and Form LM–4 may be filed by unions with less than $10,000 in annual receipts.

On October 2, 2008, the Department issued a final rule establishing the Form T–1 Trust Annual Report, which prescribes the form and content of annual reporting by unions concerning entities defined in Section 3(l) of the LMRDA as "trusts in which a labor organization is interested." 73 FR 57412. Prior to the implementation of the Form T–1 rule, the Department's LMRDA reporting program had not provided for separate trust reporting by unions. The objective of this proposed rule is to rescind the Form T–1 Trust Annual Report, as the Department has determined that it is overbroad, and not necessary to prevent the circumvention and evasion of the Title II requirements. The proposed rule also would reinstate a requirement for subsidiary organization reporting on Form LM–2.

The Form T–1 includes the requirement to report subsidiaries of labor organizations, which the Department defines as "any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization." *See* Form LM–3 Instructions, Part X, Labor Organizations With Subsidiary Organizations). The Department continues to hold the view that reporting all subsidiaries is necessary for members and the public to have an accurate understanding of a particular labor organization's financial condition. The Department believes that without the inclusion of the financial information for all subsidiaries, the financial disclosures on the Form LM–2 will be incomplete. The subsidiary is an asset of the labor organization, and a viewer of the report would not get an accurate understanding of the union's finances without the inclusion of the subsidiary. Therefore, with the proposed rescission of the Form T–1, the Department also proposes to require that labor organizations include with or within their Form LM–2 reports information concerning their subsidiary organizations.

Prior to the Department's development of the concept of the trust annual report, the Department's regulations required unions to report information on subsidiaries on their Form LM–2 reports. This requirement was revoked by revisions to the Form LM–2 in 2003. Labor Organization Annual Financial Reports, 68 FR 58374 (Oct. 9, 2003). The return of subsidiary organizations to the Form LM–2 reporting requirements would improve the amount of financial disclosure of such entities, as compared to the disclosure provided on the Form T–1, as the Form T–1 has no equivalent to the Form LM–2 assets and liabilities Schedules 1–10, and the itemization threshold for receipts and disbursements on the Form LM–2 is $5,000 while that on the Form T–1 is $10,000. Under the proposal, and as the pre-2003 Form LM–2 had long required, a union must disclose the financial information of its subsidiary to the same level of detail as other funds of the union, including details regarding assets and liabilities not required to be reported on the Form T–1.

The Department proposes to make available to Form LM–2 filers two options regarding the reporting of their subsidiaries, rather than the three options formerly permitted in the pre-2003 Form LM–2 Instructions. First, the

Department proposes that a labor union may consolidate its subsidiaries' financial information with the union's financial information on its Form LM–2 report. Alternatively, the Department proposes that a labor union can file, with its Form LM–2 report, a regular annual report of the financial condition and operations of each subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. When choosing to file a separate accountant's report, the union would be required also to include information regarding loans payable and payments to union officers and employees in the same detail required by the Form LM–2 instructions on the related schedules (Schedules 1, 11, and 12).

The Department proposes not to reinstate a third option previously available on Form LM–2: that of filing a separate Form LM–2 report on each subsidiary organization. In the Department's experience, the filing of a separate Form LM–2 in addition to the union's primary report creates confusion for union members and others viewing the reports in that the form is designed for unions, not segregated funds and assets. Moreover, a union must file one Form LM–2 report per fiscal year, and the filing of multiple forms by a union for its subsidiaries creates confusion as to which one is the primary form. While consolidation contains some risk of confusion, the Department's experience is that combined reports are easier to follow than separate reports. This is a particularly appropriate and desirable option for some unions with subsidiaries that perform traditional union operations, such as strike funds and other special union funds. Thus, the Department proposes to preserve this option for Form LM–2 filers.

To remain consistent with the proposed reporting options available for Form LM–2 filers, the Department also proposes to revise the Form LM–3 instructions regarding the reporting of subsidiary organizations. Form LM–3 filers will have the same two options to report required information about subsidiaries as the Form LM–2 filers, and the reporting unions' option to file a separate Form LM–3 report on a subsidiary organization will likewise be eliminated. Again, this would avoid potential confusion for the public and would align the Form LM–3 subsidiary reporting regime with that proposed for Form LM–2 filers.

The obligation to report on the Form T–1 constituted an increase in reporting burdens for those labor organizations with reportable trusts. Given that increase, and as stated more fully below, this proposed rule represents a net reduction in the total filing burden for Form LM–2 filers, as the rescission of the Form T–1 removes the information collection burden associated with that form and replaces it with the reinstatement of subsidiary organization reporting, which presents only a small increase in the total Form LM–2 reporting burden. As demonstrated in the 2008 Form T–1 rule, the Form T–1 represented a total burden, for the estimated 2,292 Form LM–2 filers affected by the rule, of approximately 423,900 hours in the first year and 306,700 in the subsequent years. Additionally, the projected total cost on filers in the first year was approximately $15.2 million in the first year and approximately $8.2 million in subsequent years. 73 FR at 57441 and 57445. The proposed rule eliminates these burdens and costs from OMB 1215–0188, although, as discussed below, the reinstatement of subsidiary reporting transfers a small portion of this burden to the Form LM–2.

The proposed rule does not add any burden associated with the electronic submission of reports. The Department has in place an electronic reporting system for use by labor organizations, e.LORS. The objectives of the e.LORS system include the electronic filing of current Forms LM–2, LM–3, and LM–4, as well as other LMRDA disclosure documents; disclosure of reports via a searchable Internet database; improving the accuracy, completeness and timeliness of reports; and creating efficiency gains in the reporting system. Effective use of the system reduces the burden on reporting organizations, provides increased information to members of labor organizations, and enhances LMRDA enforcement by OLMS. The OLMS Online Public Disclosure site is available for public use at *www.unionreports.gov*. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database of the information in each report.

Filing labor organizations have several advantages with the current electronic filing system. With e.LORS, data from the reporting unions' electronic records can be directly imported into Form LM–2. Not only is entry of the information eased, the software makes mathematical calculations and checks for errors or discrepancies. Additionally, any attachments to Form LM–2, such as would be required for unions choosing to submit a separate independent audit report for their subsidiary organizations, could be submitted electronically with the Form LM–2 reports.

As discussed in more detail below, there is negligible, if any, new information collection burden associated with the minor change proposed for the Form LM–3 reporting requirements regarding subsidiary organizations, nor is there any information collection associated with the proposal to change the Department's interpretation regarding wholly public sector intermediate bodies.

B. Overview of Subsidiary Reporting on Form LM–2 and Trust Reporting on Form T–1

Every labor organization whose total annual receipts are $250,000 or more and those organizations that are in trusteeship must currently file an annual financial report using the current Form LM–2, Labor Organization Annual Report, within 90 days after the end of the labor organization's fiscal year, to disclose their financial condition and operations for the preceding fiscal year. The current instructions state that the calculation of "total annual receipts" does not include "trusts" (of which the union may be required to file the Form T–1, Trust Annual Report), unless the trusts are "wholly owned, wholly controlled, and wholly financed by the labor organizations." *See* Form LM–2 Instructions, Part II: What Form to File. Although the current Form Instructions do not use the term, the above description refers to subsidiary organizations. Presently, Form LM–3 filers must also include the assets, liabilities, receipts, and disbursements within the Form LM–3 report, and prior to changes made in 2003, the Department required Form LM–2 filers to do the same. The current Form LM–2 is also used by covered labor organizations with total annual receipts of $250,000 or more to file a terminal report upon losing their identity by merger, consolidation, or other reason.

Therefore, unions must currently identify subsidiaries on the Form LM–2 in Item 10, Trusts or Funds, and they must calculate the total receipts of the subsidiary for purposes of the Form LM–2 filing threshold of $250,000. However, there are currently no further Form LM–2 reporting obligations concerning such subsidiaries. Rather, filers must report information on such subsidiaries on the Form T–1. *See* Form LM–2 Instructions Part X, Trusts in

Which a Labor Organization is Interested.

The current Form LM–2 consists of 21 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities (Statement A); a statement of receipts and disbursements (Statement B); and 20 supporting schedules (Schedules 1–10, Assets and Liabilities related schedules; Schedules 11–12 and 14–20, receipts and disbursements related schedules; and Schedule 13, which details general membership information).

The Form LM–2 requires such information as: whether the labor organization has any trusts (Item 10, including, on the current form and instructions, subsidiary organizations); whether the labor organization has a political action committee (Item 11); whether the labor organization discovered any loss or shortage of funds (Item 13); the number of members (Item 20); rates of dues and fees (Item 21); the dollar amount for seven asset categories, such as accounts receivable, cash, and investments (Items 22–28); the dollar amount for four liability categories, such as accounts payable and mortgages payable (Items 30–33); the dollar amount for 13 categories of receipts such as dues and interest (Items 36–48); and the dollar amount for 16 categories of disbursements such as payments to officers and repayment of loans obtained (Items 50–65).

Schedules 1–10 requires detailed information and itemization on assets and liabilities, such as loans receivable and payable and the sale and purchase of investments and fixed assets. There are also nine supporting schedules (Schedules 11–12, 14–20) for receipts and disbursements that provide members of labor organizations with more detailed information by general groupings or bookkeeping categories to identify their purpose. Labor organizations are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Form T–1 provides similar but not identical reporting and disclosure for section 3(l) trusts, currently including subsidiaries, of Form LM–2 filing labor organizations. The Form T–1 requires information such as: losses or shortages of funds or other property (Item 16); acquisition or disposal of any goods or property in any manner other than by purchase or sale (Item 17); whether or not the trusts liquidated, reduced, or wrote-off any liabilities without full payment of principal and interest (Item 18); whether the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates (Item 19); whether the trust liquidated, reduced, or wrote-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest (Item 20); and the aggregate totals of assets, liabilities, receipts, and disbursements (Items 21–24). Additionally, the union must report detailed itemization and other information regarding receipts in Schedule 1, disbursements in Schedule 2, and disbursements to officers and employees of the trust in Schedule 3.

Although the Form T–1 has a higher reporting threshold for receipts and disbursements than does the Form LM–2, it provides nearly identical information regarding receipts and disbursements as does the Form LM–2. For example, unions must itemize receipts of trusts with virtually identical detail on Form T–1, Schedule 1, as does the Form LM–2 on its Schedule 14. Further, the information required on Form T–1 Schedules 2 and 3 correspond almost directly to the information required on Form LM–2 Schedules 15–20 and 11–12, respectively, although the format does not directly correlate. However, as discussed earlier, Form T–1 does not provide as much detail regarding assets and liabilities of trusts as the Form LM–2 requires. For example, although Form T–1 Items 16 and 17 correspond directly to Form LM–2 Items 13 and 15, and the information required in Form T–1 Items 18–20 is required in a different format in Form LM–2, Schedules 2 and 8–10, there is also significant information required on the Form LM–2 and not on the Form T–1. Chief of the material excluded on the Form T–1 is the detailed information regarding assets and liabilities required by Form LM–2, Schedules 1–10. In sum, under the proposed rule unions would need to report such information on the Form LM–2, while they would not need to do so under the existing Form T–1. Thus, consolidation of subsidiaries on the Form LM–2 provides greater transparency for such entities than does the Form T–1.

Additionally, the Department provided the public with separate burden analyses for the Form LM–2 and the Form T–1, in addition to the other forms required to be filed with the Department under the LMRDA. These analyses include the time for reviewing the respective set of instructions, searching existing data sources, gathering and maintaining data needed, creating needed accounting procedures, purchasing software, and completing and reviewing the collection of information. This proposed rule eliminates the need for a Form T–1 burden analysis, as it proposes to eliminate that form and its separate reporting regime. The proposed rule also amends the reporting requirements for the Form LM–2 to bring subsidiary reporting back into its reporting regime, but it does not establish a new reporting regime. Thus, many of the areas analyzed in other LMRDA reporting and disclosure burden analyses are not relevant to this discussion, as the existence and basic structure and procedures of the present Form LM–2 reporting regime is not amended by this proposed rule.

Finally, for the purposes of the analysis below, the following is a brief discussion of the similarities and differences between subsidiary organizations and other entities included within the Form T–1 reporting regime, which demonstrates that data used for evaluating the burden of the Form T–1 may also be used in evaluating the burden of reporting on subsidiary organizations on the Form LM–2. As stated in the preamble, subsidiary organizations are entities wholly owned, controlled, and financed by a union, and the Department estimates that they constitute at least one third of "trusts" included within the Form T–1 reporting regime. These subsidiaries include entities such as strike funds and building corporations, and they also include other entities unrelated to typical union functions. Other entities included within the Form T–1 include Taft-Hartley funds, which are funded by an employer pursuant to a collective bargaining agreement and established and managed jointly between union(s) and employer(s). The latter includes apprenticeship and training funds. Although the entities within the reporting regime of the Form T–1 often differ widely in terms of their structure (including within the subsidiary category itself), subsidiaries and Taft-Hartley funds share many characteristics in this area, such as size, number of officers and employees, assets, liabilities, receipts, and disbursements. As such, although subsidiaries often differ from Taft-Hartley funds in terms of function and certainly in management, they also often have commonalities in areas such as structure and typical reporting and disclosure categories.

C. Methodology for the Burden Estimates [10]

Initially, as stated above, this notice proposes an overall reduction of burden hours for Form LM–2 filers. The Department proposes to rescind the Form T–1, which would result in a reduction of 423,913.74 burden hours in the first year and 306,736.92 in the subsequent years that an estimated 2,292 Form LM–2 filers would incur. Additionally, the total cost to filers was projected to be $15,186,874.46 in the first year and $8,168,474.74 in subsequent years. 73 FR at 57441 and 57445. However, the reinstatement of the subsidiary organization reporting requirement on the Form LM–2 does transfer a portion of the Form T–1 reporting burden to the Form LM–2, as discussed more fully below. The Department has employed much of the burden analysis used in the Form T–1 cost estimates as a basis for its determination of the additional subsidiary organization burden here, although, as noted above, not all aspects of such analysis are relevant to the consolidation of subsidiaries on the Form LM–2, nor do the Form T–1 and Form LM–2 reporting regimes correspond directly to one another. Those places in which the analysis from the 2008 Form T–1 rule is modified or not used are noted.

Further, the changes proposed to the Form LM–3 reporting requirements, which currently require subsidiary reporting, do not result in any significant increase or decrease to the burden for those filers. As stated above, Form LM–3 filers currently have three options in which to report on their subsidiaries: (1) Consolidate all financial transactions on one Form LM–3; (2) file a separate Form LM–3 for each subsidiary organization; or (3) attach an audit to the Form LM–3, prepared in accordance with the Form LM–3 Instructions for each subsidiary. In the Department's experience, a substantial majority of Form LM–3 filers with subsidiary organizations elect to file a consolidated Form LM–3, with few choosing either of the other options. Additionally, the burden for filing a separate LM–3 is virtually identical to consolidating the information on one report. The Department, therefore, does not believe the removal of the option to file separate LM–3s for each subsidiary organization results in a change to the filing burden for Form LM–3 filers.

In reaching its estimates regarding the burden on Form LM–2 filers to consolidate information regarding their subsidiary organizations, the Department considered the recurring costs associated with the proposed rule. Additionally, the Department used the Form T–1 cost and burden estimates as the basis for the estimates for consolidating subsidiary organization information on the Form LM–2 (73 FR 57436–57445). As stated above, although subsidiary organizations represent only a portion of the Form T–1 universe, and they differ from Taft-Hartley funds and other trusts in their function and management, the Department believes that the similarity in the make-up of the organizations and the similar level of reporting of receipts and disbursements required by the Form T–1 and Form LM–2, justify the use of Form T–1 estimates. However, there are differences between Form T–1 reporting and consolidating subsidiary organization financial information on the Form LM–2, and the analysis below will address these.

Additionally, the Department's labor cost estimates reflect the Department's assumption that the labor organizations will rely upon the services of some or all of the following positions (either internal or external staff): The labor organization's president, secretary-treasurer, accountant, and bookkeeper. In the 2008 Form T–1 rule, the salaries for these positions are measured by wage rates published by the Bureau of Labor Statistics or derived from data reported in e.LORS.

1. Number of Subsidiary Organizations

The Department estimates that Form LM–2 filers have approximately 1,187 subsidiary organizations. This number derives from a review of Form LM–2 reports filed in 2004, the final year in which filers were required to identify on Item 10 whether they had a subsidiary organization. A review of these reports indicated that 1,087 Form LM–2 filers indicated that they had at least one subsidiary organization. In the Department's experience, generally about half of the 100 largest labor organizations have multiple subsidiary organizations, with the remainder of all filers with such organizations having only one of them. In the Department's experience, these 50 of the largest labor organizations that have multiple subsidiary organizations have on average approximately two additional subsidiary organizations, for a total of three subsidiaries. Therefore, the Department added 100 (2 subsidiaries × 50 labor organizations) to the 1,087 filers indicating that they had at least one subsidiary organization, for a total estimate of 1,187 subsidiaries.[11]

2. Hours To Complete and File a Consolidated Form LM–2: Reporting and Recordkeeping

Initially, the Department considered the issue of non-recurring burden hours associated with Form LM–2 subsidiary reporting, but it believes that burdens such as those associated with reviewing the Form LM–2 instructions, training staff, acquiring the necessary software to complete and submit the form, and similar up-front burdens, do not exist separately with subsidiary organization reporting. Therefore, unlike with the Form T–1, there are no non-recurring burdens associated with subsidiary organization reporting; only recurring ones. These burdens are already included in the Form LM–2 burden estimate, and the similar burdens related to the Form T–1 would be rescinded by this proposed rule (*See* Form T–1 final rule, Table 5, 73 FR 57444). Further, many recurring burdens and tasks, such as those analyzed in the Form T–1 analysis, are also not included in this analysis, because they did not relate to the Form LM–2 requirements or are already accounted for in the Form LM–2 burden analysis. For example, the basic labor organization identifying information, Items 1–68, and the summary statements are accounted for in the existing Form LM–2 burden analysis. Therefore, this analysis focuses on additional costs necessary to consolidate subsidiary organization information on the filer's existing Form LM–2.

Additionally, the estimated reporting and recordkeeping burden hours for those filers who choose to undertake an audit are substantially the same as those who consolidate the data on their Form LM–2, as the detail required for the audit is congruent with the Form LM–2 requirements. Accordingly, the Department has analyzed below the costs associated with consolidated reporting, and assumes as part of its conclusion that the costs of the audit

[10] Some of the burden numbers included in both this PRA analysis and regulatory flexibility analysis will not add perfectly due to rounding.

[11] These figures differ from the Department's estimates in the Form T–1 analysis. See 73 FR 57441. In the Form T–1 analysis, the Department estimated 2,292 Form LM–2 filers would submit a Form T–1 based upon an analysis of those filers who indicated on their 2006 report that they had at least one LMRDA section 3(l) trust. In this NPRM, the Department derives its estimate of the number of Form LM–2 filers with subsidiaries directly from the number of Form LM–2 filers who indicated on their 2004 Form LM–2 reports that they had a subsidiary organization. The number of Form LM–2 filers with subsidiaries is smaller than the number of LM–2 filers with section 3(l) trusts because the definition of section 3(l) trusts includes more entities than the definition of subsidiaries.

option are no greater than those costs associated with consolidated reporting.

a. Recordkeeping Burden Hours To Complete Schedules for Assets, Liabilities, Receipts, Disbursements, and Officers and Employees Schedules

The Department has recently estimated the recordkeeping burden associated with the number of disbursements, receipts, officers, and employees of trusts in the 2008 Form T–1 rule. (73 FR 57440–57445). The Department assumes that the recordkeeping tasks associated with gathering information required for the Form T–1 are essentially the same as those tasks associated with gathering the necessary information for subsidiary reporting proposed here. For instance, as explained above, although the Form T–1 uses a different format and requires reporting at a higher threshold than the Form LM–2, the Form T–1 receipts schedule, Schedule 1, corresponds to Form LM–2 Schedule 14; the Form T–1 general disbursements Schedule 2 corresponds to Form LM–2 Schedules 15–20; and the Form T–1 officer and employee disbursements Schedule 3 corresponds to Form LM–2 Schedules 11–12. As a result, the Department has employed here the burden hours it concluded were associated with Form T–1 recordkeeping for these categories. For the categories of assets and liabilities, the Form T–1 has no schedules, while the Form LM–2 does provide for reporting these categories in its Schedules 1–10. However, the Department does not believe there is any new recordkeeping burden for these schedules, because unions would already maintain this subsidiary information in the accounting systems used to electronically complete the existing schedules for assets and liabilities not associated with the subsidiary. *See* 68 FR at 58439 (no recurring burden for assets and liabilities in revised Form LM–2 where schedule and software unchanged). Accordingly, the Department concludes that a Form LM–2 filer keeping records necessary to report a subsidiary organization will spend 5.49 additional hours compiling information regarding receipts, 54.15 hours compiling information on general disbursements, and 10.07 hours compiling information to report on disbursements to officers and employees. *See* 73 FR at 57442 (specifically analyzing those recordkeeping tasks for the Form T–1). The total number of hours for recordkeeping tasks is reflected below in Table 1; *see also* 73 FR 57443.

The Form T–1 analysis was based in part on a randomly selected subset of the 2,292 Form LM–2 filers in 2006 that indicated an interest in at least one trust. That analysis has been adapted here for use in analyzing reporting on subsidiaries as opposed to trusts, and includes calculations estimating the recordkeeping burden for receipts (corresponding to Form T–1 Schedule 1; Form LM–2 Schedule 14), general disbursements (corresponding to Form T–1 Schedule 2; Form LM–2 Schedules 15–20), and disbursements to officers and employees (corresponding to Form T–1 Schedule 3; Form LM–2 Schedules 11–12). Based on that analysis, the Department has derived the information-compilation hours noted above (5.49 hours for receipts, 54.15 hours for general disbursements, and 10.07 hours for officer and employee disbursements) in a similar manner, as follows:

The Department estimates that, on average, consolidated Form LM–2 filers will expend 5.49 hours a year on recordkeeping to document the information necessary to complete the Form LM–2 receipts schedule 14. Based on the random sample of labor organizations with an interest in at least one trust outlined above, Form LM–2 filers on average itemize 11 receipts on Schedule 14 (other receipts). The remaining receipts are reported as aggregates in 12 separate categories on Statement B (cash receipts): dues, per capita tax, fees, sales of supplies, interest, dividends, rents, sales of investment and fixed assets, loans, repayment of loans, receipts held on behalf of affiliates for transmission to them, and receipts from members for disbursement on their behalf. The Department does not believe subsidiaries will have receipts from per capita taxes or that they will they hold money for members and affiliates. For the Form T–1, the Department stated that, on average, trusts will itemize 109.86 receipts each year as estimated for the Form T–1. Experience with the Form LM–2 indicates that a labor organization can input all the necessary information on an itemized receipt in 3 minutes. The total number of itemized receipts, 109.86, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 5.49 hours.[12]

For the Form LM–2 disbursement schedules (Schedules 15–20), the Department estimates that, on average, consolidated filers will expend 54.15 hours a year on recordkeeping. The average Form LM–2 has 1,083 itemized disbursements. Like receipts, the Department estimates it will take 3 minutes to input all the necessary information on an itemized disbursement. The total number of itemized disbursements, 1,083, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 54.15 hours.[13]

Regarding the officer and employee schedules (Schedules 11–12), the Department estimates consolidated Form LM–2 filers will expend 10.07 hours on recordkeeping to compile the information necessary to complete these schedules, as Form T–1 Schedule 3 is virtually identical to Form LM–2 Schedules 11–12. The Department based its estimate on the analysis used in the 2008 Form T–1 PRA analysis, as the rule required unions to file Form T–1 reports for subsidiaries, and the Department believes, as explained previously, that the filing burden for subsidiaries greatly resembles that of the burden for filing a Form T–1 for trusts. Specifically, similar to the Form T–1 analysis, a union will not have to increase recordkeeping for officers of subsidiaries, as they are already required to keep records on its officers and key employees (including those of the subsidiary) for the IRS Form 990, including name, address, current position, salary, fees, bonuses, severance payments, deferred compensation, allowances, and taxable and nontaxable fringe benefits. (See 73 FR 57440–42).

Additionally, the Department determined, consistent with the 2008 Form T–1 burden analysis and its Form LM–2 sample, that Form LM–2 filers have, on average, 21.57 employees. The Department assumes that subsidiaries will have a comparable number of employees, although in practice subsidiaries, such as strike funds and building corporations may have considerably fewer. Nevertheless, subsidiaries, as part of unions and thus functioning in certain purposes as employers, keep wage records for each of their employees. The filers will also have to begin keeping records on non-key employees. *Id.*

Finally, for the assets and liabilities schedules (Form LM–2 Schedules 1–10), reporting in these categories was not required for the Form T–1. As explained above, the Department does not believe there is any new recordkeeping burden for these schedules, as subsidiaries already maintain this information as accounts receivable, accounts payable, and investments.

b. Reporting Burden Hours for Data Input

As with the recordkeeping burden above, the Department concludes that the number of hours required for data input for subsidiary reporting on the Form LM–2 is substantially the same as the number of hours required for data input for the Form T–1, which was assessed in the 2008 Form T–1 rule. 73 FR at 57442. In its 2008 Form T–1 rule, the Department estimated that Form T–1 filers will spend 3.75 reporting hours on each schedule inputting the data. As stated in that analysis, experience with the Form LM–2 in previous rulemakings indicates that labor organizations will spend, for each type of reporting (i.e. receipts; general disbursements; officer and employee

[12] This number differs slightly from the 5.43 hours used in the Form T–1 analysis (73 FR 57442) due to a rounding error in that analysis.

[13] This number differs slightly from the 54.13 hours used in the Form T–1 analysis (73 FR 57442) due to a rounding error in that analysis.

disbursements), 15 minutes a year training new staff, 60 minutes preparing the download, 90 minutes preparing and testing the data file, and 60 minutes editing, validating and importing the data.

In this analysis, the Department has removed the 15 minutes of additional training each year from its estimate, because this extra training is already accounted for in the existing Form LM–2 burden and information relating to the subsidiary is entered on the Form in the same manner as any other asset. However, as in the Form T–1 analysis, the Department estimates that Form LM–2 filers will spend 3.5 hours inputting data for receipts (on Form LM–2, Schedule 14, which corresponds to Form T–1, Schedule 1); officer and employee disbursements (on Form LM–2, Schedules 11–12, which correspond to Form T–1, Schedule 3); the remaining disbursements (on Form LM–2, Schedules 15–20, which correspond to Form T–1, Schedule 2); as well as for the assets and liabilities schedules (on Form LM–2, Schedules 1–10, although the Form T–1 has no counterpart). Additionally, as in the Form T–1 analysis, the Department also estimates that the president and treasurer of the Form LM–2 filing union will each spend two extra hours reviewing the form to ensure the accuracy of the consolidated subsidiary information before signing. *See* 73 FR 57444. These figures are shown below in Table 2.

The Department also removed other reporting categories used in Table 3 of the Form T–1 burden analysis (73 FR 57443), because they did not relate the Form LM–2 requirements or are already included in the Form LM–2 reporting regime and accounted for separately. These categories include: Fill out trust/labor organization information; answer questions; fill in assets, liabilities, disbursements and receipts; additional information; and signature.

c. Total Hours Spent on Recordkeeping and Reporting

As discussed above, and as reflected in the following tables, the Department estimates that, in addition to the existing burden to complete the Form LM–2 as calculated in the 2003 Form LM–2 Final Rule, 68 FR at 58436–40, Form LM–2 filers will expend, on average, 69.71 hours per year on recordkeeping per subsidiary organization and 18.00 hours on reporting.

TABLE 1—RECORDKEEPING BURDEN IN HOURS PER SUBSIDIARY ORGANIZATION

Schedule	Schedule or item description	Total recordkeeping burden (in hours)
Schedules 1–10	Assets and Liabilities Schedules	0.00
Schedule 14	Individually itemized receipts	5.49
Schedules 15–20	Individually itemized disbursements	54.15
Schedule 11 and 12	Disbursements to Officers and Employees of subsidiary	10.07
Total Recordkeeping Burden Hours per Subsidiary Organization		69.71

TABLE 2—REPORTING BURDEN IN MINUTES PER SUBSIDIARY ORGANIZATION

Schedule	Schedule or item description	Prepare download	Preparation of test/data file	Edit/validate/import data file	Total reporting burden
Schedules 1–10	Assets and Liabilities Schedules	60	90	60	210
Schedule 14	Individually itemized receipts	60	90	60	210
Schedules 15–20	Individually itemized disbursements	60	90	60	210
Schedule 11 and 12	Disbursements to Officers and Employees of subsidiary.	60	90	60	210
	Management Review				240
Total Burden per Subsidiary Organization		240	360	240	1080
Total Burden Hours per Subsidiary Organization		4.00	6.00	4.00	18.00

3. Cost of Personnel To Report Subsidiary Organization Financial Information on the Form LM–2

As in the Form T–1 analysis (73 FR 57443–45), the Department assumes that, on average, the completion by a labor organization of a consolidated Form LM–2 will involve an accountant/auditor, bookkeeper/clerk, labor organization president and labor organization treasurer. Based on the 2008 Bureau of Labor Statistics (BLS) wage data from its Occupational Employment Statistics Survey, accountants earn $34.74 per hour and bookkeepers/clerks earn $15.88 per hour.[14] The Department also increased each of these figures by 43.0% to account for total compensation.[15] *See* Table 3 below.

As in the Form T–1 analysis, the Department estimates the average annual salaries of labor organization officers needed to complete tasks for compliance with this rule—the president and treasurer—from responses to salary inquiries based on a sample of 205 labor organizations that filed a Form LM–2 in 2006 and indicated an interest in at least one section 3(l) trust. Because the Department assumes significant commonality between those labor organizations that would have reported on trust interests under the Form T–1

[14] See Occupational Employment and Wages Survey. 2008, survey, Table 6, from the Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) Program; *http://www.bls.gov/news.release/pdf/ocwage.pdf*. The Form T–1 analysis utilized data from the 2007 survey, while this proposed rule has updated the data with the use of the 2008 survey.

[15] See Employer Costs for Employee Compensation Summary, from the BLS, at *http://www.bls.gov/news.release/ecec.nr0.htm*. The Department updated the total hourly compensation figures from the Form T–1 analysis (30.2% to 43.0%), in that it uses 2008 rather than 2007 numbers, and it increased the hourly wage rate by the percentage total of the average hourly compensation figure ($8.90 in 2008) over the average hourly wage ($20.49 in 2008).

rule and those labor organizations that will report on subsidiaries under Form LM–2, the Department has employed here the salary data for labor organization President and Treasurer utilized in the Form T–1. The Form T–1 study determined that in 2006 Form LM–2 labor organization presidents with section 3(l) trusts make, on average, $24.89 an hour and treasurers $31.58. The average annual salaries were determined by multiplying the average hourly wage by the number of hours in a year, based on a standard 40-hour work week (40 × 52 = 2,080 hours). The average hourly wage was then multiplied by the same 43.0% to reach $35.59 per hour and $45.16 per hour, for presidents and treasurers, respectively. *See* Table 3 below.

TABLE 3—COMPENSATION COST TABLE

Title	Total hourly wage	Total hourly compensation
Accountants/Auditors	$34.74	$49.68
Bookkeepers/Clerks	15.88	22.71
President	24.89	35.59
Treasurer	31.58	45.16

Once the labor costs were calculated, the Department applied those costs to each of the Form LM–2 tasks computed in the previous section. Each task was evaluated separately to determine which individual from a particular job category would be needed to complete the task. All tasks identified by the Department above as necessary for compliance with the requirements of this rule were analyzed to determine which personnel would conduct those tasks. As stated previously, the Department removed tasks associated with the Form T–1 burden analysis that do not correlate to a task needed to consolidate subsidiary information on the Form LM–2, or are otherwise accounted for in the pre-existing Form LM–2 reporting regime and its burden (*See* Form T–1 final rule, Table 5, 73 FR 57444). The following table presents this analysis.

TABLE 4—COST BY TASK FOR SUBSIDIARY ORGANIZATION CONSOLIDATION ON THE FORM LM–2

Burden type	Task	Individuals participating	Hourly cost	Hours to complete	Cost
Recordkeeping	Input Records	Bookkeeper	$22.71	69.71	$1,583.11
Reporting	Prepare Download	Bookkeeper	$22.71	4.00	90.84
Reporting	Preparation of Test/ Data File.	Accountant	$49.68	6.00	298.08
Reporting	Edit/Validate/Import Data File.	Accountant	$49.68	4.00	298.08
Reporting	Management Review	President and Treasurer.	$35.59 and $45.16	4.00 (2 hours each)	161.50
Total Recordkeeping and Reporting Burdens Hours and Costs				87.71	2,431.61

4. Calculation of Total Costs To Form LM–2 Labor Organizations With a Subsidiary Organization

Based on the analysis reflected in the table above, the average cost per labor organization to consolidate its subsidiary's financial information on its Form LM–2 is $2,431.61. As noted earlier, the Department has employed here many of the assumptions about recordkeeping and reporting burdens from the cost analysis in the Form T–1 Final Rule, because the two reporting regimes have many similarities. However, subsidiaries of smaller unions will not have as many officers, employees, receipts, or disbursements as the subsidiaries of larger unions. As a result, the Department views the burden estimate developed here as somewhat more generous than it will likely be in actuality.

Additionally, based upon experience, the Department estimates that 10% of filers will submit an audit rather than consolidate on its Form LM–2. For these filers, the Department estimates that the reporting and recordkeeping burden, as well as the total cost, will be virtually identical to filers who choose to consolidate, as the same information and level of detail is required for both options. However, the Department understands that the accountant who prepares a separate audit will not engage in the three separate reporting activities (prepare download, prepare data file, and edit import file). Rather, he or she will conduct an analysis of the records and create an audit report. Nevertheless, the Department believes that the reporting burden associated with preparing an audit report will be virtually identical to that of the reporting burden associated with consolidating such information on the Form LM–2. As a result, the Department estimates that the audit option will also cost Form LM–2 filers $2,431.61.

Based upon an estimate of 1,187 total subsidiaries for Form LM–2 filers, the Department estimates that the total cost for Form LM–2 subsidiary reporting is $2,886,321.07. These results are reflected in the table below.

TABLE 5—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM LM–2 SUBSIDIARY ORGANIZATION REPORTING

Number of subsidiaries	Reporting hours per subsidiary	Total reporting hours	Recordkeeping hours per subsidiary	Total recordkeeping hours	Total burden hours per subsidiary	Total burden hours	Average cost per subsidiary	Total cost
1,187	18.00	21,366	69.71	82,745.77	87.71	104,111.77	$2,431.61	$2,886,321.07

5. Request for Public Comment

Currently, the Department is soliciting comments concerning the information collection request ("ICR") for the information collection requirements included in this proposed regulation at section 403.2, Annual financial report, of title 29, Code of Federal Regulations, which, when implemented will revise the existing OMB control number 1215–0188. A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*. Please note that comments submitted in response to this notice will be made a matter of public record.

The Department hereby announces that it has submitted a copy of the proposed regulation to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are 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 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.,* by permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Affected Public: Private Sector: Not-for-profit institutions.

Number of Annual Responses: 33,684.

Frequency of Response: Annual for most forms.

Estimated Total Annual Burden Hours: 4,411,641.

Estimated Total Annual Burden Cost: $185,035,644.

Potential respondents are hereby duly notified that such persons are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. *See* 35 U.S.C. 3506(c)(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the Federal Register informing the public of OMB's decision with respect to the ICR submitted thereto under the PRA.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make initial analyses available for public comment. 5 U.S.C. 603, 604. If an agency determines that its rule will not have a significant economic impact on a substantial number of small entities, it must certify that conclusion to the Small Business Administration (SBA). 5 U.S.C. 605(b).

As in prior rulemakings, the Department's regulatory flexibility analysis utilizes the Small Business Administration's ("SBA") "small business" standard for "Labor Unions and Similar Labor Organizations." Specifically, the Department used the $5 million standard established in 2000, which was updated to $6.5 million in 2005 and in 2008 to $7 million, for purposes of its regulatory flexibility analyses. *See* 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard ($7 million) has been used in developing the regulatory flexibility analysis for this rule.

All numbers used in this analysis are based on 2006 data taken from the Office of Labor-Management Standards e.LORS database, which contains data from annual financial reports filed by labor organizations with the Department pursuant to the LMRDA, and BLS data.[16] Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

1. Statement of the Need for, and Objectives of, the Proposed Rule

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion is found earlier in this preamble.

The objective of this proposed rule is to reinstate subsidiary organization reporting on Form LM–2. Subsidiary reporting on the Form LM–2 was eliminated with revisions to the form in 2003 in anticipation of the implementation of the Form T–1. Until 2003, a union's annual Form LM–2 report would not be complete without inclusion of subsidiaries' financial information. This requirement was superseded by the introduction of the Form T–1. With the rescission of the Form T–1, reporting on subsidiary organizations is proposed to be reinstated within the Form LM–2 reporting requirements. Thus, the proposed rule requires that labor organizations include within their Form LM–2 filing financial information concerning their subsidiary organizations, defined as "any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization." *See* proposed Form LM–2 Instructions, Section X.

As noted earlier in the preamble, the return of subsidiary organizations to the

[16] In order to estimate the number of labor organizations that will report subsidiaries, the Department also analyzed Form LM–2 reports from 2004, which was the final year in which filers were required to identify whether they had a subsidiary organization.

Form LM–2 reporting requirements will improve the amount of financial disclosure of such entities, as compared to disclosure under the Form T–1. Under the proposal, and as the Form LM–2 long required, a union must disclose the financial information of its subsidiary to the same level of detail as other assets of the union, even if the union chose to file a separate Form LM–2 report for the subsidiary or to file an audit for the entity. See pre-2003 Form LM–2 Instructions, Section X. In contrast, the Form T–1, while requiring similar detail in reporting of receipts and disbursements, requires less detailed reporting of assets and liabilities. See Form T–1, Items 16–24, and Form LM–2, Schedules 1–10.

The Department proposes to provide to Form LM–2 filers two options regarding the reporting of their subsidiaries, rather than the three options provided in the pre-2003 Form LM–2 Instructions. The Department proposes that Form LM–2 filers can either consolidate their subsidiaries' financial information on their Form LM–2 report, or they can file, with their Form LM–2 report, a regular annual report of the financial condition and operations of each subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. Specific information concerning loans payable and payments to officers and employees, in the same detail required under the related schedules on Form LM–2, also would have to be reported.

The Department proposes to not reinstate a previous third option for filers: that of filing a separate Form LM–2 report that includes only the subsidiary's financial information. In the Department's experience, the filing of a separate Form LM–2 in addition to the union's primary report creates confusion for union members and others viewing the reports in that the form is designed for unions, not segregated funds and assets. Moreover, a union must file one Form LM–2 report per fiscal year, and the filing of multiple forms by a union for its subsidiaries creates confusion as to which one is the primary form. While consolidation contains some risk of confusion, the Department's experience is that combined reports are easier to follow than separate reports. Moreover, consolidation is entirely appropriate for subsidiaries that are wholly owned, wholly financed, and wholly controlled by the reporting labor union. This reporting method is a particularly appropriate and desirable option for some unions with subsidiaries that perform traditional union operations, such as strike funds and other special union funds. Thus, the Department proposes to preserve this option for Form LM–2 filers.

Additionally, to preserve consistency, the Department proposes to alter the Form LM–3 instructions regarding the reporting of subsidiary organizations by aligning them with the revised Form LM–2 instructions pertaining to the two options for reporting on subsidiaries. This proposal would establish uniformity with the subsidiary reporting requirements of the two forms.

2. Legal Basis for Rule

The legal authority for this final rule is section 208 of the LMRDA. 29 U.S.C. 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under title II of the Act, including rules prescribing reports concerning trusts in which a labor organization is interested, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438.

3. Number of Small Entities Covered Under the Proposal

As stated in the preamble and in the PRA analysis, 1,087 filers indicated that they had at least one subsidiary organization on their 2004 Form LM–2 reports, the final year in which filers were required to identify on Item 10 whether they had a subsidiary organization. The Department assumes that of those 1087 filers, 100 labor organizations have receipts valued above SBA's $7 million threshold used to differentiate between small and large entities. Therefore, the Department concludes that there are 987 small labor organizations with receipts below the $7 million threshold that may be affected by this rule. Further, in its experience, those smaller unions with under $7 million in annual receipts will each only have one subsidiary. *See* PRA analysis, *supra.*

4. Relevant Federal Requirements Duplicating, Overlapping or Conflicting With the Rule

To the extent that there are federal rules that duplicate, overlap, or conflict with this rule, this is the result of the requirements of the LMRDA and other Federal statutes, such as the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. Section 201(b) of the LMRDA requires reporting of all assets, liabilities, receipts, and disbursements of labor organizations, and this includes subsidiary organizations. 29 U.S.C. § 431(b). However, to limit burden and any potential duplication, the Department allows filers to attach an audit rather than consolidate information on their subsidiaries.

5. Differing Compliance or Reporting Requirements for Small Entities

Labor organizations that have total annual receipts of $250,000 or more must file the revised Form LM–2. Under the proposed rule, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form LM–2 under the LMRDA.

6. Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

Form LM–2 filers are directed to use an electronic reporting format. OLMS will provide compliance assistance for any questions or difficulties that may arise from using the Form LM–2 reporting software. A toll-free help desk is staffed during normal business hours and can be reached by telephone at 1–866–401–1109.

Additionally, the use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables most schedule information to be imported onto the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which assists reporting compliance and reduces the likelihood that a union will have to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

7. Steps Taken To Reduce Burden

The proposed rule substantially reduces the burden on labor organizations that file the Form LM–2, including many small labor organizations. By proposing to rescind the Form T–1, which was estimated to affect 2,292 Form LM–2 filers, the proposed rule will eliminate a projected average cost per filer of $4,851.20 in the first year and $2,609.29 in subsequent

year. Subsidiary organization reporting, in contrast, impacts fewer unions (only 1,087 unions are estimated to have such entities), and the cost to consolidate their financial information is only $2,431.61. The Department has further reduced the burden by permitting those unions who already have audit reports for such subsidiaries to attach them to their Form LM–2. *See* PRA analysis, *supra.*

8. Reporting, Recording and Other Compliance Requirements of the Rule

This analysis only considers labor organizations with annual receipts between $250,000 and $7 million. Labor organizations with less than $250,000 in annual receipts are not required to file the Form LM–2 and those with annual receipts greater than $7 million are outside of the coverage of the Regulatory Flexibility Act. The proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact will be the cost of obtaining and reporting required information.

As stated above, the Department estimates that there are 987 labor unions with under $7 million in total annual receipts, which are affected by this rule. Additionally, these unions will have a burden of only $2,431.61, which comes out to merely 0.97% of the total annual receipts of the smallest Form LM–2 filers ($250,000 in total annual receipts) and about 0.07% of the median of unions between $250,000 and $7 million in total annual receipts (i.e. $3,375,000 in total annual receipts). The Department has further reduced the burden by permitting those unions who already have audit reports for such subsidiaries to attach them to their Form LM–2. *See* PRA analysis, *supra.* Moreover, the Department does not believe that the burden will be as great on smaller unions as those with greater than $7 million in total annual receipts, as the smaller unions' subsidiaries will not be as complicated and as large, in areas such as total officers, employees, receipts and disbursements.

9. Conclusion

The Regulatory Flexibility Act does not define either "significant economic impact" or "substantial" as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, "what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact." A Guide for Government Agencies, supra, at 17. As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. *Id.*

As noted above, the Department estimates that there are 987 labor unions with under $7 million in total annual receipts that will be affected by this rule, and each of these has an estimated one subsidiary about which it will be required to report. As noted in the PRA analysis, *supra,* the Department estimated above that a labor organization's cost for filing a report for one subsidiary is $2,431.61. This cost represents less that one percent (0.97%) of the total annual receipts of the smallest Form LM–2 filers ($250,000 in total annual receipts). Further, this cost represents less than one-tenth of one percent (0.07%) of the median of unions between $250,000 and $7 million in total annual receipts (i.e. $3,375,000 in total annual receipts).

The Department concludes that this economic impact is not significant, as that term is employed for the purpose of this analysis. As to the number of labor organizations affected by this rule, the Department has determined, by examining e.LORS data, that there are 987 smaller unions (each with one subsidiary) affected by this rule. This total represents only 23.34% of the recent total of 4,228 Form LM–2s from labor organizations with receipts between $250,000 and $7,000,000 (which constitute just 17.6% of the 24,065 labor organizations that must file any of the annual financial reports required under the LMRDA (Forms LM–2, LM–3, or LM–4)). The Department concludes that the rule does not impact a substantial number of small entities. Therefore, under 5 U.S.C. 605, the Department concludes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Electronic Filing of Forms and Availability of Collected Data

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The Form LM–2 now in use can be downloaded from the OLMS Web site. OLMS also has implemented a system to require Form LM–2 filers and permit Form LM–3 and Form LM–4 filers to submit forms electronically with digital signatures. Labor organizations are currently required to pay a fee to obtain electronic signature capability for the two officers who sign the form. Digital signatures ensure the authenticity of the reports.

The OLMS Internet Disclosure site at *http://www.unionreports.gov* is available for public use. The site contains a copy of each labor organization's annual financial report for reporting years 2000 and thereafter, as well as an indexed computer database of the information in each report that is searchable through the Internet.

Information about this system can be obtained on the OLMS Web site at *http://www.olms.dol.gov.*

Appendix A: Specific Changes to the Form LM–2 Instructions

A. General Instructions

Section II. What Form To File

Current instructions read:

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM–2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) of these instructions. Receipts of a trust in which the labor organization is interested should not be included in the total annual receipts of the labor organization when determining which form to file unless the trust is wholly owned, wholly controlled, and wholly financed by the labor organization.

Labor organizations with total annual reports of less than $250,000 may file the simplified annual report Form LM–3, if not in trusteeship as defined in Section IX (Labor Organizations In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM–4, if not in trusteeship.

The Department proposes that the above language be revised to read:

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM–2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) or as described in Section X (Labor Organizations With Subsidiary Organizations). Receipts of a trust in which the labor organization is interested should not be included in the total annual receipts of the labor organization when determining which form to file, unless the 3(l) trusts is a subsidiary organization of the union.

Labor organizations with total annual receipts of less than $250,000 may file the simplified Form LM–3, if not in trusteeship as defined in Section IX (Labor Organization In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM–4, if not in trusteeship.

Section VIII. Funds To Be Reported

Current instructions read:

The labor organization must report financial information on Form LM–2 for all

funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury. The labor organization is required to report information about any trust in which it is interested on the Form T–1. *See* Section X (Trusts In Which A Labor Organization Is Interested).

The Department proposes that the above language be revised to read:

The labor organization must report financial information on Form LM–2 for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury. These special purpose funds include those of subsidiary organizations. *See* Section X (Labor Organizations With Subsidiary Organizations).

Special Instructions for Certain Organizations

Section X. Labor Organizations With Subsidiary Organizations

Current instructions read:

A trust in which a labor organization is interested is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as:

* * *a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The definition of a trust in which a labor organization is interested may include, but is not limited to, joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions created for the benefit of union members, and redevelopment or investment groups established by the unions for the benefit of its members. The determination whether a particular entity is a trust in which a labor organization is interested must be based on the facts in each case.

A labor organization is required to report in Form LM–2 information concerning each LMRDA Section 3(l) trust in accordance with the instructions in Item 10 of Form LM–2.

A labor organization must, in addition, file a separate Form T–1 report disclosing assets, liabilities, receipts, and disbursements of a trust in which the labor organization is interested if the labor organization, alone or in combination with other labor organizations, either (1) appoints or selects a majority of the members of the trust's governing board or (2) contributes to the trust greater than 50% of the trust's receipts during the one year reporting period. Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contribution.

No Form T–1 should be filed for any labor organization that already files a Form LM–2, LM–3, or LM–4, nor should a report be filed for any entity that is expressly exempted from reporting in the Act, such as organizations composed entirely of state or local government employees or state or local central bodies.

No Form T–1 need be filed for:

- A Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC funds are filed with a Federal or state agency
- A political organization under 26 U.S.C. 527, if timely, complete, and publicly available reports are filed with the Internal Revenue Service
- A federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA)
- A for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843
- An employee benefit plan required to file a Form 5500 for a plan year ending during the reporting period of the union.

For purposes of these instructions, only, a trust is "required to file a Form 5500" if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. sections 1021 and/or 1024.[17] However, if the plan administrator of the trust is eligible for an exemption from filing a Form 5500 or Form 5500–SF, then a Form T–1 must be filed for that section 3(l) trust regardless of whether a Form 5500 or Form 5500–SF is filed on its behalf. For a definition of plans "required to file a Form 5500" for purposes of filing the Form T–1, *see* 29 CFR 403.2(d)(3)(vi).

An abbreviated Form T–1 report may be filed where a qualifying independent audit also is submitted, in accordance with requirements specified in the Form T–1 instructions.

A Form T–1 report must be filed within 90 days after the end of the union's fiscal year. The Form T–1 covers the most recently concluded fiscal year of the trust.

See Instructions for Form T–1, Trust Annual Report.

Questions regarding these reporting requirements should be directed to the OLMS Division of Interpretations and Standards, which can be reached by e-mail at *OLMS–Public@dol.gov,* by phone at 202–693–0123, by fax at 202–693–1340, or at the following address: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210.

Examples of a trust in which a labor organization is interested may include, but are not limited to, the following entities:

Example A: The Building Corporation—A labor organization creates a corporation which owns the building where the union has its offices. The building corporation must be reported as a trust in which the labor organization is interested.

Example B: The Redevelopment Corporation—A labor organization creates an entity named the Redevelopment Corporation, or appoints one or more of the members of the governing board of the Corporation, which is established primarily to enable members of the labor organization to obtain low cost housing constructed with Federal Housing and Urban Development (HUD) grants. The Redevelopment Corporation must be reported as a trust in which it is interested. A labor organization that neither participated in the creation of the Corporation, nor appointed members of its governing board, but loaned money to the Corporation to use as matching money for HUD grants need not report the Corporation as a trust in which it is interested.

Example C: The Educational Institute—Five reporting labor organizations form the Educational Institute to provide educational services primarily for the benefit of their members. Similar services are also provided to the general public. Each labor organization contributes funds to start the Educational Institute, which will then offer various educational programs that will generate revenue. Each labor organization that participated in forming the Institute, or that appoints a member to its governing body, must report the Educational Institute as a trust in which it is interested.

Example D: Joint Funds—A reporting labor organization that forms a "joint fund" with a large national manufacturer to offer a variety of training and jobs skills programs for members of the labor organization, or appoints a member to the governing body of such a fund, must report the joint fund as a trust in which the labor organization has an interest.

Example E: Job Targeting Fund—A reporting labor organization creates an entity for the purpose of making targeted disbursements to increase employment opportunities for its members. The fund must be reported as a trust in which the labor organization is interested.

The Department proposes that the above language be revised to read:

The labor organization must disclose assets, liabilities, receipts, and disbursements of a subsidiary organization.

Within the meaning of these instructions, a subsidiary organization is defined as any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the

[17] The following sections of title 29 of the Code of Federal Regulations identify for purposes of these instructions, the types of ERISA plans that are not *required* to file a Form 5500: section 2520.104–20 (small unfunded, insured, or combination welfare plans), section 2520.104–22 (apprenticeship and training plans), section 2520.104–23 (unfunded or insured management and highly compensated employee pension plans), section 2520.104–24 (unfunded or insured management and highly compensated employee welfare plans), section 2520.104–25 (day care center plans), section 2520.104–26 (unfunded dues financed welfare plans maintained by employee organizations), section 2520.104–27 (unfunded dues financed pension plans maintained by employee organizations), section 2520.104–43 (certain small welfare plans participating in group insurance arrangements), and section 2520.104–44 (large unfunded, insured, or combination welfare plans; certain fully insured pension plans). *Labor organizations must file a Form T–1 for these types of plans.*

reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1)—Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM–2.

Method (2)—File, with the labor organization's Form LM–2, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

Financial information reported separately for subsidiary organizations under method (2) must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM–2. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 26 (Investments) and in Schedule 5 (Investments) of the labor organization's Form LM–2. When method (2) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Other Assets) of the labor organization's Form LM–2.

The same type of information required on Form LM–2 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM–2 on Schedule 11 and Schedule 12 in the detail required by the instructions. If method (2) is used, an attachment must be submitted containing the information required by the instructions for Schedules 2, 11, and 12.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) is used, only the disbursements of the subsidiary organization for its employees should be reported.

XI. Completing Form LM–2

Item 10 currently reads:

10. TRUSTS OR FUNDS—Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l) (*see* Section X of these Instructions). Provide in Item 69 (Additional Information) the full name, address, and purpose of each trust. Also include in Item 69 the fiscal year ending date for any trust for which a Form T–1 is filed if the trust's fiscal year is different from that of the labor organization. If no Form T–1 is required to be filed on the trust because (1) the trust had annual receipts of less than $250,000 during the trust's most recent fiscal year or (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is less than $10,000, the labor organization should also report the amount of the contribution in Item 69 and, if the contribution was made by the labor organization itself, in the appropriate disbursement item in Statement B. Additionally, if no Form T–1 is filed because financial information is already available as a result of the disclosure requirements of another Federal statute, list the name of any government agency, such as the Employee Benefits Security Administration (EBSA) of the Department of Labor, with which the trust files a publicly available report, and the relevant file number of the trust, or otherwise indicate where the relevant report may be viewed. *See* Instructions for Form T–1, Trust Annual Report, for guidance on reporting the assets, liabilities, receipts, disbursements, and other information about these entities.

The Department proposes that the above language be revised to read:

10. TRUSTS—Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l). Provide in Item 69 (Additional Information) the full name, address, and purpose of each trust. If a report has been filed for the trust or other fund under the Employee Retirement Income Security Act of 1974 (ERISA), report in Item 69 (Additional Information) the ERISA file number (Employer Identification Number—EIN) and plan number, if any.

The Department proposes that the Form LM–2 be revised to break current Item 11 on the form into two questions to be read as follows:

Item 11(a). During the reporting period did the labor organization have a political action committee fund (PAC)?

Item 11(b). During the reporting period did the labor organization have a subsidiary organization as defined in Section X of these Instructions?

Current instructions read:

If the labor organization answered "Yes" to Item 11, provide in Item 69 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM–2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

The Department proposes that the Instructions for Item 11 be revised to read:

If the labor organization answered "Yes" to Item 11(a), in reference to a political action committee, provide in Item 69 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM–2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

If the labor organization answered "Yes" to Item 11(b), in reference to a subsidiary organization, provide in Item 69 (Additional Information) the name, address, and purpose of each subsidiary organization. Indicate whether the information concerning its financial condition and operations is included in this Form LM–2 or in a separate report. *See* Section X of these instructions for information on reporting subsidiary organizations.

Schedule 2—Loans Receivable

The instructions regarding Column (A) currently read:

Column (A): Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;

The Department proposes that the Instructions for Schedule 2, Column (A) be revised to read:

Column (A): Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization, including any subsidiary organization, at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;

Schedule 5—Investments Other Than U.S. Treasury Securities

Schedule 5, Item 6 currently reads:

List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also, list each Trust which is an investment.

The Department proposes that Schedule 5, Item 6 be revised to read:

List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also, list each subsidiary for which separate reports are attached.

The Instructions for Schedule 5 currently read:

Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and any investments in a trust as defined in Section X (Trusts in Which a Labor Organization is Interested) of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

The Department proposes that the Instructions for Schedule 5 be revised to read:

Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and investments in any subsidiary organization not reported on a consolidated basis in accordance with method (1) explained in Section X of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

The Instructions for the Schedule 5, Note currently read:

Note: All trusts in which the labor organization is interested which are investments of the labor organization (such as real estate trusts, building corporations, etc.) must be reported in Schedule 5. On Lines 6(a) through (d) enter the name of each trust in Column (A) and the labor organization's share of its book value in Column (B).

The Department proposes that the Instructions for Schedule 5, Note be revised to read:

Note: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the subsidiary organization must be reported in Schedule 5 if it is an investment. Enter on Lines 6(a) through (d) the name of each subsidiary organization in Column (A) and its book value in Column (B).

The Instructions for Schedule 7—Other Assets, Note currently read:

Note: If the labor organization has an ownership interest of a non-investment nature in a trust in which it is interested (such as a training fund) the value of the labor organization's ownership interest in the entity as shown on the labor organization's books must be reported in Schedule 7 (Other Assets). Enter in Column (A) the name of any such entity. Enter in Column (B) the value as shown on the labor organization's books of its share of the net assets of any such entity.

The Department proposes that the Instructions for Schedule 7, Note be revised to read:

Note: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the value of the subsidiary organization as shown on your organization's books must be reported in Schedule 7 if it is of a non-investment nature. Enter in Column (A) the name of any such subsidiary organization. Enter in Column (B) the value as shown on your organization's books of the net assets of any such subsidiary organization.

The Instructions for Schedule 12—Disbursements to Employees, Columns (A), (B), and (C) currently read:

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received $10,000 or more in gross salaries, allowances, and other direct and indirect disbursements from the labor organization or from the labor organization and any affiliates and/or trusts of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates or trusts but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization.

Column (C): Enter the name of any affiliate or trust that paid any salaries, allowances, or expenses on behalf of a listed employee.

The Department proposes that the Instructions for Schedule 12, Columns (A), (B), and (C) be revised to read:

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received $10,000 or more in gross salaries, allowances, and other direct and indirect disbursements from the labor organization (including any subsidiary organizations) or form the labor organization and any affiliates. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization (including any subsidiary organizations).

Column (C): Enter the name of any affiliate that paid any salaries, allowances, or expenses on behalf of a listed employee. If a subsidiary of the labor organization paid any salaries, allowances, or expenses on behalf of a listed employee, see Section X of these Instructions for information about reporting these disbursements.

The Department seeks comments on its proposed changes to the Form LM–2 and instructions.

Appendix B: Specific Proposed Changes to the Form LM–3 and Instructions

The text of the Form LM–3 and Instructions pertaining to some sections will be changed to address the reporting of subsidiary organizations. With respect to the Form, the Department proposes to remove Item 3(c), which currently requires to identify if the report is exclusively filed for a subsidiary organization, as the Department proposes to remove this option, as described above. The proposed revised Form LM–3 Instructions include changes to sections VIII and X.

Section VIII currently reads:

VIII. Funds To Be Reported

Your labor organization's Form LM–3 must report financial information for all funds of your organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even it they are not part of your organization's general treasury. All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–3 if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organization(s)." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM–3 or a separate report may be filed for any subsidiary organization. *See* Section X of these instructions for information on reporting financial information for subsidiary organizations.

In combining the information concerning special funds and/or any subsidiary organizations, be sure to include the requested information and amounts for the "special funds" and subsidiary organizations as well as for your organization in all items.

The Department proposes that Section VIII read:

VIII. Funds To Be Reported

Your labor organization's Form LM–3 must report financial information for all funds of your organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even it they are not part of your organization's general treasury. All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–3 if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organization(s)." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM–3 or you may attach an audit to your Form LM–3 report as described in

Section X of these instructions for information on reporting financial information for subsidiary organizations.

In combining the information concerning special funds and/or any subsidiary organizations, be sure to include the requested information and amounts for the "special funds" and subsidiary organizations as well as for your organization in all items.

Current Section X reads:

X. Labor Organizations With Subsidiary Organizations

A subsidiary organization, within the meaning of these instructions, is any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

If your organization has no subsidiary organization as defined above, skip to Section Xl of these instructions.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1)—Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM–3.

Method (2)—Complete a separate Form LM–3 for the subsidiary organization and file it with the labor organization's Form LM–3. The LM–3 report for the subsidiary organization must be identified by selecting Item 3(c).

Method (3)—File, with the labor organization's Form LM–3, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. Financial information reported separately for subsidiary organizations under methods (2) and (3) above must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM–3. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) or (3) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Investments) of the labor organization's Form LM–3.

When method (2) or (3) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 30 (Other Assets) of the labor organization's Form LM–3.

The same type of information required on Form LM–3 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM–3 in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. In method (2) this information must be reported on the separate Form LM–3 of the subsidiary organization in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. If method (3) is used, an attachment must be submitted containing the information required by the instructions for Items 17, 18, and 24.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) or (3) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) or (3) is used, only the disbursements of the subsidiary organization for its employees should be reported.

The Department proposes that Section X be revised to read:

X. Labor Organizations With Subsidiary Organizations

A subsidiary organization, within the meaning of these instructions, is any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

If your organization has no subsidiary organization as defined above, skip to Section Xl of these instructions.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1)—Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM–3.

Method (2)—File, with the labor organization's Form LM–3, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. Financial information reported separately for subsidiary organizations under this method must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM–3. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Investments) of the labor organization's Form LM–3.

When method (2) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 30 (Other Assets) of the labor organization's Form LM–3.

The same type of information required on Form LM–3 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM–3 in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. If method (2) is used, an attachment must be submitted containing the information required by the instructions for Items 17, 18, and 24.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the

subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) is used, only the disbursements of the subsidiary organization for its employees should be reported.

List of Subjects in 29 CFR Part 403

Labor unions, Trusts, Reporting and recordkeeping requirements.

Text of Proposed Rule

Accordingly, the Department proposes to amend part 403 of 29 CFR Chapter IV as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 201, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 4–2007, May 2, 2007, 72 FR 26159.

§ 403.2 [Amended]

2. In § 403.2, remove paragraph (d).

§ 403.5 [Amended]

3. In § 403.5, remove paragraph (d).

§ 403.8 [Amended]

4. In § 403.8, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

Signed in Washington, DC, this 25th day of January 2010.

Andrew Auerbach,

Deputy Director, Office of Labor-Management Standards.

[FR Doc. 2010–1912 Filed 2–1–10; 8:45 am]

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