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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[FNS–2007–0022]

RIN 0584–AD15

Child and Adult Care Food Program: At-Risk Afterschool Meals in Eligible States

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child and Adult Care Food Program (CACFP) regulations to implement provisions from the Agricultural Risk Protection Act of 2000, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, the Consolidated Appropriations Act of 2008 the Omnibus Appropriations Act of 2009 and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010, that authorize reimbursement to eligible States for a meal (normally a supper) served by at-risk afterschool care programs in eligible States.

DATES: *Effective Date:* This final rule is effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

In the Department's at-risk afterschool care program, afterschool meals are served to children participating in eligible afterschool care programs under CACFP in selected States, as authorized by law. At-risk afterschool meals and snacks are available to children through age 18 (or individuals of any age if disabled) who are participating in an afterschool care program under the CACFP. At-risk care programs under the CACFP are those operated at sites located in an area in which at least 50 percent of local school children are certified eligible for free or reduced price meals.

Although reimbursement for at-risk afterschool snacks is available in all States, at-risk afterschool meals are only available in States authorized by section 17(r)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (r)(5))—currently, Connecticut, Delaware, Illinois, Maryland, Michigan, Missouri, Nevada, New York, Oregon, Pennsylvania, Vermont, West Virginia, Wisconsin, and the District of Columbia. To be eligible, afterschool care programs must be organized primarily to provide care to at-risk school children after school, or on weekends, holidays, or school vacations and must provide educational or enrichment activities. Programs may participate only if the basic purpose is to provide afterschool care and if the program is open to all eligible children. FNS supports physical activity as an important component in encouraging healthy lifestyle choices to children and in addressing childhood obesity. However, sports and athletic teams that limit membership for reasons other than space, security, or licensing requirements may not be approved for participation. At-risk meals and snacks must be served free of charge to the participants and are reimbursed at the applicable free rates for meals and snacks.

On March 27, 2008 (73 FR 16213), FNS published a proposed rule to add new definitions of "at-risk afterschool meal" and "at-risk afterschool snack" to the CACFP regulations. The rule also proposed to add "meals" to the at-risk afterschool component and revise the requirements for Program participation to reflect the provision of at-risk afterschool snack and at-risk afterschool meal provision.

II. Discussion of Public Comments

The comment period began on March 27, 2008, and ended May 27, 2008. Five comments were received on the proposed rule, four of which generally supported the proposed rule. One commenter represented a State agency, three represented advocacy groups and one was an individual citizen.

Three commenters objected to the clause "with State agency approval" that was added in the proposed rule to 7 CFR 226.17a(m)(1) and (2), which would give State agencies the discretion to approve snack and meal service during weekends and vacations during the regular school year. The commenters were concerned that State agencies should not have the authority to deny meal service on weekends or school holidays and therefore requested that FNS remove the clause "with State agency approval" from any other corresponding reference.

Centers and sponsors of centers that wish to participate in CACFP must demonstrate, to the satisfaction of the State agency through Program applications, agreements and regular reviews by the State agency, that an institution has the financial viability, administrative capability and Program accountability to properly operate CACFP. If the State agency determines that an institution is unable to properly manage weekend or vacation meals, the State agency may deny the request to serve those meals. FNS deems this process a necessary step in ensuring the ongoing integrity of the CACFP. Therefore, this final rule retains the provision as set forth in the proposed rule.

Three commenters asked that USDA clearly state in the final regulations that afterschool meals can be served at any point during the afterschool program. They stated that the second CACFP integrity rule gave State agencies too much authority to determine appropriate serving times for CACFP, and that sponsors of at-risk afterschool care centers should be able to set their own meal service timeframes.

Meal service requirements, which were a component of an interim rule, "Child and Adult Care Food Program; Improving Management and Program Integrity," published September 1, 2004 (69 FR 53501), provided State agencies with broad authority to impose limits on the duration of meal services and the time between meal services. The proposed rule did not alter State agencies' authority in the existing provisions of the interim rule,

authorized at 7 CFR 226.20(k). They will therefore remain unchanged.

III. Procedural Matters

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Regulatory Impact Analysis

The Regulatory Impact Analysis completed for this final rule is available from: Melissa Rothstein, Chief Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590. The analysis is summarized below.

Need for Action

The Child and Adult Care Food Program's at-risk afterschool meals component, authorized by the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224) (42 U.S.C. 1766(r)), has been governed by FNS guidelines since its creation. This rule will align CACFP regulations to statutory provisions that provide an additional meal for at-risk children through age 18 who are participating in afterschool programs in eligible States.

Benefits

Among the motivating factors to establish the at-risk afterschool snack program was a desire to support educational and enriching afterschool care programs for children up to 18 years of age in at-risk neighborhoods in order to reduce juvenile crime and educational underachievement. FNS cannot quantify the impact of the at-risk afterschool meals program on juvenile crime or educational achievement. However, participation in these programs is growing and thus these outcomes are to some extent fostered. In the first four years of the program, growth in afterschool meals served in the seven States eligible at that time ranged from 2 to 8 percent higher than afterschool meals served by non-participating States. However, data reported since 2004 for these seven States suggests that this disparity in growth has ended, at least temporarily, and it is too soon to credit the program with a sustained long-term impact on afterschool program attendance.

Although some at-risk afterschool meals replaced meals served by outside-school-hours care centers, there is also considerable evidence that the total number of children reached by CACFP has increased, to date, as a result of this program. The percentage of at-risk afterschool meals that would have been served in traditional child care centers in the absence of the at-risk care center program is, of course, uncertain. However, it may be as high at 65 percent. That figure suggests that nearly 35 percent of total at-risk afterschool participants, or roughly 49,000 children on an average school day during fiscal year (FY) 2008, would not have received a Federally-reimbursable supper if not for the at-risk afterschool care center program. The program benefits those 49,000 children by providing them with a meal that conforms to USDA meal patterns. In addition, all children served by the at-risk afterschool care center program, approximately 142,000 per day during FY 2008, benefit from the program's structured educational or enrichment elements.

Costs

Costs associated with the at-risk afterschool program include both the reimbursement rate that the Federal government pays for each meal, as well as the commodity assistance given to the program. Reimbursement and commodity assistance estimates alone however do not give a full sense of the economic impact of the program.

While many of the CACFP free meal reimbursements have simply shifted from non at-risk afterschool care centers to at-risk afterschool care centers with no increase to program cost, meals previously provided by child care centers at full or reduced price are now provided free in at-risk centers. This shift increases reimbursement costs while serving no additional children. The economic impact of this shift appears to be modest and is estimated to increase reimbursement costs by approximately $6.7 million during FY 2002–2008. For FY 2009–2013 the projected costs associated with this shift are $8.0 million.

While a large percentage of meals served in at-risk afterschool care centers simply replace meals that would have been served in non at-risk centers, it is estimated that 35% of the suppers served in at-risk afterschool care centers are served to children who would not have received CACFP meals in the absence of the at-risk program. The net increase in meals served in at-risk centers represents a cost of an estimated $80.5 million during FY 2002–2008 and a cost of approximately $103.3 million during FY 2009–2013.

The total economic impact of both the shift in meals from reduced price and paid to free and the net increase in meals for FY 2009–2013 is estimated to be $111.3 million. This estimate, however, is sensitive to the assumption about the rate of growth that would have prevailed in the at-risk States in the absence of the at-risk afterschool care program. Because this rate is unknown, the cost estimate is subject to uncertainty.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Mr. Kevin Concannon, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. At-risk afterschool care centers in the eligible States choose whether they wish to participate in this additional meal service. Most of the institutions that will choose to add a meal service are already providing snacks under the at-risk component of the CACFP. The additional meal service will not have a significant paperwork or reporting burden because it is incorporated under the existing agreement and claim for reimbursement.

Unfunded Mandates Reform Act

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

Executive Order 12372

CACFP is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the

final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this Program is included from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since CACFP is a State administered, Federally funded program, FNS staff at headquarters and in regional offices have ongoing formal and informal discussions with State and local officials regarding Program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In CACFP, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures and 7 CFR 226.22 and 7 CFR parts 3016 and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and provisions revealed that the rule's intent does not affect the participation of protected individuals in CACFP.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The recordkeeping and reporting burden contained in this rule is approved under OMB No. 0584–0055. This final rule does not contain any new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

■ 2. In § 226.2:

■ a. Add new definitions of "At-risk afterschool meal" and "At-risk afterschool snack" in alphabetical order; and

■ b. Amend the last sentence of the introductory text of the definition of "For-profit center" by adding the words "and/or meal" after the words "at-risk afterschool snack".

The additions read as follows:

§ 226.2 Definitions.

* * * * *

At-risk afterschool meal means a meal that meets the requirements described in § 226.20(b)(6) and/or (c)(1), (c)(2), or (c)(3), that is reimbursed at the appropriate free rate and is served by an *At-risk afterschool care center* as defined in this section, which is located in a State designated by law or selected by the Secretary as directed by law.

At-risk afterschool snack means a snack that meets the requirements described in § 226.20(b)(6) and/or (c)(4) that is reimbursed at the free rate for snacks and is served by an *At-risk afterschool care center* as defined in this section.

* * * * *

■ 3. In § 226.4(d):

■ a. Insert "Richard B. Russell" before "National School Lunch Program" where it appears in the first sentence; and

■ b. Add a sentence at the end of the paragraph.

The addition reads as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(d) * * * For at-risk afterschool meals and at-risk afterschool snacks served to children, funds will be made available to each eligible State agency in an amount equal to the total calculated by multiplying the number of at-risk afterschool meals and the number of at-risk afterschool snacks served in the Program within the State by the national average payment rate for free meals and free snacks, respectively, under section 11 of the Richard B. Russell National School Lunch Act.

* * * * *

§ 226.9 [Amended]

■ 4. In § 226.9, amend paragraph (b)(2) by removing the words "at-risk afterschool snack component" and adding in their place the words "at-risk afterschool care component".

■ 5. In § 226.10, revise the fourth sentence of the introductory text of paragraph (c) to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. * * *

* * * * *

■ 6. In § 226.11:

■ a. Revise the second sentence of paragraph (b)(3);

■ b. Revise paragraph (c)(2); and

■ c. Revise the second sentence of paragraph (c)(4).

The revisions read as follows:

§ 226.11 Program payments for centers.

* * * * *

(b) * * *

(3) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. * * *

(c) * * *

(2) *At-risk afterschool care institutions.* Except as provided in paragraph (c)(4) of this section, State agencies must base reimbursement to each at-risk afterschool care center on the number of at-risk afterschool snacks and/or at-risk afterschool meals that are served to children.

* * * * *

(4) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. * * *

* * * * *

■ 7. In § 226.17, revise the third sentence of paragraph (b)(4) to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(4) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be included in this percentage. * * *

* * * * *

■ 8. In § 226.17a:

■ a. Revise the heading of paragraph (a) and revise paragraph (a)(1) introductory text;

■ b. Add a new paragraph (a)(1)(v);

■ c. Revise paragraph (a)(2);

■ d. Revise paragraphs (c), (j), (k), (l), (m), and (n);

■ e. Revise paragraphs (o)(2), (o)(3), and (o)(4); and

■ f. Revise paragraph (p).

The addition and revisions read as follows:

§ 226.17a At-risk afterschool care center provisions.

(a) *Organizations eligible to receive reimbursement for at-risk afterschool snacks and at-risk afterschool meals.* (1) *Eligible organizations.* To receive reimbursement for at-risk afterschool snacks, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. To receive reimbursement for at-risk afterschool meals, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

* * * * *

(v) Organizations eligible to be reimbursed for at-risk afterschool meals must be located in one of the eligible States designated by law or selected by the Secretary as directed by law.

(2) *Limitations.* (i) To be reimbursed for at-risk afterschool snacks and/or at-risk afterschool meals, all organizations must:

(A) Serve the at-risk afterschool snacks and/or at-risk afterschool meals to children who are participating in an approved afterschool care program; and

(B) Not exceed the authorized capacity of the at-risk afterschool care center.

(ii) In any calendar month, a for-profit center must be eligible to participate in the Program as described in the definition of For-profit center in § 226.2. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility.

* * * * *

(c) *Eligibility requirements for children.* At-risk afterschool snacks and/or at-risk afterschool meals are reimbursable only if served to children who are participating in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of *Persons with disabilities* in § 226.2.

* * * * *

(j) *Cost of at-risk afterschool snacks and meals.* All at-risk afterschool snacks and at-risk afterschool meals served under this section must be provided at no charge to participating children.

(k) *Limit on daily reimbursements.* Only one at-risk afterschool snack and, in eligible States, one at-risk afterschool meal per child per day may be claimed for reimbursement. An at-risk afterschool care center that provides care to a child under another component of the Program during the same day may not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the at-risk afterschool snack and the at-risk afterschool meal. All meals and snacks must be claimed in accordance with the requirements for the applicable component of the Program.

(l) *Meal pattern requirements for at-risk afterschool snacks and at-risk afterschool meals.* At-risk afterschool snacks must meet the meal pattern requirements for snacks in § 226.20(b)(6) and/or (c)(4); at-risk afterschool meals must meet the meal pattern requirements for meals in § 226.20(b)(6) and/or (c)(1), (c)(2), or (c)(3).

(m) *Time periods for snack and meal services*—(1) *At-risk afterschool snacks.* When school is in session, the snack must be served after the child's school day. With State agency approval, the snack may be served at any time on weekends and vacations during the regular school year. Afterschool snacks may not be claimed during summer vacation, unless an at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(2) *At-risk afterschool meals.* When school is in session, the meal must be served after the child's school day. With State agency approval, any one meal may be served (breakfast, lunch, or supper) per day on weekends and vacations during the regular school year. Afterschool meals may not be claimed during summer vacation, unless an at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(n) *Reimbursement rates.* At-risk afterschool snacks are reimbursed at the free rate for snacks. At-risk afterschool meals are reimbursed at the respective free rates for breakfast, lunch, or supper.

(o) * * *

(2) The number of at-risk afterschool snacks prepared or delivered for each snack service and/or, in eligible States, the number of at-risk afterschool meals prepared or delivered for each meal service;

(3) The number of at-risk afterschool snacks served to participating children for each snack service and/or, in eligible States, the number of at-risk afterschool meals served to participating children for each meal service; and

(4) Menus for each at-risk afterschool snack service and each at-risk afterschool meal service.

(p) *Reporting requirements.* In addition to other reporting requirements under this part, at-risk afterschool care centers must report the total number of at-risk afterschool snacks and/or (in eligible States) the total number of at-risk afterschool meals served to eligible children based on daily attendance rosters or sign-in sheets.

* * * * *

Dated: March 19, 2010.

Kevin Concannon,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 2010–7054 Filed 3–31–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0928; Airspace Docket No. 09–ASW–28]

Amendment of Class E Airspace; Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective Date 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On January 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Killeen, TX, reconfiguring controlled airspace at Skylark Field Airport (75 FR 3877) Docket No. FAA–2009–0928. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Killeen, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Skylark Field Airport, and changing the airport's name from Killeen Municipal Airport. Adjustments to the geographic coordinates and reclassification of the Iresh Nondirectional Radio Beacon (NDB) to the Iresh Locator Outer Marker (LOM) also will be made in accordance with the FAA's National Aeronautical Charting Office. With the exception of these changes, this action is the same as that published in the NPRM. This action is necessary for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW TX E5 Killeen, TX [Amended]

Robert Gray Army Airfield (AAF), TX
(Lat. 31°04′02″ N., long. 97°49′44″ W.)
Hood Army Airfield (AAF), TX
(Lat. 31°08′19″ N., long. 97°42′52″ W.)
Gray VOR/DME
(Lat. 31°01′58″ N., long. 97°48′50″ W.)
Skylark Field Airport, TX
(Lat. 31°05′09″ N., long. 97°41′11″ W.)
Iresh LOM
(Lat. 31°01′27″ N., long. 97°42′29″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Robert Gray AAF and within a 6.3-mile radius of Hood AAF and within 1.8 miles each side of the 037° radial of the Gray VOR/DME extending from the 7.6-mile radius to 14.6 miles northeast of the airfield, and within 1.8 miles each side of the 217° radial of the Gray VOR/DME extending from the 7.6-mile radius to 14.6 miles southwest of the airfield, and within 1.7 miles each side of the 064° radial of the Gray VOR/DME extending from the 7.6-mile radius to 13.9 miles northeast of the airfield, and within 1.7 miles each side of the 244° radial of the Gray VOR/DME extending from the 7.6-mile radius to 13.9 miles southwest of the airfield, and within 2 miles each side of the 150° bearing from Robert Gray AAF extending from the 7.6-mile radius to 11.6 miles southeast of the airfield, and within 2 miles each side of the 339° bearing from Robert Gray AAF extending from the 7.6-mile radius to 10.3 miles north of the airfield, and within a 6.5-mile radius of Skylark Field Airport and within 4 miles each side of the 197° bearing from the Skylark Field Airport extending from the 6.5-mile radius to 9.6 miles south of the airport and within 2.1 miles each side of the 197° bearing from the Iresh LOM extending from the 6.5-mile radius to 10.1 miles south of the airport.

Issued in Fort Worth, Texas, on March 16, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6796 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0925; Airspace Docket No. 09–ASW–25]

Amendment of Class E Airspace; Lampasas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective Date 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On January 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Lampasas, TX, reconfiguring controlled airspace at Lampasas Airport (75 FR 3878) Docket No. FAA–2009–0925. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW TX E5 Lampasas, TX [Amended]

Lampasas Airport, TX

(Lat. 31°06′22″ N., long. 98°11′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lampasas Airport, and within 4 miles each side of the 171° bearing from the airport extending from the 6.4-mile radius to 11.9 miles south of the airport.

Issued in Fort Worth, Texas, on March 16, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6805 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1150; Airspace Docket No. 09–AGL–34]

Establishment of Class E Airspace; Luverne, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Luverne, MN to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Quentin Aanenson Field Airport, Luverne, MN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On January 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Luverne, MN, creating controlled airspace at Quentin Aanenson Field Airport (75 FR 3879) Docket No. FAA–2009–1150. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Quentin Aanenson Field Airport, Luverne, MN. This action also amends the geographic coordinates of the airport to coincide with the FAAs National Aerospace Charting Office. With the exception of this change, the action is the same as that described in the NPRM. This action is necessary for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MN E5 Luverne, MN [New]

Quentin Aanenson Field Airport, MN
(Lat. 43°37′01″ N., long. 96°13′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Quentin Aanenson Field Airport.

Issued in Fort Worth, Texas, on March 16, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6808 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0249; Airspace Docket No. 10–ASO–22]

Establishment of Class E Airspace; Panama City, Tyndall AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Panama City, FL, to accommodate Standard Instrument Approach Procedures (SIAPs) at Tyndall AFB. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. Comments for inclusion in the Rules Docket must be received on or before May 17, 2010. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0249; Airspace Docket No. 10–ASO–22, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701

Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0249; Airspace Docket No. 10–ASO–22." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Panama City, FL, to provide controlled airspace extending upward from 700 feet above the surface of the earth to support the SIAPs developed for Tyndall AFB.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Panama City, FL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Panama City, Tyndall AFB, FL [New]

Tyndall AFB

(Lat. 30°04′12″ N., long. 85°34′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tyndall AFB.

Issued in College Park, Georgia, on March 18, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6827 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0802; Airspace Docket No. 09–AGL–22]

Establishment of Class E Airspace; Kindred, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Kindred, ND to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Hamry Field Airport, Kindred, ND. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective Date 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On January 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Kindred, ND, creating controlled airspace at Hamry Field Airport (75 FR 3880) Docket No. FAA–2009–0802. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Hamry Field Airport, Kindred, ND. This action is necessary for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL ND E5 Kindred, ND [New]

Hamry Field Airport, ND
(Lat. 46°38′55″ N., long. 96°59′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Hamry Field Airport.

Issued in Fort Worth, Texas, on March 16, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6806 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0053; Airspace Docket No. 10–ASO–12]

Establishment of Class E Airspace; Quitman, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Quitman, GA, to accommodate Standard Instrument Approach Procedures (SIAPs) at Quitman Brooks County Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. Comments for inclusion in the Rules Docket must be received on or before May 17, 2010. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation,

Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0053; Airspace Docket No. 10–ASO–12, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0053; Airspace Docket No. 10–ASO–12." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Quitman, GA, to provide controlled airspace extending upward from 700 feet above the surface of the earth to support the SIAPs that have been developed for Quitman Brooks County Airport.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Quitman, GA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Quitman, GA [New]

Quitman Brooks County Airport, GA
(Lat. 30°48′19″ N., long. 83°35′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Quitman Brooks County Airport.

Issued in College Park, Georgia, on March 18, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6829 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0069; Airspace Docket No. 10–ASO–15]

Establishment of Class E Airspace; Mount Pleasant, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Mount Pleasant, SC, to accommodate Standard Instrument Approach Procedures (SIAPs) at Mt Pleasant Regional Airport-Faison Field. This action enhances the safety and airspace management of Instrument Flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. Comments for inclusion in the Rules Docket must be received on or before May 17, 2010. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0069; Airspace Docket No. 10–ASO–15, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0069; Airspace Docket No. 10–ASO–15." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Mount Pleasant, SC, to provide controlled airspace extending upward from 700 feet above the surface of the earth to support the SIAPs that have been developed for Mt Pleasant Regional Airport-Faison Field.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Mount Pleasant, SC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO SC E5 Mount Pleasant, SC [New]

Mt Pleasant Regional Airport-Faison Field, SC

(Lat. 32°53′52″ N., long. 79°46′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Mt Pleasant Regional Airport-Faison Field.

Issued in College Park, Georgia, on March 18, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6831 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0878; Airspace Docket No. 09–ASW–7]

RIN 2120–AA66

Establishment of Low Altitude Area Navigation Route (T–284); Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a low altitude area navigation (RNAV) route, designated T–284, in the Houston, TX, terminal area, to expedite the handling of Instrument Flight Rules (IFR) overflight aircraft transitioning busy terminal airspace. The FAA is taking this action to enhance the safe and efficient use of the navigable airspace in the Houston, TX, terminal area.

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish low altitude area navigation route T–284 (74 FR 58571). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The following editorial changes are corrected in this final rule. The airway identifier presented in the regulatory text of the NPRM was incorrectly listed as T–254 instead of T–284. Additionally, the points WEMAR and DROPP identified in the route description were incorrectly listed as WPs (waypoints) instead of fixes. With the exception of the editorial changes noted above, this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing area navigation route T–284 between the WEMAR, TX, navigation fix and the Scholes, TX, VORTAC. The new route will enhance the flow of air traffic in the Houston, TX, terminal area.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV routes listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a low altitude RNAV route (T-route) in Houston, TX.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.T, Airspace Designations and Reporting Points, signed August 27, 2009 and effective September 15, 2009, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–284 WEMAR, TX to Scholes, TX [New]

WEMAR, TX—Fix
(Lat. 29°39′37″ N., long. 97°00′37″ W.)
DROPP, TX—Fix
(Lat. 29°13′38″ N., long. 95°32′04″ W.)
Scholes, TX (VUH)—VORTAC
(Lat. 29°16′10″ N., long. 94°52′04″ W.)

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

Kelly Neubecker,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–7245 Filed 3–31–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM96–1–030 and RM96–1–036; Order No. 587–U]

Standards for Business Practices for Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations that establish standards for interstate natural gas pipeline business practices and electronic communications to incorporate by reference into its regulations the most recent version of the standards, Version 1.9, adopted by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines, with certain enumerated exceptions. This rule upgrades the Commission's current business practice and communication standards to include standards governing Index-Based Capacity Release and Flexible Delivery and Receipt Points and to reflect the Commission's findings in Order Nos. 698, 712, 717, and 682. This rule will increase the efficiency of the pipeline grid and make pipelines' electronic communications more secure.

DATES: *Effective Date:* This rule will become effective May 3, 2010. Natural gas pipelines are required to file tariff sheets to reflect the changed standards on September 1, 2010, to take effect on November 1, 2010. Implementation of these standards is required on and after November 1, 2010. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of May 3, 2010.

FOR FURTHER INFORMATION CONTACT:

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Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Final Rule

Issued March 24, 2010.

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its regulations (which establishes standards for natural gas pipeline business practices and electronic communications) [1] to incorporate by reference the most recent version (Version 1.9) of the standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). This rule upgrades the Commission's current business practice and communication standards to include standards governing Index-Based Capacity Release and Flexible Delivery and Receipt Points and to reflect the Commission's findings in Order Nos. 698, 712, 717, and 682.[2]

I. Background

2. Since 1996, in the Order No. 587 series,[3] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by NAESB (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. A cold snap in January 2004 in New England highlighted the need for better coordination and communication between the gas and electric industries as coincident peaks occurred in both industries making the acquisition of gas and transportation by power plant operators more difficult. In response to this need, in early 2004, NAESB established a Gas-Electric Coordination Task Force to examine issues related to the interrelationship of the gas and electric industries and identify potential areas for improved coordination through standardization. NAESB developed a number of standards to enhance the coordination of scheduling and other business practices between the gas and electric industries.

4. On June 27, 2005, NAESB filed these standards with the Commission and requested clarification regarding a number of additional proposals that it was considering, including capacity release indexed pricing, the use of flexible receipt and delivery points upstream of a constraint, and changes to the intra-day nomination cycle. The 2005 NAESB report highlighted several issues relating to Commission policy that were inhibiting the development of additional standards and requested Commission guidance and clarification on these issues.

5. In Order No. 698, the Commission incorporated by reference certain NAESB business practices standards for interstate natural gas pipelines designed to improve coordination and communication between the gas and electric industries. The order also provided clarification and guidance on three issues on which NAESB had been unable to reach a consensus: (1) Uses of gas indices for pricing capacity release transactions; (2) flexibility in the use of receipt and delivery points; and (3) changes to the intraday nomination schedule to increase the number of scheduling opportunities for firm shippers.[4]

6. On September 3, 2008, NAESB submitted a report to the Commission on these three issues. NAESB reports that its membership conducted thirteen subcommittee meetings, many of which were multi-day meetings, held between June 2007 and July 2008. While the standards discussed related only to gas issues, NAESB states that all interested parties, including the Wholesale Electric Quadrant membership, were invited to participate and share their perspectives. Two hundred people, including many from the electric industry, participated in these meetings.

7. NAESB's September 2008 report also states that the WGQ has adopted business practice standards for (1) increasing the flexibility of gas receipt and delivery points and (2) index-based pricing for capacity releases. In addition, despite holding 12 meetings with respect to modifying the intra-day nomination schedule, NAESB reports that none of the proposed standards for revised intra-day nominations achieved a sufficient consensus for adoption.

8. On July 16, 2009, after a review of the new and revised standards referenced in NAESB's September 2008 Report, the Commission issued a notice of proposed rulemaking that proposed to amend the Commission's regulations at 18 CFR 284.12 to incorporate by reference the consensus standards adopted by NAESB's WGQ that (1) permit the use of indices to price capacity release transactions and (2) afford greater flexibility on the receipt and delivery points for redirects of scheduled gas quantities.[5] The Commission also noted that the industry was unable to reach consensus on increasing opportunities for intra-day nominations. Seven entities filed comments in response to the July 2009 NOPR.[6]

9. On September 30, 2009, NAESB filed a report informing the Commission that it had adopted and ratified Version 1.9 of its business practice standards applicable to natural gas pipelines.[7] The Version 1.9 standards are the result of a continuing effort by NAESB's WGQ and the gas industry to add additional specificity and functionality to gas standards. For example, the Version 1.9 Business Practice Standards now include communication standards and protocols concerning the use of index-based pricing for capacity releases, which the Commission proposed to adopt in the July 2009 NOPR, and new standards adopted in response to Order Nos. 698, 712, 717, and 682. In addition, these new and modified standards now support the ability of pipelines to redirect gas around constraints, provide additional gas quality and transactional reporting, and add new information posting requirements for Web sites and browsers.

10. On November 19, 2009, the Commission issued a notice of proposed rulemaking that proposed to amend the Commission's regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 1.9) of consensus business practice standards adopted by NAESB's WGQ applicable to natural gas pipelines.[8] Three entities filed

[1] 18 CFR 284.12.

[2] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 698, FERC Stats. & Regs. ¶ 31,251 (2007), *order on clarification and reh'g,* Order No. 698–A, 121 FERC ¶ 61,264 (2007); *Promotion of a More Efficient Capacity Release Market,* Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g,* Order No. 712–A, FERC Stats. & Regs. ¶ 31,284 (2008); *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *Revision of Regulations to Require Reporting of Damage to Natural Gas Pipeline Facilities,* Order No. 682, FERC Stats. & Regs. ¶ 31,227 (2006). We also take this opportunity to update § 284.12(a)(2) to reflect NAESB's new address.

[3] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. ¶ 31,038 (1996).

[4] *See* Order No. 698, FERC Stats. & Regs. ¶ 31,251 at P 1, 55–57, 63–64, 69.

[5] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Notice of Proposed Rulemaking, 74 FR 36633 (Jul. 24, 2009), FERC Stats. & Regs. ¶ 32,645 (2009) (July 2009 NOPR).

[6] The entities that filed comments and the abbreviations used in this Final Rule to identify these entities are listed in Appendix A.

[7] The business practice standards addressed in the July 2009 NOPR are included as part of the Version 1.9 Standards.

[8] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Notice of Proposed

comments in response to the November 2009 NOPR.[9]

II. Discussion

A. Incorporation of the NAESB Standards by Reference

11. After a review of the comments filed in response to the two NOPRs, the Commission will amend part 284 of its regulations to incorporate by reference Version 1.9 of the NAESB WGQ's consensus standards, with the two exceptions noted in the November 2009 NOPR.[10] The Version 1.9 Standards include communication standards and protocols related to the business practice standards dealing with index-based capacity release, which the Commission proposed to adopt in the July 2009 NOPR, and new standards adopted in response to Order Nos. 698, 712, 717, and 682. These new and modified standards provide additional flexibility to shippers. The standards create a uniform method that will enable releasing and replacement shippers to use third-party rate indices to create rate formulas for capacity releases that will better reflect the value of capacity. These standards also reflect a reasonable compromise for dealing with copyright issues that arise in using copyrighted gas indices to set prices, ensuring that shippers have a reasonable choice of available indices to use while equitably spreading the costs entailed by the use of such indices among the pipelines and shippers. The standard for the use of flexible receipt and delivery points will enable all shippers to quickly and efficiently redirect gas when such gas may be needed by gas generators or other shippers. In addition, the standards will provide for more uniform reporting for gas quality and new information posting requirements for Web sites and browsers. Adoption of the Version 1.9 Standards will continue the process of updating and improving NAESB's business practice standards for the wholesale gas market.

12. To implement these standards, natural gas pipelines will be required to file tariff sheets to reflect the changed standards on September 1, 2010, to take effect on November 1, 2010, and will be required to implement these standards on and after November 1, 2010.

13. NAESB approved the Version 1.9 Standards under NAESB's consensus procedures.[11] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires Federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.[12]

14. The comments on both NOPRs generally supported the adoption of the standards. We will address below the few issues raised in the comments.

B. Issues Raised by Commenters

1. Waivers of the Index-Based Capacity Release Pricing Standards Comments

15. Carolina does not object to incorporation of the capacity release index-based standards, but states that "substantial costs and administrative burdens would be imposed on Carolina unnecessarily if it was required to fulfill all of the requirements of the standards adopted by NAESB to address index-based capacity releases."[13] Furthermore, Carolina states that in almost three years of operation as an interstate pipeline, no shipper has requested index-based pricing for a capacity release on Carolina's system, and Carolina itself has not sold capacity on its system using index prices. In addition, Carolina stated that because of its small staff, the time and cost of implementing the standards would far exceed the estimates of the NOPR.[14]

16. Carolina concludes by stating that as long as a pipeline supports index-based capacity releases in a manner adequate to its circumstances and the needs of its shippers, the Commission's policies would be fulfilled. Alternatively, the Commission, in its final rule, should indicate its willingness to grant waivers of the capacity release standards to pipelines operating under the circumstances and needs of its shippers.[15]

17. AGA supports Carolina's argument on the availability of waivers, and argues that, to the extent the particular circumstances of an individual pipeline warrants additional time to implement these standards, the pipeline should seek a waiver of the regulations. In this regard, AGA believes the Commission should consider Carolina's concerns described in their comments regarding their specific circumstances in an individual proceeding on a request for waiver as opposed to revising the Final Rule to address potential implementation issues.[16]

Commission Finding

18. Determining whether a waiver or extension of time, or whether a non-standard process may be appropriate for an individual pipeline based on their particular circumstances cannot be determined generically in a final rule. Carolina needs to raise such issues in its compliance filing or in a request for waiver, so that its shippers will have an opportunity to intervene and raise any concerns with Carolina's proposals.[17]

2. Issues On Which Consensus Could Not Be Reached

a. Intra-Day Nominations Background

19. In the July 2009 NOPR,[18] the Commission determined not to propose regulations to resolve a disputed issue relating to revising the schedule for intra-day nominations. The Commission's regulations provide that nominations by shippers with firm transportation service have priority over nominations by shippers with interruptible service.[19] In Order No.

Rulemaking, 74 FR 62261 (Nov. 27, 2009), FERC Stats. & Regs. ¶ 32,649 (2009) (November 2009 NOPR).

[9] *See supra* n.6.

[10] As proposed in the November 2009 NOPR, the Commission is continuing its past practice and is not incorporating by reference Standards 4.3.4 and 10.3.2, because they are inconsistent with the Commission's record retention requirement in 18 CFR 284.12(b)(3)(v). In addition, the Commission is not incorporating by reference the WEQ/WGQ eTariff Related Standards because the Commission has already adopted standards and protocols for electronic tariff filings based on the NAESB Standards. *See Electronic Tariff Filings,* FERC Stats. & Regs. ¶ 31,276 (2008).

[11] This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—Distributors, End Users, Pipelines, Producers, and Services (including marketers and computer service providers). For final approval, 67 percent of the WGQ's general membership voting must ratify the standards.

[12] Public Law 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[13] Carolina Comments (Docket No. RM96–1–030) at 2.

[14] *Id.* at 3.

[15] *Id.* at 5.

[16] AGA Reply Comments (Docket No. RM96–1–030) at 5.

[17] *See, e.g., WestGas InterState, Inc.,* 130 FERC ¶ 61,165, at P 4 (2010).

[18] July 2009 NOPR at P 6, 19–20.

[19] 18 CFR 284.12 (b)(1)(i).

587–G,[20] issued in 1998, the Commission, however, followed the Gas Industry Standards Board [21] consensus and permitted pipelines with three intra-day nomination opportunities to exempt the last intra-day opportunity from bumping. The Commission found that the consensus created a fair balance between firm shippers, who will have had two opportunities to reschedule their gas, and interruptible shippers and will provide some necessary stability in the nomination system, so that shippers can be confident by mid-afternoon that they will receive their scheduled flows.

20. The NAESB standards currently provide shippers four nomination opportunities: The Timely Nomination Period (11:30 a.m. CCT [22] the day prior to gas flow), the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); Intra-Day 1 (10 a.m. CCT the day of gas flow); and Intra-Day 2 (5 p.m. CCT the day of gas flow). A firm nomination for the first three nomination cycles has priority over (can bump) an already scheduled interruptible (IT) nomination. But at the Intra-Day 2 cycle, a firm nomination will not bump already scheduled interruptible service.

Cycle	Nomination time (CCT)	Nomination effective	Bumping IT	Bumping notice	Schedule confirmed
Timely	11:30 a.m	Day-Ahead	Yes	4:30 p.m	4:30 p.m.
Evening	6 p.m	Day-Ahead	Yes	10 p.m	10 p.m.
Intra-Day 1	10 a.m	Day of	Yes	2 p.m	2 p.m.
Intra-Day 2	5 p.m	Day of	No	NA	9 p.m.

21. A number of parties urged NAESB to consider revising these timelines to better coordinate scheduling for the gas and electric industries. The NAESB committee held 12 meetings and considered a wide variety of possible revisions to the nomination schedule adopted in 1998. These included complete revisions of the timeline, including changing the gas day; adding intra-day nomination opportunities within the existing framework; changing the Intra-Day 2 to a bump nomination while adding an additional no-bump nomination period, and merely changing the Intra-Day 2 cycle to a bumpable nomination. None of these proposals achieved a sufficient consensus at the subcommittee level.

22. In the July NOPR, we did not propose to resolve the dispute, finding that "a simple, one-size fits-all solution does not exist that will solve the complex issue of coordinating between the electric and gas industries, [because] the diversity within the electric industry (*e.g.,* differing timelines, system peaks times, generation mixes, and prevalence of firm gas service), in particular, does not suggest that revising gas scheduling procedures is the most effective means to improve coordination." [23] Based on the extensive NAESB record that we reviewed, we were not convinced that we have a sufficient basis for finding that any of the proposed revisions create a superior balance of interests compared with the original consensus.[24]

Comments

23. NGSA supports the Commission's proposal to not impose a generic change to the intra-day nomination timeline of all pipelines.[25] NJN/PSEG also supports the Commission's decision to not adopt any changes to its current regulations and policies regarding intra-day nominations. These commenters note that the lack of consensus among NAESB participants only underscores the concerns the gas industry has with proposed changes to the current NAESB gas nomination timeline.[26]

24. By contrast, TVA disagrees with the Commission's proposal to maintain the status quo regarding intra day nomination regulations. TVA states that, due to an ever increasing amount of renewable resources and their intermittent nature, it is crucial for the electric and gas industry to coincide their scheduled loads in order to maintain both flexibility and reliability.[27] TVA urges the Commission to postpone this ruling until more information is gathered on this issue [28] and requests that a technical conference be convened to on this matter.[29]

25. APS also states that maintaining the status quo is not an option, and that the NAESB gas nomination timeline must be modified. It further states that the only proposal that currently accomplishes objectives such as pipeline infrastructure development, greater access to firm capacity, enhanced reliability, and reduced risk for shippers is the APS/TVA proposal. It states that absent approval of the APS/TVA proposal, NAESB cannot make further progress without policy guidance from the Commission on the issues of: (1) Whether the no bump rule, in its entirety, should be eliminated; and/or (2) if the no bump rule is maintained, what is the minimum amount of hours that interruptible service should be guaranteed to flow, and does the minimum amount of flow have to be as a result of the last cycle of the day.[30]

26. NGSA urges the Commission to deny the request of TVA and others to schedule a technical conference on the issue of intraday pipeline nomination schedules. In this regard, NGSA asserts that NAESB had an extensive and open process to consider the various proposed modifications to the timelines. In the end, no consensus approach was approved. However, despite the significant NAESB efforts, parties are now asking for a technical conference. In NGSA's view, such a conference would be unnecessary and redundant,[31] and the Commission should adhere to its proposal. NGSA concludes that no compelling reason has been shown why the Commission should not accept the comprehensive NAESB process.

Commission Determination

27. The comments on this issue reveal the same kinds of disagreements that surfaced in the NAESB process, and we

[20] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. ¶ 31,062, at 30,672 (1998).

[21] At that time, NAESB was the Gas Industry Standards Board and had not yet expanded to include the electric industry or the retail gas and electric segments.

[22] Central clock time.

[23] July 16 NOPR at P 21 (citing NAESB September 3, 2008 filing at 26, Comments of Interested LDCs, *http://www.naesb.org/pdf3/wgq_060308ldc.pdf*).

[24] For example, we do not know the costs to the pipelines and practical implications to shippers or others of creating more numerous intra-day nomination opportunities or adding a late nomination period well after normal business hours.

[25] NGSA Comments (Docket No. RM96–1–030) at 3.

[26] NJN/PSEG Comments (Docket No. RM96–1–030) at 8–9.

[27] TVA Comments (Docket No. RM96–1–030) at 2.

[28] *Id.* at 1.

[29] TVA at 2.

[30] APS Comments (Docket No. RM96–1–030) at 7.

[31] NGSA Comments (Docket No. RM96–1–030) at 5.

still do not see that any nationwide scheduling solution is superior to the balance between firm and interruptible service created by the existing standards. Having a last No-bump nomination opportunity provides necessary stability to the nomination system by ensuring that interruptible shippers can be bumped only at the Intra-Day I nomination cycle during the business day and so will have an opportunity to reschedule their gas. Furthermore, some electric generators rely on interruptible transportation of natural gas to supply fuel; changing the intra-day nomination rules would not constitute an improvement in gas-electric coordination. Moreover, because these nationwide standards cover four time zones, and already extends to 10 p.m. East Coast time, we do not believe that extending the No-bump cycle even later in the night is a reasonable alternative. As we stated in the NOPR, individual pipelines may be able to offer special services or increased nomination opportunities that will better fit the profile of gas fired generation. Given the extensive comments during the NAESB process, and those filed here, we see little benefit from holding a technical conference on this issue.

b. Gas Quality Posting

Background

28. NAESB modified Gas Quality Standards Nos. 4.3.90 and 4.3.92 and also added a new gas quality standard. However, NAESB reported that two proposed gas quality standards failed to pass as a result of a single segment failing to approve the standard. One of the blocked standards would have required a pipeline that currently does not post a Wobbe number [32] to post gas quality information on its Web site and to calculate and post a Wobbe number when notified by a Service Requestor of its desire to begin discussing the interchangeability of gas supplies. The other blocked standard would have added to an existing requirement that pipelines post and permit downloads of three months of historical gas quality data by requiring that the pipelines permit the download of gas quality information for a date range specified by the party seeking to download the information. The Commission proposed to take no action on these blocked standards.

Comments

29. AGA notes that, in the November 2009 NOPR, the Commission did not propose to require the incorporation of standards regarding the posting of gas quality information. AGA urges the Commission to reconsider, and argues that, when there is strong support within four industry segments for a proposed NAESB standard, but a single segment blocks the initiative, such a proposal cannot be fairly characterized as lacking support.[33] AGA also argues that the Commission should take a closer look at the standards and make a determination on the merits as to whether the benefits achieved by the transparency of gas quality information and the efficiency associated with the standardized practices as to posting the information would outweigh the burden of the incorporation of such standards.[34]

30. AGA maintains that the standard requiring pipelines to calculate the Wobbe number is consistent with the Commission's reliance on the Natural Gas Council's White Paper on Natural Gas Interchangeability and Non-Combustion End Uses.[35] AGA contends that the White Paper concluded that "the Wobbe Number provides the most efficient and robust single index and measure of gas interchangeability," and AGA argues shippers have a critical need for the Wobbe number. AGA also argues that the blocked posting standard would allow shippers to obtain information based on a given date range which will allow shippers to compare gas quality information over different periods of time.

31. AGA also recommends that the Commission consider the merits of posting historical gas quality information based on a given date range so that shippers could compare gas quality information over different periods rather than the NAESB standard which require information by location for a three month period.[36]

Commission Determination

32. In the past, the Commission has resolved disputes at NAESB, and adopted our own standards, when we find that the standards are sufficiently important to warrant such intervention.[37] We have examined the substance of these gas quality standards, as we noted in the NOPR, and we have reached the conclusion that these particular standards do not warrant such intervention. AGA has not provided convincing reasons that these standards are as important to the operation of the pipeline grid as the standards on which the Commission intervened in the past or that the benefits of these standards outweigh the burdens.

33. The Commission does not currently require pipelines to use the Wobbe number in calculating gas quality. It is not clear, and AGA has not demonstrated, that a widespread need to compare gas quality across pipelines exists, that all pipelines actually collect information that permit them to calculate a Wobbe number, that the best or only way to make such a comparison is using the Wobbe number, or that the few shippers with a need for such a comparison cannot reasonably make comparisons based on existing information. We therefore see insufficient justification for imposing a burden on pipelines to calculate a Wobbe number when the Wobbe number has no significance to their systems.

34. With respect to the blocked standard regarding downloading, the existing NAESB standards, 4.3.90, 4.3.91, and 4.3.92, already require pipelines to provide a downloadable file, with a standardized file format, of gas quality information for each identified location for a three month period. Since the data are available, we see no need for Commission intervention to determine a download functionality that is more efficient for all pipelines, particularly given the large disparities in the quantity of data provided by different pipelines. Moreover, because pipelines' gas quality requirements differ markedly, some issues regarding gas quality, including the use of the Wobbe number and individual posting requirements keyed

[32] The Wobbe number or Wobbe index is named after Goffredo Wobbe, an Italian physicist who developed a formula to compare the characteristics of two gasses. The Wobbe index is a measure of the physical combustion characteristics of natural gas used in the natural gas industry to ensure that natural gas from different sources is compatible with gas-burning equipment in a particular service area. *See* Williams, Technical Background and Issues of Gas Interchangeability, 27 (AGA Staff Paper, 2006) (*http://www.aga.org/NR/rdonlyres/C9D9FB1D-E244-4B9D-9C67-5FA74C24A8E0/0/0604GASINTERCHANGEABILITYSTAFFPAPER.pdf.*).

[33] AGA Comments (Docket No. RM96–1–036) at 6.

[34] *Id.* at 6–7.

[35] The White Paper on Gas Interchangeability was developed by a consortium of parties, including pipelines, LNG suppliers, utilities, power generators, and other end users of natural gas, and discusses issues and makes recommendations with respect to natural gas quality and interchangeability. *http://www.ferc.gov/industries/lng/indus-act/issues/gas-qual/natural-gas-inter.pdf.* On June 15, 2006, the Commission issued a Policy Statement relating to natural gas quality. *Natural Gas Interchangeability,* 115 FERC ¶ 61,325 (2006), *reh'g denied,* 126 FERC ¶ 61,210 (2009).

[36] *Id.* at 8–9.

[37] *See* Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. ¶ 31,062 (adopting Commission regulations regarding priority between firm and interruptible service, operational balancing agreements, and imbalance netting and trading).

to the specific gas quality conditions on a pipeline can be better addressed in individual Commission proceedings involving gas quality when relevant.

III. Implementation Schedule and Procedures

35. In their comments on the July NOPR, AGA, NJN/PSEG, and NGSA support prompt implementation of the index based capacity release standard and the standards providing greater flexibility for using alternate receipt and delivery points so that shippers can benefit from the enhanced flexibility and improved efficiency that the standards provide.[38] INGAA urges the Commission to defer requiring implementation of the index based capacity release standards and receipt and delivery point standards until after the Commission completes its consideration of NAESB WGQ Standards Version 1.9, so that pipelines can implement these standards once.[39] El Paso urges the Commission to implement the index-based capacity release and flexible delivery and receipt point standards six months after the effective date of the Version 1.9 Standards.[40] TVA also argues that the Commission should postpone deciding on the proposals in the July 2009 NOPR due to the fact that NAESB will file the WGQ Version 1.9 Standards in the near future.

Commission Determination

36. We have sought reasonably to balance the interests of the parties by acting quickly on the November 2009 NOPR and adopting Version 1.9 of the standards. This will ensure that shippers can utilize the flexibility provided by the index based releases and the improved point right authority, but at the same time resolves the pipelines' concerns by minimizing their costs through a single implementation. In addition, we are directing the filing of tariff sheets at a time that coordinates with the filing by natural gas pipelines and processing by the Commission of the pipelines' electronic tariff filings.

37. Thus, we will require natural gas pipelines to file tariff sheets to reflect the changed standards on September 1, 2010, to take effect on November 1, 2010, and will require implementation of these standards by November 1, 2010. Pipelines incorporating the Version 1.9 standards into their tariffs must include the standard number and Version 1.9 designation.[41]

38. In addition, we have noticed that pipelines propose to incorporate the NAESB standards in a variety of non-standard ways. For example, pipelines often file to renew requests for waivers or extensions of time with respect to particular standards without providing a citation to the order or notice in which the initial waiver or extension was granted. As a result, both Commission staff and the public have difficulty reviewing the compliance filings.

39. To ease the burden of compliance review, we therefore will specify certain format requirements applicable to the compliance filings. Pipelines must include in their transmittal letter a table of all the NAESB standards incorporated by reference and a cross-reference to the tariff provision (whether revised or not) in which that standard is contained. For standards that are not incorporated by reference, the pipelines also should identify the tariff provision that complies with that standard.[42] Where applicable, pipelines shall also include a table of prior standards for which waivers or extensions of time were granted along with citations to the relevant orders or notices granting those waivers or extensions of time. In addition, we have included as Appendix B an example of a recommended tariff provision for incorporation of the NAESB standards by reference.

IV. Notice of Use of Voluntary Consensus Standards

40. In section 12(d) of NTT&AA, Congress affirmatively requires Federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as the means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.[43] NAESB approved the standards under its consensus procedures. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. On July 16, 2009, the Commission issued a NOPR proposing to incorporate by reference NAESB's standards governing Index-Based Capacity Release and Flexible Delivery and Receipt Points and on November 19, 2009, the Commission issued a NOPR that proposed to incorporate by reference NAESB's Version 1.9 Standards, which included the standards on Index-Based Capacity Release and Flexible Delivery and Receipt Points. The Commission took the comments on these two NOPRs into account in fashioning this Final Rule.

V. Information Collection Statement

41. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

42. This Final Rule upgrades the Commission's current business practice and communication standards to the latest edition approved by the NAESB WGQ (*i.e.,* the Version 1.9 Standards).

43. The implementation of these standards is necessary to increase the efficiency of the pipeline grid, make pipelines' electronic communications more secure, and is consistent with the mandate that agencies provide for electronic disclosure of information. Requiring such information ensures a common means of communication and ensures common business practices that provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines.

44. The following burden estimates include the costs to implement the WGQ's revised business practice standards and communication protocols for interstate natural gas pipelines. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act of promoting the efficiency and reliability of the natural gas industry's operations. In addition, the Commission's Office of Energy Market Regulation will use the data for general industry oversight.

45. The Commission sought comments on the Commission's estimate provided in the NOPR of the

[38] AGA Comments (Docket No. RM96–1–030) at 2–3, Reply Comments at 1–7; NJN/PSEG Comments (Docket No. RM96–1–030) at n.2; NGSA Comments (Docket No. RM96–1–030) at 3.

[39] INGAA Comments (Docket No. RM96–1–030) at 1, Answer at 2–3.

[40] El Paso Comments (Docket No. RM96–1–036) at 1.

[41] Please *see* the attached Appendix B, which shows the preferred and recommended format for submitting tariff sheets that would incorporate the NAESB Version 1.9 gas standards by reference.

[42] We note that Standards 1.3.2 and 5.3.2 should be included in the pipelines' tariffs.

[43] *See supra,* n.12.

burden associated with adoption of the NOPR proposals. In response to the NOPR, no comments were filed that addressed the reporting burden imposed by these requirements. Therefore the Commission will use these same estimates in this Final Rule, with the sole exception that, based on more recent information, we are updating our estimate of the number of respondents (from 168 to 130).

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	130	1	22	2,860
Totals				2,860

Total Annual Hours for Collection

(Reporting and Recordkeeping, (if appropriate)) = 2,860.

46. *Information Collection Costs:* The Commission sought comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following: [44]

	FERC–549C
Annualized Capital/Startup Costs	$429,000
Annualized Costs (Operations & Maintenance)	N/A
Total Annualized Costs	429,000

47. OMB regulations [45] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this Final Rule to OMB. These information collections are mandatory requirements.

Title: FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Information collection.

OMB Control No.: 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: The Commission's regulations adopted in this rule upgrade the Commission's current business practices and communication standards in response to the Commission's determinations in Order Nos. 682, 698, 698–A, 712, and 717, and would: revise standards allowing index-based pricing for capacity release transactions and allow for increased receipt and delivery point flexibility through the use of redirects of scheduled quantities; create information posting requirements for Web sites and browsers; require the posting of gas quality information including posting and format requirements; report hydrocarbon liquid drop out measurements; and create standards to reflect changes in the use of software used on the Internet.

48. The implementation of these data requirements will increase the efficiency of the capacity release market and the ability to schedule gas around constraints, will be reported directly to the industry users and will provide additional transparency to informational posting Web sites. It also will improve gas quality measurements and will improve communication standards. The implementation of these standards and regulations will promote the additional efficiency and reliability of the gas industries' operations thereby helping the Commission to carry out its responsibilities under the Natural Gas Act of promoting the efficiency and reliability of the gas industries' operations. In addition, the Commission's Office of Energy Market and Regulation will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

49. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with interstate natural gas pipelines and has made a determination that these revisions are necessary to establish a more efficient and integrated pipeline grid. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

50. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426 *Tel:* (202) 502–8415, *Fax:* (202) 273–0873, *E-mail: michael.miller@ferc.gov* or by contacting: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (*Attention:* Desk Officer for the Federal Energy Regulatory Commission, (202) 395–4638, *fax:* (202) 395–7285).

VI. Environmental Analysis

51. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[46] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[47] The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering analysis, and dissemination, and for sales, exchange, and transportation of natural gas and electric power that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

VII. Regulatory Flexibility Act

52. The Regulatory Flexibility Act of 1980 (RFA) [48] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that

[44] The total annualized cost for the information collection is $429,000. This number is reached by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of $150 (a composite estimate that includes legal, technical, and support staff rates). $429,000= $150 x 2,860.

[45] 5 CFR 1320.11.

[46] Order No. 486, *Regulation Implementing the National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[47] 18 CFR 380.4.

[48] 5 U.S.C. 601–612.

may minimize a regulation's impact; and (3) make the analysis available for public comment.[49]

53. The regulations we are adopting in this Final Rule impose requirements only on interstate pipelines, the majority of which are not small businesses. In this regard, we note that, under the industry standards used for the RFA, a natural gas pipeline company qualifies as a "small entity" if it had annual receipts of less than $7 million.[50] Most companies regulated by the Commission do not fall within the RFA's definition of a small entity. Approximately 130 entities would be potential respondents subject to data collection FERC–549C reporting requirements. Nearly all of these entities are large entities. For the year 2007 (the most recent year for which information is available), only four companies not affiliated with larger companies had annual revenues of less than $7 million, which is about three percent of the total universe of potential respondents. Moreover, these requirements are designed to benefit all customers, including small businesses. As noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.[51]

54. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

[49] 5 U.S.C. 601–604.

[50] *See* U.S. Small Business Administration, *Table of Small Business Size Standards, http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (effective July 31, 2006).[50] 5 U.S.C. 601(3), *citing* section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) less than $7 million for the previous year.

[51] As we stated in *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587–C, FERC Stats. & Regs. ¶ 31,050, at 30,588 (1997), pipelines may file requests seeking waiver or extension of the requirements of this rule, but must file such requests within 30 days of the issuance of this rule.

VIII. Document Availability

55. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

56. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

57. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

58. These regulations are effective May 3, 2010. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

* * * * *

■ In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

* * * * *

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

* * * * *

■ 2. Section 284.12 is amended by revising paragraphs (a)(1)(i) through (a)(1)(vii), and (a)(2) to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Additional Standards (General Standards, Creditworthiness

Standards and Gas/Electric Operational Communications Standards) (Version 1.9, September 30, 2009);

(ii) Nominations Related Standards (Version 1.9, September 30, 2009);

(iii) Flowing Gas Related Standards (Version 1.9, September 30, 2009);

(iv) Invoicing Related Standards (Version 1.9, September 30, 2009);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 1.9, September 30, 2009) with the exception of Standard 4.3.4;

(vi) Capacity Release Related Standards (Version 1.9, September 30, 2009); and

(vii) Internet Electronic Transport Related Standards (Version 1.9, September 30, 2009) with the exception of Standard 10.3.2.

(2) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, *Phone:* (713) 356–0060. NAESB's Web site is at *http://www.naesb.org/.* Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, *Phone:* (202) 502–8371, *http://www.ferc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.*

* * * * *

Appendix A

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

List of Commenters [52]

American Gas Association (AGA) filed comments in Docket Nos. RM96–1–030 and RM96–1–036 and reply comments in Docket No. RM96–1–030.
Arizona Public Service Company (APS) filed comments in Docket No. RM96–1–030.
Carolina Gas Transmission Company (Carolina) filed comments in Docket Nos. RM96–1–030 and RM96–1–036.
El Paso Corporation (El Paso) filed comments in Docket No. RM96–1–036.
Interstate Natural Gas Association of America (INGAA) filed comments and an answer in Docket No. RM96–1–030.
Natural Gas Supply Association (NGSA) filed comments in Docket No. RM96–1–030 (late filed).
New Jersey Natural Gas Company & PSEG Energy Resources & Trade LLC (NJN/PSEG) filed comments in Docket No. RM96–1–030.
Tennessee Valley Authority (TVA) filed comments in Docket No. RM96–1–030.

Appendix B

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

Recommended Tariff Provision

General Terms and Conditions

Compliance with 18 CFR, Section 284.12

Transporter has adopted all of the Business Practices and Electronic Communications Standards which are required by the Commission in 18 CFR, Section 284.12(a), as amended from time to time, in accordance with Order No. 587, *et al.* In addition to the NAESB WGQ Standards referenced elsewhere in the Tariff, Transporter specifically incorporates by reference the following NAESB WGQ Version 1.9 Standards, Definitions, and Data Sets, by reference:

Additional Standards:
General:
Principles (Optional): 0.1.1, 0.1.2, 0.1.3
Standards: 0.3.1, 0.3.2, 0.3.16, 0.3.17

Creditworthiness:
Standards: 0.3.3, 0.3.4, 0.3.5, 0.3.6, 0.3.7, 0.3.8, 0.3.9, 0.3.10

Gas/Electric Operational Communications:
Definitions: 0.2.1, 0.2.2, 0.2.3
Standards: 0.3.11, 0.3.12, 0.3.13, 0.3.14, 0.3.15

Storage Information:
Data Sets: 0.4.1

Nominations Related Standards:
Principles (Optional): 1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5, 1.1.7, 1.1.9, 1.1.10, 1.1.11, 1.1.12, 1.1.13, 1.1.14, 1.1.15, 1.1.16, 1.1.17, 1.1.18, 1.1.20, 1.1.21, 1.1.22
Definitions: 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.8, 1.2.9, 1.2.10, 1.2.11, 1.2.12, 1.2.13, 1.2.14, 1.2.15, 1.2.16, 1.2.17, 1.2.18, 1.2.19
Standards: 1.3.1, 1.3.2(vi), 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.8, 1.3.9, 1.3.11, 1.3.13, 1.3.14, 1.3.15, 1.3.16, 1.3.17, 1.3.18, 1.3.19, 1.3.20, 1.3.21, 1.3.22, 1.3.23, 1.3.24, 1.3.25, 1.3.26, 1.3.27, 1.3.28, 1.3.29, 1.3.30, 1.3.31, 1.3.32, 1.3.33, 1.3.34, 1.3.35, 1.3.36, 1.3.37, 1.3.38, 1.3.39, 1.3.40, 1.3.41, 1.3.42, 1.3.43, 1.3.44, 1.3.45, 1.3.46, 1.3.47, 1.3.48, 1.3.49, 1.3.50, 1.3.51, 1.3.52, 1.3.53, 1.3.54, 1.3.55, 1.3.56, 1.3.57, 1.3.58, 1.3.59, 1.3.60, 1.3.61, 1.3.62, 1.3.63, 1.3.64, 1.3.65, 1.3.66, 1.3.67, 1.3.68, 1.3.69, 1.3.70, 1.3.71, 1.3.72, 1.3.73, 1.3.74, 1.3.75, 1.3.76, 1.3.77, 1.3.79, 1.3.80
Data Sets: 1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.4.6, 1.4.7

Flowing Gas Related Standards:
Principles (Optional): 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6
Definitions: 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5
Standards: 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.5, 2.3.6, 2.3.7, 2.3.8, 2.3.9, 2.3.10, 2.3.11, 2.3.12, 2.3.13, 2.3.14, 2.3.15, 2.3.16, 2.3.17, 2.3.18, 2.3.19, 2.3.20, 2.3.21, 2.3.22, 2.3.23, 2.3.25, 2.3.26, 2.3.27, 2.3.28, 2.3.29, 2.3.30, 2.3.31, 2.3.32, 2.3.33, 2.3.34, 2.3.35, 2.3.40, 2.3.41, 2.3.42, 2.3.43, 2.3.44, 2.3.45, 2.3.46, 2.3.47, 2.3.48, 2.3.49, 2.3.50, 2.3.51, 2.3.52, 2.3.53, 2.3.54, 2.3.55, 2.3.56, 2.3.57, 2.3.58, 2.3.59, 2.3.60, 2.3.61, 2.3.62, 2.3.63, 2.3.64, 2.3.65
Data Sets: 2.4.1, 2.4.2, 2.4.3, 2.4.4, 2.4.5, 2.4.6, 2.4.7, 2.4.8, 2.4.9, 2.4.10, 2.4.11, 2.4.12, 2.4.13, 2.4.14, 2.4.15, 2.4.16, 2.4.17, 2.4.18

Invoicing Related Standards:
Principles (Optional): 3.1.1, 3.1.2
Definition: 3.2.1
Standards: 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.3.7, 3.3.8, 3.3.9, 3.3.10, 3.3.11, 3.3.12, 3.3.13, 3.3.14, 3.3.15, 3.3.16, 3.3.17, 3.3.18, 3.3.19, 3.3.20, 3.3.21, 3.3.22, 3.3.23, 3.3.24, 3.3.25, 3.3.26
Data Sets: 3.4.1, 3.4.2, 3.4.3, 3.4.4

Quadrant Electronic Delivery Mechanism Related Standards:
Principles (Optional): 4.1.2, 4.1.3, 4.1.4, 4.1.6, 4.1.7, 4.1.10, 4.1.12, 4.1.13, 4.1.15, 4.1.16, 4.1.17, 4.1.18, 4.1.19, 4.1.20, 4.1.21, 4.1.22, 4.1.23, 4.1.24, 4.1.26, 4.1.27, 4.1.28, 4.1.29, 4.1.30, 4.1.31, 4.1.32, 4.1.33, 4.1.34, 4.1.35, 4.1.36, 4.1.37, 4.1.38, 4.1.39, 4.1.40
Definitions: 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, 4.2.7, 4.2.8, 4.2.9, 4.2.10, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 4.2.15, 4.2.16, 4.2.17, 4.2.18, 4.2.19, 4.2.20
Standards: 4.3.1, 4.3.2, 4.3.3, 4.3.5, 4.3.16, 4.3.17, 4.3.18, 4.3.20, 4.3.22, 4.3.23, 4.3.24, 4.3.25, 4.3.26, 4.3.27, 4.3.28, 4.3.29, 4.3.30, 4.3.31, 4.3.32, 4.3.33, 4.3.34, 4.3.35, 4.3.36, 4.3.38, 4.3.39, 4.3.40, 4.3.41, 4.3.42, 4.3.43, 4.3.44, 4.3.45, 4.3.46, 4.3.47, 4.3.48, 4.3.49, 4.3.50, 4.3.51, 4.3.52, 4.3.53, 4.3.54, 4.3.55, 4.3.56, 4.3.57, 4.3.58, 4.3.59, 4.3.60, 4.3.61, 4.3.62, 4.3.65, 4.3.66, 4.3.67, 4.3.68, 4.3.69, 4.3.72, 4.3.73, 4.3.74, 4.3.75, 4.3.76, 4.3.78, 4.3.79, 4.3.80, 4.3.81, 4.3.82, 4.3.83, 4.3.84, 4.3.85, 4.3.86, 4.3.87, 4.3.89, 4.3.90, 4.3.91, 4.3.92, 4.3.93, 4.3.94, 4.3.95, 4.3.96, 4.3.97, 4.3.98, 4.3.99

Capacity Release Standards:
Principles (Optional): 5.1.1, 5.1.2, 5.1.3, 5.1.4
Definitions: 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5
Standards: 5.3.1, 5.3.3, 5.3.4, 5.3.5, 5.3.7, 5.3.8, 5.3.9, 5.3.10, 5.3.11, 5.3.12, 5.3.13, 5.3.14, 5.3.15, 5.3.16, 5.3.17, 5.3.18, 5.3.19, 5.3.20, 5.3.21, 5.3.22, 5.3.23, 5.3.24, 5.3.25, 5.3.26, 5.3.27, 5.3.28, 5.3.29, 5.3.30, 5.3.31, 5.3.32, 5.3.33, 5.3.34, 5.3.35, 5.3.36, 5.3.37, 5.3.38, 5.3.39, 5.3.40, 5.3.41, 5.3.42, 5.3.43, 5.3.44, 5.3.45, 5.3.46, 5.3.47, 5.3.48, 5.3.49, 5.3.50, 5.3.51, 5.3.52, 5.3.53, 5.3.54, 5.3.55, 5.3.56, 5.3.57, 5.3.58, 5.3.59, 5.3.60, 5.3.61, 5.3.62, 5.3.62a, 5.3.63, 5.3.64, 5.3.65, 5.3.66, 5.3.67, 5.3.68, 5.3.69
Data Sets: 5.4.1, 5.4.2, 5.4.3, 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8, 5.4.9, 5.4.10, 5.4.11, 5.4.12, 5.4.13, 5.4.14, 5.4.15, 5.4.16, 5.4.17, 5.4.18, 5.4.19, 5.4.20, 5.4.21, 5.4.22, 5.4.23

Internet Electronic Transport Related Standards:
Principles (Optional): 10.1.1, 10.1.2, 10.2.3, 10.2.4, 10.2.5, 10.2.6, 10.2.7, 10.2.8, 10.1.9, 10.1.10
Definitions: 10.2.1, 10.2.2, 10.2.3, 10.2.4, 10.2.5, 10.2.6, 10.2.7, 10.2.8, 10.2.9, 10.2.10, 10.2.11, 10.2.12, 10.2.13, 10.2.14, 10.2.15, 10.2.16, 10.2.17, 10.2.18, 10.2.19, 10.2.20, 10.2.21, 10.2.22, 10.2.23, 10.2.24, 10.2.25, 10.2.26, 10.2.27, 10.2.28, 10.2.29, 10.2.30, 10.2.31, 10.2.32, 10.2.33, 10.2.34, 10.2.35, 10.2.36, 10.2.37, 10.2.38
Standards: 10.3.1, 10.3.3, 10.3.4, 10.3.5, 10.3.6, 10.3.7, 10.3.8, 10.3.9, 10.3.10, 10.3.11, 10.3.12, 10.3.14, 10.3.15, 10.3.16, 10.3.17, 10.3.18, 10.3.19, 10.3.20, 10.3.21, 10.3.22, 10.3.23, 10.3.24, 10.3.25, 10.3.26, 10.3.27

[52] The abbreviations used to refer to these commenters in this Final Rule are shown parenthetically.

[FR Doc. 2010–6976 Filed 3–31–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. FDA–1999–N–3539] (formerly Docket No. 1999N–4783)

Administrative Practices and Procedures; Good Guidance Practices; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its administrative regulations. This action is being taken to ensure accuracy and clarity in agency regulations.

DATES: The rule is effective April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: FDA is amending its administrative regulations in 21 CFR part 10. We are taking this action to ensure accuracy and clarity in the agency's regulations.

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because the amendments to the regulations provide only technical changes to correct inaccurate citations and to update terminology, and are nonsubstantive.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

■ 2. In § 10.90, revise paragraphs (a) and (c) to read as follows:

§ 10.90 Food and Drug Administration regulations, recommendations, and agreements.

(a) *Regulations.* FDA regulations are issued in the **Federal Register** under § 10.40 or § 10.50 and codified in the Code of Federal Regulations. Regulations may contain provisions that will be enforced as legal requirements, or which are intended only as guidance documents and recommendations, or both. The dissemination of draft notices and regulations is subject to § 10.80.

* * * * *

(c) *Recommendations.* In addition to the guidance documents subject to § 10.115, FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the Commissioner, e.g., model State and local ordinances, or personnel practices for reducing radiation exposure, issued under 42 U.S.C. 243 and 21 U.S.C. 360ii. These recommendations may, in the discretion of the Commissioner, be handled under the procedures established in § 10.115, except that the recommendations will be included in a separate public file of recommendations established by the Division of Dockets Management and will be separated from the guidance documents in the notice of availability published in the **Federal Register**, or be published in the **Federal Register** as regulations under paragraph (a) of this section.

* * * * *

Dated: March 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7286 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2010–N–0002]

Ophthalmic and Topical Dosage Form New Animal Drugs; Orbifloxacin, Mometasone Furoate Monohydrate, and Posaconazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for the veterinary prescription use of a suspension containing orbifloxacin, mometasone furoate monohydrate, and posaconazole for the treatment of otitis externa in dogs.

DATES: This rule is effective April 1, 2010.

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

SUPPLEMENTARY INFORMATION: Intervet, Inc., 56 Livingston Ave., Roseland, NJ 07068, filed NADA 141–266 that provides for veterinary prescription use of POSATEX (orbifloxacin, mometasone furoate monohydrate, and posaconazole) Otic Suspension for the treatment of otitis externa in dogs associated with susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (coagulase-positive staphylococci, *Pseudomonas aeruginosa*, and *Enterococcus faecalis*). The NADA is approved as of February 18, 2010, and the regulations are amended in 21 CFR part 524 by adding § 524.1610 to reflect the approval.

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

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

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

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

List of Subjects in 21 CFR Part 524

Animal drugs.

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

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Add § 524.1610 to read as follows:

§ 524.1610 Orbifloxacin, mometasone furoate monohydrate, and posaconazole suspension.

(a) *Specifications.* Each gram of suspension contains 10 milligrams (mg) orbifloxacin, mometasone furoate monohydrate equivalent to 1 mg mometasone furoate, and 1 mg posaconazole.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* For dogs weighing less than 30 lbs. instill 4 drops once daily into the ear canal. For dogs weighing 30 lbs. or more, instill 8 drops into the ear canal. Therapy should continue for 7 consecutive days.

(2) *Indications for use*. For the treatment of otitis externa associated with susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (coagulase-positive staphylococci, *Pseudomonas aeruginosa*, and *Enterococcus faecalis*).

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

Dated: March 24, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–7163 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. FDA–2009–N–0458]

RIN 0910–AG29

Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations That Suffer From a Disease or Condition That a Device Is Intended to Treat, Diagnose, or Cure; Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations on premarket approval of medical devices to include requirements relating to the submission of information on pediatric subpopulations that suffer from the disease or condition that a device is intended to treat, diagnose, or cure. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under FDA's usual procedure for notice and comment to provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw this direct final rule.

DATES: This rule is effective August 16, 2010. Submit electronic or written comments on the direct final rule by June 15, 2010. Submit electronic or written comments on the information collection requirements by June 1, 2010. If we receive no significant adverse comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0458, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number and regulatory information number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert Gatling, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1640, Silver Spring, MD 20993, 301–796–6560.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rule?

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA)[1] (Public Law 110–85) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding, among other things, a new section 515A of the act (21 U.S.C. 360e–1). Section 515A(a) of the act requires persons who submit certain medical device applications to include readily available information providing a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients. This rule amends FDA's regulations to implement the requirements of section 515A(a) of the act.

Section 515A(c) of the act states that, for the purposes of that section, the term "pediatric subpopulation" has the meaning given the term in section 520(m)(6)(E)(ii) of the act (21 U.S.C. 360j(m)(6)(E)(ii)). Section 520(m)(6)(E)(ii) of the act defines the term "pediatric subpopulation" to mean one of the following populations:

- Neonates;
- Infants;
- Children; or
- Adolescents.

We have previously issued guidance recommending the age range for each of the populations included in the term "pediatric subpopulation." See *Premarket Assessment of Pediatric Medical Devices* (May 14, 2004); (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089740.htm*).

The term "pediatric patient" is defined, for purposes of section 520(m)(6)(E)(i) of the act as patients who are 21 years of age or younger at the time of the diagnosis or treatment. Because no other definition of "pediatric patient" is included in the Pediatric Medical Device Safety and Improvement Act of 2007, and because the definition in section 520(m)(6)(E)(i) of the act is consistent with the definition of pediatric subpopulations in section 520(m)(6)(E)(ii), FDA has concluded that the term "pediatric patient" in section 515A of the act refers to patients who are 21 years of age or younger at the time of the diagnosis or treatment.

The information submitted under section 515A(a) of the act will help FDA track the following information that it is required to report annually to Congress, in accordance with section 515A(a)(3) of the act:

- The number of approved devices for which there is a pediatric subpopulation that suffers from the disease or condition that the device is intended to treat, diagnose, or cure;
- The number of approved devices labeled for use in pediatric patients;
- The number of approved pediatric devices that were exempted from a review fee under section 738(a)(2)(B)(v) of the act (21 U.S.C. 379j(a)(2)(B)(v)); and
- The review time for each such device.

[1] Title III of FDAAA, which includes new section 515A, is also known as the Pediatric Medical Device Safety and Improvement Act of 2007.

II. What Applications Are Subject to This Rule?

In accordance with the act, these requirements apply to the following applications when submitted on or after the effective date of this rule:

- Any request for a humanitarian device exemption (HDE) submitted under section 520(m) of the act;
- Any premarket approval application (PMA) or supplement to a PMA submitted under section 515 of the act; and
- Any product development protocol (PDP) submitted under section 515 of the act.

If the applicant of a supplement to a PMA has previously submitted information satisfying these requirements, the applicant may incorporate that information by reference rather than resubmitting the same information. However, if additional information has become readily available to the applicant since the previous submission, the applicant must submit that information as part of the supplement.

Many PMAs begin with the submission of one or more PMA modules; see *Premarket Approval Application Modular Review—Guidance for Industry and FDA Staff*, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089764.htm*. Applicants who choose to use the modular approach should submit the information required by section 515A(a) of the act in the final PMA module (i.e., the module that includes final clinical data, proposed labeling, and the summary of safety and effectiveness).

III. What Does This Direct Final Rule Do?

This direct final rule implements new section 515A(a) of the act by amending 21 CFR Part 814, *Premarket Approval of Medical Devices*, to include requirements relating to the submission of information on pediatric subpopulations that suffer from the disease or condition that a device is intended to treat, diagnose, or cure.

A. What Information Must Be Provided?

This rule requires each applicant who submits an HDE, PMA, supplement to a PMA, or PDP to include, if "readily available," a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients.

B. What Are the Consequences of Not Submitting "Readily Available" Information?

If you do not submit the information required by section 515A(a) of the act, FDA may not approve your application until you provide the required information. We intend to contact you during the normal course of our review to inform you that your submission lacks the information required by section 515A(a) of the act and by this rule, and to ask you to amend your application to provide the required information. If your application has no other deficiencies and otherwise meets applicable statutory and regulatory requirements for approval, but still lacks information required by section 515A(a) of the act, we intend to send you an "approvable" letter informing you that we will approve your application after you provide the information required by section 515A(a). If your application has other deficiencies or does not meet all applicable statutory and regulatory requirements for approval, we intend to send you a "not approvable" letter or a "major deficiency" letter describing what information or data you need to provide before FDA can approve your application; the "not approvable" or "major deficiency" letter may cite the absence of 515A(a) information in the section listing minor deficiencies. For additional information concerning the interactive process we will use during our review, see *Guidance for Industry and FDA Staff: Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements*, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089402.htm*. For additional information concerning "approvable," "not approvable," and "major deficiency" letters, see *FDA and Industry Actions on Premarket Approval Applications (PMAs): Effect on FDA Review Clock and Goals*, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089733.htm*.

IV. What Are the Procedures for Issuing a Direct Final Rule?

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA announced the availability of the guidance document entitled "Guidance for FDA and Industry: Direct Final Rule Procedures" that described when and how we will employ direct final rulemaking. We believe that this rule is appropriate for direct final rulemaking because it is intended to make noncontroversial amendments and minor corrections to existing regulations. We anticipate no significant adverse comment.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule that is identical in substance to this direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

If we receive any significant adverse comment, we intend to withdraw this final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If we withdraw the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the APA (5 U.S.C. 552a *et seq.*). If we receive no significant adverse comment during the specified comment period, we intend to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends.

V. What Is the Legal Authority for This Rule?

This rule, if finalized, would amend §§ 814.1, 814.2, 814.20, 814.37, 814.39, 814.44, 814.100, 814.104, and 814.116. FDA's legal authority to modify 814.1, 814.2, 814.20, 814.37, 814.39, 814.44, 814.100, 814.104 and 814.116 arises from the same authority under which FDA initially issued these regulations, the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 360e, 360e–1, 360j, and 371).

VI. What Is the Environmental Impact of This Rule?

FDA has determined under 21 CFR 25.30(h) and 25.34(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. What Is the Economic Impact of This Rule?

We have examined the impacts of this rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this direct final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this regulation only requires that some submissions include a small amount of readily available information, creating little additional burden, the agency certifies that the direct final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

We believe that the only costs to industry are those that we account for in our Paperwork Reduction Act analysis, which immediately follows this section. The rule does not require additional clinical research or other costly efforts, and simply requires the applicant to briefly summarize readily available information that will have been reviewed by the applicant during the course of its development of the device and preparation of its application to FDA. We have also limited the rule to exclude supplements that do not involve a new intended use; if a supplement does not involve a new intended use, we do not expect the applicant will have new information pertinent to the requirement of section 515A(a) of the act and this rule, and the limitation avoids the needless submission of duplicate information to FDA. We expect FDA's additional costs will be inconsequential, as the information required here will be filed and managed as an integral part of each submission, using existing filing, storage, and data management systems and processes.

VIII. How Does the Paperwork Reduction Act of 1995 Apply to This Rule?

This direct final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection techniques, when appropriate, and other forms of information technology.

Title: Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations That Suffer From a Disease or Condition That a Device Is Intended to Treat, Diagnose, or Cure.

Description: Section 515A(a) of FDAAA requires applicants who submit certain medical device applications to include readily available information providing a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients. The information submitted will allow FDA to track the number of approved devices for which there is a pediatric subpopulation that suffers from the disease or condition that the device is intended to treat, diagnose, or cure; the number of approved devices labeled for use in pediatric patients; the number of approved pediatric devices that were exempted from a review fee under section 738(a)(2)(B)(v) of the act; and the review time for each such device.

Description of Respondents: These requirements apply to applicants who submit the following applications when submitted on or after the effective date of this rule:

- Any request for an HDE submitted under section 520(m) of the act;
- Any PMA submitted under section 515 of the act;
- Any PDP submitted under section 515 of the act; and
- Any supplement to an HDE, PMA, or PDP that proposes a new intended use, whether for an adult population or a pediatric population.

Burden: FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.20(b)(3)(i)	25	1	25	4	100
814.37(b)(2)	10	1	10	4	40
814.39(h)	10	1	10	4	40
814.104(b)(6)	5	1	5	4	20
Totals					200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

All that is required is to access, organize, and submit information that is readily available, using any approach that meets the requirements of section 515A(a) of the act and this rule. FDA expects to receive approximately 40 original PMA/PDP/HDE applications each year, 5 of which FDA expects to be HDEs. This estimate is based on the actual average of FDA's receipt of new PMA applications in FY 2007 through FY 2008. The agency estimates that 10 of those 40 original PMA submissions will fail to provide the required pediatric use information and their sponsors will therefore be required to submit PMA amendments. The agency also expects to receive 10 supplements that describe a new indication for use and will include the pediatric use information required by 515A(a) of the act and this rule. We believe that because the rule requires that the applicant organize and submit only readily available information or a description of the methodology employed to determine whether information required is readily available, no more than 4 hours will be required to comply with section 515A(a) of the act and this rule. FDA estimates that the total burden created by this rule is 200 hours.

We based this estimate on our experience with similar information collection requirements and on consultations with the Interagency Pediatric Devices Working Group which includes the Agency for Healthcare Research and Quality, FDA, National Institutes of Health, members of the Pediatric Advisory Committee, researchers, healthcare practitioners, medical device trade associations, and medical device manufacturers.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this direct final rule (see **DATES**), to the Division of Dockets Management (see **ADDRESSES**).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. What Are the Federalism Impacts of This Rule?

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. How Do You Submit Comments on This Rule?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this direct final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 2. In § 814.1, revise paragraph (a) to read as follows:

§ 814.1 Scope.

(a) This section implements sections 515 and 515A of the act by providing procedures for the premarket approval of medical devices intended for human use.

* * * * *

■ 3. Revise § 814.2 to read as follows:

§ 814.2 Purpose.

The purpose of this part is to establish an efficient and thorough device review process—

(a) To facilitate the approval of PMAs for devices that have been shown to be safe and effective and that otherwise meet the statutory criteria for approval;

(b) To ensure the disapproval of PMAs that have not been shown to be safe and effective or that do not otherwise meet the statutory criteria for approval; and

(c) To ensure PMAs include readily available information concerning actual and potential pediatric uses of medical devices.

■ 4. In § 814.20, revise paragraph (b)(3)(i) to read as follows:

§ 814.20 Application.

* * * * *

(b) * * *

(3) * * *

(i) *Indications for use.* (A) A general description of the disease or condition the device will diagnose, treat, prevent, cure, or mitigate, including a description of the patient population for which the device is intended.

(B) Information concerning uses in pediatric patients who are 21 years of age or younger: The application must include the following information, if readily available:

(*1*) A description of any pediatric subpopulations (neonates, infants, children, adolescents) that suffer from the disease or condition that the device is intended to treat, diagnose, or cure; and

(*2*) The number of affected pediatric patients.

* * * * *

■ 5. In § 814.37, revise the section heading and paragraph (b) to read as follows:

§ 814.37 PMA amendments and resubmitted PMAs.

* * * * *

(b)(1) FDA may request the applicant to amend a PMA or PMA supplement with any information regarding the device that is necessary for FDA or the appropriate advisory committee to complete the review of the PMA or PMA supplement.

(2) FDA may request the applicant to amend a PMA or PMA supplement with information concerning pediatric uses as required under § 814.20(b)(3)(i).

* * * * *

■ 6. In § 814.39, add paragraph (h) to read as follows:

§ 814.39 PMA supplements.

* * * * *

(h) The application must include the following information, if readily available:

(1) A description of any pediatric subpopulations (neonates, infants, children, adolescents) that suffer from the disease or condition that the device is intended to treat, diagnose, or cure; and

(2) The number of affected pediatric patients who are 21 years of age or younger.

(3) If information concerning the device that is the subject of the supplement was previously submitted under § 814.20(b)(3)(i), that information may be incorporated by reference to the application or submission that contains the information. However, if additional information required under § 814.20(b)(3)(i) has become readily available to the applicant since the previous submission, the applicant must submit that information as part of the supplement.

■ 7. In § 814.44, redesignate paragraphs (e)(1)(ii) through (e)(1)(iv) as paragraphs (e)(1)(iii) through (e)(1)(v), respectively, and add new paragraph (e)(1)(ii) to read as follows:

§ 814.44 Procedures for review of a PMA.

* * * * *

(e) * * *

(1) * * *

(ii) The submission of additional information concerning potential pediatric uses required by § 814.20(b)(3)(i) that is readily available to the applicant;

* * * * *

■ 8. Amend § 814.100 as follows:

■ a. Redesignate paragraphs (b) through (e) as paragraphs (d) through (g), respectively;

■ b. Redesignate paragraph (a) as paragraph (b), and remove the first sentence of newly redesignated paragraph (b); and

■ c. Add new paragraphs (a) and (c) to read as follows:

§ 814.100 Purpose and scope.

(a) This subpart H implements sections 515A and 520(m) of the act.

* * * * *

(c) Section 515A of the act is intended to ensure the submission of readily available information concerning actual and potential pediatric uses of medical devices.

* * * * *

■ 9. Amend § 814.104 as follows:

■ a. Revise the last sentence of paragraph (b)(4)(ii);

■ b. Revise the last sentence of paragraph (b)(5); and

■ c. Add paragraph (b)(6) to read as follows:

§ 814.104 Original applications.

* * * * *

(b) * * *

(4) * * *

(ii) * * * The effectiveness of this device for this use has not been demonstrated.

(5) * * * If the amount charged is $250 or less, the requirement for a report by an independent certified public accountant or an attestation by a responsible individual of the organization is waived; and

(6) Readily available information concerning actual and potential pediatric uses of the device, as required by § 814.20(b)(3)(i).

* * * * *

■ 10. In § 814.116, redesignate paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively, and add new paragraph (c)(2) to read as follows:

§ 814.116 Procedures for review of an HDE.

* * * * *

(c) * * *

(2) The submission of additional information concerning potential pediatric uses required by § 814.20(b)(3)(i) that is readily available to the applicant;

* * * * *

Dated: March 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7193 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1002, 1003, 1004, 1005, 1010, 1020, 1030, 1040, and 1050

[Docket No. FDA–2010–N–0010]

Medical Devices; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending certain medical device regulations to correct statutory and regulatory references to ensure accuracy, consistency, and clarity in the agency's regulations.

DATES: This rule is effective April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Bernice E. Noland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4430, Silver Spring, MD 20993–0002, 301–796–5742.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations at part 1002 (21 CFR part 1002) to correct a regulatory reference. FDA is revising § 1002.30(b) by deleting "paragraph (c) of § 1002.61" and replacing it with "table 1 of § 1002.1." FDA updated

§ 1002.30(a) to reflect this change, but inadvertently retained the reference to "paragraph (c) of § 1002.61" in § 1002.30(b). With this technical amendment, the entirety of the regulation at § 1002.30 accurately references "table 1 of § 1002.1," which is the former paragraph (c) of § 1002.61.

In addition, FDA is amending its regulations at part 1002 and parts 1005 and 1010 (21 CFR parts 1005 and 1010) to correct statutory references. These parts intermittently cite sections of the Radiation Control for Health and Safety Act of 1968 (Radiation Control Act) (Public Law 90–602). However, "Act" is defined in 21 CFR 1000.3(b), and applicable throughout 21 CFR parts 1000 to 1050, subchapter J, to mean the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 360hh–360ss). The Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), transferred the Radiation Control Act to the FFDCA. With these technical amendments, FDA is replacing citations to the Radiation Control Act with citations to the corresponding sections of the FFDCA. FDA is revising §§ 1002.41(a)(1) and 1002.42 by replacing section "359" of the act with section "535." FDA is revising § 1005.25(c) by replacing section "360(d)" of the act with section "536(d)." FDA is revising § 1010.4(c)(3) by replacing section "360A(e)" of the act with section "537(e)."

Finally, FDA is amending its authority citations in parts 1003, 1004, 1005, 1010, 1020, 1030, 1040, and 1050 to correct statutory citations. These parts cite to the Public Health Service Act, which codified the Radiation Control Act at 42 U.S.C. 263b–263n, until the SMDA transferred the Radiation Control Act to the FFDCA. Section 19(a)(3) of the SMDA also repealed section 354 of the Radiation Control Act, codified at 42 U.S.C. 263b, which contained Congress's declaration of purpose in enacting the program of electronic product radiation controls. The SMDA redesignated and transferred the remaining sections to the FFDCA at 21 U.S.C. 360hh–360ss. The authority citations in parts 1003, 1004, 1005, 1010, 1020, 1030, 1040, and 1050 to 42 U.S.C. 263b–263n were not correspondingly updated to reflect the transfer of the Radiation Control Act from the Public Health Service Act to the FFDCA. With these technical amendments, FDA is replacing citations to the Public Health Service Act with citations to the corresponding sections of the FFDCA. Thus, FDA is revising parts 1003, 1004, 1010, 1030, 1040, and 1050 by replacing the authority citation of "42 U.S.C. 263b–263n" with "21 U.S.C. 360hh–360ss." FDA is similarly revising part 1005 by replacing the authority citation of "42 U.S.C. 263d, 263h" with "21 U.S.C. 360ii, 360mm." FDA is also revising part 1020 by deleting the authority citation to 21 U.S.C. 360gg. Although section 354 of the Radiation Control Act would have been designated as 21 U.S.C. 360gg had the provision been transferred to the FFDCA, the SMDA repealed that section. As a result, the citation to 21 U.S.C. 360gg in part 1020 is an inadvertent error that this technical amendment will correct by deleting that part of the authority citation.

Publication of this document constitutes final action on the change under the Administrative Procedure Act (5 U.S.C. 553). These technical amendments correct regulatory and statutory references in the Code of Federal Regulations. FDA therefore, for good cause, has determined that notice and public comment are unnecessary, under 5 U.S.C. 553(b)(3)(B). Further, this rule places no burden on affected parties for which such parties would need a reasonable time to prepare for the effective date of the rule. Accordingly, FDA, for good cause, had determined this technical amendment to be exempt under 5 U.S.C. 553(d)(3) from the 30-day effective date from publication.

FDA has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office Management and Budget under the Paperwork Reduction Act of 1995 is not required.

For the effective date of this final rule, see the **DATES** section of this document.

List of Subjects

21 CFR Part 1002

Electronic products, Radiation protection, Reporting and recordkeeping requirements.

21 CFR Part 1003

Administrative practice and procedure, Electronic products, Radiation protection.

21 CFR Part 1004

Electronic products, Radiation protection.

21 CFR Part 1005

Administrative practice and procedure, Electronic products, Imports, Radiation protection, Surety bonds.

21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

21 CFR Part 1030

Electronic products, Microwave ovens, Radiation protection.

21 CFR Part 1040

Electronic products, Labeling, Lasers, Medical devices, Radiation protection, Reporting and recordkeeping requirements.

21 CFR Part 1050

Electronic products, Medical devices, Radiation protection.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 1002—RECORDS AND REPORTS

■ 1. The authority citation for 21 CFR part 1002 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 360hh–360ss, 371, 374.

■ 2. In § 1002.30, paragraph (b) introductory text is revised to read as follows:

§ 1002.30 Records to be maintained by manufacturers.

* * * * *

(b) In addition to the records required by paragraph (a) of this section, manufacturers of products listed in table 1 of § 1002.1 shall establish and maintain the following records with respect to such products:

* * * * *

■ 3. In 1002.41, paragraph (a)(1) is revised to read as follows:

§ 1002.41 Disposition of records obtained by dealers and distributors.

(a) * * *

(1) The dealer or distributor elects to hold and preserve such information and to immediately furnish it to the manufacturer when advised by the manufacturer or the Director, Center for Devices and Radiological Health, that

such information is required for purposes of section 535 of the Act; and

* * * * *

■ 4. Section 1002.42 is revised to read as follows:

§ 1002.42 Confidentiality of records furnished by dealers and distributors.

All information furnished to manufacturers by dealers and distributors pursuant to this part shall be treated by such manufacturers as confidential information which may be used only as necessary to notify persons pursuant to section 535 of the Act.

PART 1003—NOTIFICATION OF DEFECTS OR FAILURE TO COMPLY

■ 5. The authority citation for 21 CFR part 1003 is revised to read as follows:

Authority: 21 U.S.C. 360hh–360ss.

PART 1004—REPURCHASE, REPAIRS, OR REPLACEMENT OF ELECTRONIC PRODUCTS

■ 6. The authority citation for 21 CFR part 1004 is revised to read as follows:

Authority: 21 U.S.C. 360hh–360ss.

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

■ 7. The authority citation for 21 CFR part 1005 is revised to read as follows:

Authority: 21 U.S.C. 360ii, 360mm.

■ 8. In 1005.25, paragraph (c) is revised to read as follows:

§ 1005.25 Service of process on manufacturers.

* * * * *

(c) Service of any process, notice, order, requirement, or decision specified in section 536(d) of Subchapter C—Electronic Product Radiation Control of the Federal Food, Drug, and Cosmetic Act (formerly the Radiation Control for Health and Safety Act of 1968) (21 U.S.C. 360mm(d)) may be made by registered or certified mail addressed to the agent with return receipt requested, or in any other manner authorized by law. In the absence of such a designation or if for any reason service on the designated agent cannot be effected, service may be made as provided in section 536(d) by posting such process, notice, order, requirement, or decision in the Office of the Director, Center for Devices and Radiological Health and publishing a notice that such service was made in the **Federal Register**.

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

■ 9. The authority citation for 21 CFR part 1010 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381.

■ 10. In 1010.4, paragraph (c)(3) is revised to read as follows:

§ 1010.4 Variances.

* * * * *

(c) * * *

(3) All applications for variances and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications will be available for public disclosure in the office of the Division of Dockets Management, except for information regarded as confidential under section 537(e) of the act.

* * * * *

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

■ 11. The authority citation for 21 CFR part 1020 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, 381.

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

■ 12. The authority citation for 21 CFR part 1030 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381.

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

■ 13. The authority citation for 21 CFR part 1040 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381.

PART 1050—PERFORMANCE STANDARDS FOR SONIC, INFRASONIC, AND ULTRASONIC RADIATION-EMITTING PRODUCTS

■ 14. The authority citation for 21 CFR part 1050 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381.

Dated: March 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7288 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2010–N–0148]

Revision of Organization and Conforming Changes to Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to amend the regulations to reflect organization change in the agency and to make other conforming changes. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Vanessa Starks, Office of Management Programs (HFA–410), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4654; or Sharon Burgess, Division of Human Capital Management (HFA–410), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2065.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this final rule to amend its regulations by updating the organizational information in part 5 (21 CFR part 5).

The agency has updated the references to part 5, subpart M.

The portion of this final rule updating the organizational information in part 5, subpart M is a rule of agency organization, procedure, or practice. FDA is issuing these provisions as a final rule without publishing a general notice of proposed rulemaking because such notice is not required for rules of agency organization, procedure, or practice under 5 U.S.C. 553(b)(3)(A). For the conforming changes to the other regulations, the agency finds good cause under 5 U.S.C. 553(b)(3)(B) to dispense with prior notice and comment, and good cause under 5 U.S.C. 553(d)(3) to make these conforming changes effective less than 30 days after publication because such notice and comment and delayed effective date are unnecessary and contrary to the public interest. These conforming changes merely update the footnotes in part 5, subpart M. These changes do not result

in any substantive change in the regulations.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority of the Commissioner of Food and Drugs, 21 CFR Part 5 is amended as follows:

■ 1. Part 5 is revised to read as follows:

PART 5—ORGANIZATION

Subparts A–L—[Reserved]

Subpart M—Organization

Sec.
5.1100 Headquarters.
5.1105 Chief Counsel, Food and Drug Administration.
5.1110 FDA Public Information Offices.

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

Subparts A–L—[Reserved]

Subpart M—Organization

§ 5.1100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

OFFICE OF THE COMMISSIONER.[1]

Office of the Chief Counsel.[2]

Office of the Administrative Law Judge.[1]

Office of Women's Health.

Office of Policy, Planning & Budget.[1]

Office of Policy.

Policy Development and Coordination Staff.

Regulations Policy and Management Staff.

Regulations Editorial Section.

Office of Planning.[1]

Planning Staff.

Evaluation Staff.

Economics Staff.

Risk Communication Staff.

Business Process Planning Staff.

Office of Budget.[1]

Office of Legislation.[3]

Office of the Counselor to the Commissioner.[1]

Office of Crisis Management.

Office of Emergency Operations.

Office of the Chief Of Staff.[1]

Executive Secretariat.

Office of Special Medical Programs.

Office of Good Clinical Practice.

Office of Combination Products.[4]

Office of Orphan Products Development.

Office of Pediatric Therapeutics.[3]

Office of International Programs.[3]

Office of External Affairs.

Office of External Relations.[3]

Communications Staff.

Office of Public Affairs.[1]

Web Communications Staff.

Office of Special Health Issues.[3]

Medwatch Staff.

Office of Foods.[1]

Office of the Chief Scientist.[1]

Office of Counter-Terrorism and Emerging Threats.[3]

Office of Critical Path Programs.

Office of Scientific Integrity.

Office of Science and Innovation.

Office of International Programs.[3]

Office of Administration.[1]

Office of Equal Employment Opportunity & Diversity Management.[3]

Conflict Prevention and Resolution Staff.

Compliance Staff.

Diversity Staff.

Office of Acquisitions and Grants Services.[5]

Division of Acquisition Operations.

Division of Acquisition Support and Grants.

Division of Acquisition Programs.

Division of Information Technology.

Office of Executive Operations.[1]

Office of Financial Operations.[6]

Office of Financial Management.[6]

Controls, Compliance, and Oversight Staff.

Business Transformation, Administration and Management Staff.

User Fees Staff.

Financial Systems Support Staff.

Division of Accounting.

Division of Budget Execution and Control.

Office of Financial Services.

Division of Payment Services.

Division of Travel Services.

Office of Information Management.[6]

Division of Business Partnership and Support.[6]

Division of Chief Information Officer Support.[6]

Division of Systems Management.[7]

Division of Infrastructure Operations.[8]

Division of Technology.[8]

Office of Management.[3]

Ethics and Integrity Staff.

Office of Business Operations and Human Capital Programs.

Office of Management Programs.

Office of Security Operations.

Office of White Oak Services.[1]

Division of Logistics Services and Facilities Operations.

Division of White Oak Consolidation.

Office of Shared Services.[5]

Office of Real Property Services.

Jefferson Laboratories Complex Staff.

Division of Engineering Services.

Environment, Safety And Strategic Initiatives Staff.

Division of Facilities Operations.

Portfolio Development Staff.

Employee Resource & Information Center.

Office of Public Information and Library Services.

Division of Dockets Management.

Division of Freedom of Information.

FDA Biosciences Library.

Public Services Branch.

Technical Services Branch.

FDA History Office.

CENTER FOR BIOLOGICS EVALUATION AND RESEARCH.[9]

Office of the Center Director.

Regulations Policy Staff.

Quality Assurance Staff.

Office of Management.

Regulatory Information Management Staff.

Division of Planning, Evaluation, and Budget.

Division of Veterinary Services.

Division of Program Services.

Division of Scientific Advisors & Consultants.

Building Operations Staff.

Office of Compliance and Biologics Quality.

[1] Mailing address: 10903 New Hampshire Ave., Silver Spring, MD 20906.

[2] The Office of the Chief Counsel (also known as the Food and Drug Division, Office of the General Counsel, Department of Health and Human Services), while administratively within the Office of the Commissioner, is part of the Office of the General Counsel of the Department of Health and Human Services.

[3] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[4] Mailing address: 15800 Crabbs Branch Way, Rockville, MD 20855.

[5] Mailing address: 5630 Fishers Lane, Rockville, MD 20857.

[6] Mailing address: 1350 Piccard Dr., Rockville, MD 20850.

[7] Mailing address: 2094 Gaither Rd., Rockville, MD 20850.

[8] Mailing address: 2098 Gaither Rd., Rockville, MD 20850.

[9] Mailing address: 1401 Rockville Pike, Rockville, MD 20852.

Division of Case Management.
Division of Inspections and Surveillance.
Division of Manufacturing and Product Quality.
Office of Biostatistics and Epidemiology.
Division of Biostatistics.
Division of Epidemiology.
Office of Information Management.
Division of Information Operations.
Division of Information Development.
Office of Blood Research and Review.
Policy and Publications Staff.
Division of Emerging and Transfusion Transmitted Diseases.
Division of Hematology.
Division of Blood Applications.
Office of Vaccines Research and Review.
Program Operation Staff.
Division of Product Quality.
Division of Bacterial, Parasitic, and Allergenic Products.
Division of Viral Products.
Division of Vaccines and Related Product Applications.
Office of Cellular, Tissue, and Gene Therapies.
Regulatory Management Staff.
Division of Cellular and Gene Therapies.
Division of Clinical Evaluation and Pharmacology/Toxicology.
Division of Human Tissues.
Office of Communication, Outreach and Development.
Division of Disclosure and Oversight Management.
Division of Manufacturers Assistance and Training.
Division of Communication and Consumer Affairs.
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH.[1]
Office of the Center Director.
Office of Systems and Management.
Division of Ethics and Management Operations.
Division of Planning, Analysis and Finance.
Division of Information Dissemination.
Division of Information Technology.
Office of Compliance.
Promotion and Advertising Policy Staff.
Division of Bioresearch Monitoring.
Division of Program Operations.
Division of Enforcement A.
Division of Enforcement B.
Office of Device Evaluation.
Program Management Staff.
Program Operations Staff.
Division of Cardiovascular Devices.
Division of Reproductive, Gastro-Renal and Urological Devices.
Division of General, Restorative, and Neurological Devices.
Division of Surgical, Orthopedic and Restorative Devices.
Division of Ophthalmic, and Ear, Nose and Throat Devices.
Division of Anesthesiology, General Hospital, Infection Control, and Dental Devices.
Office of Science and Engineering Laboratories.
Division of Biology.
Management Support Staff.
Standards Management Staff.
Division of Chemistry and Materials Science.
Division of Solid and Fluid Mechanics.
Division of Physics.
Division of Imaging and Applied Mathematics.
Office of Communication, Education and Radiation Programs.
Program Operations Staff.
Regulations Staff.
Staff College.
Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.
Office of Surveillance and Biometrics.
Issues Management Staff.
Division of Biostatistics.
Division of Postmarket Surveillance.
Division of Surveillance Systems.
Office of In Vitro Diagnostic Device Evaluation and Safety.
Division of Chemistry and Toxicology Devices.
Division of Immunology and Hematology Devices.
Division of Microbiology Devices.
Division of Radiological Devices.
CENTER FOR DRUG EVALUATION AND RESEARCH.[10]
Office of the Center Director.
Controlled Substance Staff.
Office of Regulatory Policy.
Division of Regulatory Policy I.
Division of Regulatory Policy II.
Division of Regulatory Policy III.
Division of Information Disclosure Policy.
Office of Management.
Division of Management and Budget.
Division of Management Services.
Office of Communications.
Division of Information Services.
Division of Public Affairs.
Division of Drug Information.
Office of Surveillance and Epidemiology.[11]
Review and Management Staff.
Business Process Improvement Staff.
Regulatory Policy Staff.
Division of Medication Error Prevention and Analysis.
Division of Pharmacovigilance I.
Division of Pharmacovigilance II.
Division of Drug Risk Evaluation.
Division of Epidemiology.
Office of Compliance.[1]
Division of Compliance Risk Management and Surveillance.
Division of New Drugs and Labeling Compliance.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Office of New Drugs.[2]
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Office of Drug Evaluation I.
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Division of Psychiatry Products.
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Division of Metabolism and Endocrinology Products.
Division of Pulmonary, Allergy and Rheumatology Products.
Division of Anesthesia and Analgesia Products.
Office of Drug Evaluation III.
Division of Gastroenterology Products.
Division of Reproductive and Urologic Products.
Division of Dermatology and Dental Products.
Office of Antimicrobial Products.
Division of Anti-Infective and Ophthalmology Products.
Division of Anti-Viral Products.
Division of Special Pathogen and Transplant Products.
Office of Drug Evaluation IV.
Division of Nonprescription Clinical Evaluation.
Division of Nonprescription Regulation Development.

[10] Mailing address: 10903 New Hampshire Ave., White Oak Bldg. 51, Silver Spring, MD 20993.

[11] Mailing address: 10903 New Hampshire Ave., White Oak Bldg. 22, Silver Spring, MD 20993.

Division of Medical Imaging Products.
Office of Oncology Drug Products.
Division of Drug Oncology Products.
Division of Hematology Products.
Division of Biologic Oncology Products.
Office of Pharmaceutical Science.[1]
Program Activities Review Staff.
Operations Staff.
Science and Research Staff
New Drug Microbiology Staff.
Office of Generic Drugs.[12]
Division of Bioequivalence.
Division of Labeling and Program Support.
Division of Chemistry I.
Division of Chemistry II.
Division of Chemistry III.
Office of New Drug Quality Assessment.[13]
Division of New Drug Quality Assessment I.
Division of New Drug Quality Assessment II.
Branch IV.
Branch V.
Branch VI.
Division of New Drug Quality Assessment III.
Branch VII.
Branch VIII.
Branch IX.
Office of Testing and Research.[2]
Laboratory of Clinical Pharmacology.
Division of Applied Pharmacology Research.
Division of Pharmaceutical Analysis.
Division of Product Quality Research.
Office of Biotechnology Products.[4]
Division of Monoclonal Antibodies.
Division of Therapeutic Protein.
Office of Medical Policy.[2]
Division of Drug Marketing, Advertising and Communication.
Office of Executive Programs.[1]
Division of Training and Development.
Division of Executive Operations.
Division of Advisory Committee and Consultant Management.
Office of Translational Sciences.[4]
Office of Biostatistics.
Division of Biometrics I.
Division of Biometrics II.
Division of Biometrics III.
Division of Biometrics IV.
Division of Biometrics V.
Division of Biometrics VI.
Division of Biometrics VII.
Office of Clinical Pharmacology.[1]
Division of Clinical Pharmacology I.
Division of Clinical Pharmacology II.
Division of Clinical Pharmacology III.
Division of Clinical Pharmacology IV.
Division of Clinical Pharmacology V.
Division of Pharmacometrics.
Office of Counter-Terrorism and Emergency Coordinator.
Office of Planning and Informatics.
Office of Planning and Analysis.
Planning and Evaluation Staff.
Analysis Staff.
Office of Business Informatics.
Division of Records Management.
Division of Regulatory Review Support.
Division of Business Analysis and Reporting.
Division of Project Development.
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION.[14]
Office of the Center Director.
Senior Science Advisor Staff.
Executive Operations Staff.
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Division of Food Processing Science and Technology.
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Office of Management.
Office of Policy.
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NATIONAL CENTER FOR TOXICOLOGY RESEARCH.[16]
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Division of Neurotoxicology.
Division of Veterinary Services.
Division of Systems Toxicology.
Office of Regulatory Compliance and Risk Management.
OFFICE OF REGULATORY AFFAIRS.[3]
Equal Employment Opportunity Staff.
Office of Resource Management.[3]

[12] Mailing address: 7519 Standish Pl., Bldg. MPN4, Rockville, MD 20855.
[13] Mailing address: 10903 New Hampshire Ave., White Oak Bldg. 21, Silver Spring, MD 20993.
[14] Mailing address: 5100 Paint Branch Pkwy., College Park, MD 20740–3835.
[15] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.
[16] Mailing address: 3900 NCTR Rd., Jefferson, AR 72079.

Division of Planning, Evaluation, and Management.

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Division of Personnel Operations.

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Division of Compliance Policy.

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Office of Criminal Investigations.[17]

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Midwest Area Office.[18]

Northeast Area Office.[19]

Pacific Area Office.[20]

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Division of Surveillance.

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Division of Animal Research.

Division of Animal and Food Microbiology.

Office of Minor Use and Minor Species Animal Drug Development.[28]

§ 5.1105 Chief Counsel, Food and Drug Administration.

The Office of the Chief Counsel's mailing address is 5600 Fishers Lane, rm. 6–05, Rockville, MD 20857.[1]

§ 5.1110 FDA public information offices.

(a) *Division of Dockets Management.* The Division of Dockets Management public room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20852, Telephone: 301–827–6860.

(b) *Division of Freedom of Information.* The Freedom of Information public room is located in rm. 6–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–827–6567.

(c) *Press Relations Staff.* Press offices are located in White Oak Bldg. 1, 10903 New Hampshire Ave., Silver Spring, MD 20993, Telephone: 301–827–6242; and at 5100 Paint Branch Pkwy., College Park, MD 20740, Telephone: 301–436–2335.

Dated: March 26, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7282 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

[17] Mailing address: 7500 Standish Pl., Rockville, MD 20855.

[18] Mailing address: 901 Warrenville Rd., Lisle, IL 60532.

[19] Mailing address: 10 Exchange Pl., Jersey City, NJ 07302.

[20] Mailing address: 201 Avenida Fabricante, San Clemente, CA 92672.

[21] Mailing address: 865 SW 78th Ave., Plantation, FL 33324.

[22] Mailing address: 5799 Broadmoor St., Mission, KS 66202.

[23] Mailing address: 7519 Standish Pl., Bldg. MPN4, rm. 176, Rockville, MD 20855.

[24] Mailing address: 7529 Standish Pl., Bldg. MPN5, rm. 3577, Rockville, MD 20855.

[25] Mailing address: 7520 Standish Pl., Bldg. MPN2, rm. 239, Rockville, MD 20855.

[26] Mailing Address: 7519 Standish Pl., Bldg. MPN5, rm. 300, Rockville, MD 20855.

[27] Mailing address: 8401 Muirkirk Rd., Bldg. MOD2, rm. G101, Laurel, MD 20708.

[28] Mailing address: 7500 Standish Pl., Bldg. MPN2, rm. N378, Rockville, MD 20855.

[1] The Office of the Chief Counsel (also known as the Food and Drug Division, Office of the General Counsel, Department of Health and Human Services), while administratively within the Office of the Commissioner, is part of the Office of the General Counsel of the Department of Health and Human Services.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST–2010–0022]

RIN 2105–AD88

Participation by Disadvantaged Business Enterprises in Airport Concessions

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

ACTION: Final rule.

SUMMARY: The Department of Transportation is removing the "sunset" provision from its rule governing the airport concessions disadvantaged business enterprise (ACDBE) program. The revised rule instead provides reviewing the program to ensure that it is being effectively implemented.

DATES: This rule is effective April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room W94–302, 202–366–9310, *bob.ashby@dot.gov*.

SUPPLEMENTARY INFORMATION: When the Department issued its final rule revising its ACDBE rule (49 CFR part 23) in 2005, the rule included at section 23.7 a "sunset" provision. This provision said, unless extended by the Department, the provisions of part 23 would terminate and become inoperative on April 21, 2010. The preamble to the rule explained the rationale for this provision as follows:

> The Department is introducing a "sunset" provision into the final rule as a way of addressing the durational element of narrow tailoring. A narrowly-tailored rule is not intended to remain in effect indefinitely. Rather, the rule should be reviewed periodically to ensure that it continues to be needed and that it remains a constitutionally appropriate way of implementing its objectives. Consequently, this provision states that this rule will terminate and cease being operative in five years, unless the Department extends it. We intend, beginning four years from now, to review the rule to determine whether it should be extended, modified, or allowed to expire. Of course, the underlying DBE statute remains in place, and its requirements continue to apply regardless of the status of this regulation, absent future Congressional action. (70 FR 14502; March 22, 2005).

The Department believes that it is useful to begin reviewing the provisions of part 23 at this time, for the purpose of

determining of what, if any, modifications, are appropriate to improve its operations, in context of the "strict scrutiny" requirements of narrowly tailoring a program to meet a compelling need to combat discrimination and its effects. Consequently, as part of the notice of proposed rulemaking (NPRM) for this final rule (73 FR 5551; February 3, 2010), the Department solicited comments from interested parties concerning any and all changes to part 23 they believe would be useful in helping the Department, airports, ACDBEs, and other airport-related businesses to achieve the ACDBE program's objectives. The Department will use the information we receive to assist us in determining whether to issue a proposed rule to modify the ACDBE regulation. In addition, the Department is planning to meet with stakeholders, at times and places to be determined, to discuss potential changes to part 23.

However, the Department does not believe it is appropriate to retain the "sunset" provision itself. The Department can, and will, review the provisions of the rule without this provision being in place. Moreover, as the preamble discussion for section 23.7 itself pointed out, the ACDBE program is mandated by statute. The Department does not believe that it would be meaningful to eliminate a regulation when its underlying statutory mandate remains applicable to airports and other participants. Doing so would simply cause confusion and disruption, making it more difficult for all parties concerned to carry out their responsibilities under the statute, which is not self-executing. A regulatory framework is necessary for rational implementation of the statute. Periodic program reviews by the Department, as well as consideration from time to time of the continuing need for the program by Congress, meet the durational element of narrow tailoring satisfactorily.

Moreover, the Department is convinced that programs like those in 49 CFR part 23 and its companion DBE rule, 49 CFR part 26, remain necessary to redress discrimination and its effects in airport programs and to ensure a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. The extensive evidence provided to a March 2009 hearing of the House Transportation and Infrastructure Committee on this subject, and the findings of continuing need for DBE programs in the House-passed version of the Federal Aviation Administration reauthorization bill (H.R. 915), as well as the Department's long-term experience in operating the program, support this conclusion.

For these reasons, the Department proposed to amend section 23.7 by removing the "sunset" language and substituting a requirement for program review. The Department received only one comment to the docket, from an advocacy organization that opposes any use of race-conscious measures to remedy discrimination and its continuing effects. The commenter suggested that the regulation should be allowed to go out of effect, since, in the commenter's view, there is no current justification for the use of race-conscious remedies in DOT programs. The Department does not agree with this commenter. Federal Courts have unanimously found that DOT's DBE rules are constitutional, and the information presented in the March 2009 House of Represntatives hearing referenced above provides strong evidence of the continuing need for the DBE program in aviation and other transportation contexts.

We believe that the rationale for the proposed amendment to section 23.7 is sound, and we are, therefore, issuing this final rule deleting the "sunset provision."

Regulatory Analyses and Notices

Administrative Procedure Act

Having considered the potentially high risk of disruption posed by the current "sunset" provision, the Department believes that the program review approach embodied in this rule provides a better way of achieving the objective of ensuring that the durational element of narrow tailoring is achieved. In order to ensure that all parties understand that the program and regulation will continue without interruption or uncertainty, the Department believes that it is important to remove the "sunset" provision and substitute the program review approach at this time.

In order to ensure that this amendment goes into effect before the April 21, 2010, date on which the existing sunset provision would terminate part 23, it is necessary for the amendment to become effective before that date. For this reason, the Department finds good cause, under section 553 of the Administrative Procedure Act, to make the rule effective immediately.

Executive Order 12866 and Regulatory Flexibility Act

The Department has determined that this action is not a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. The rule does not impose any costs or burdens on grantees or other parties and simply keeps in place the opportunity for interested parties to participate in a program review. It makes no changes in the obligations of any party. For these reasons, the Department certifies that the rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not create any information collection requirements covered by the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 23

Administrative practice and procedures, Airports, Civil rights, Government contracts, Grant programs—transportation, Minority business, Reporting and recordkeeping requirements.

Issued at Washington, DC, March 25, 2010.

Ray LaHood,

Secretary of Transportation.

■ For reasons discussed in the preamble, the Department of Transportation amends Title 49 of the Code of Federal Regulations, part 23, as follows:

■ 1. The authority citation for 49 CFR part 23 continues to read as follows:

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

■ 2. Section 23.7 is revised to read as follows:

§ 23.7 Program reviews.

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[FR Doc. 2010–7401 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XV62

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl 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 catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2010 Pacific cod allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2010, through 1200 hrs, A.l.t., June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 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 B season allowance of the 2010 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 3,664 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11788, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the B season allowance of the 2010 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,214 mt, and is setting aside the remaining 450 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear 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 using trawl 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 March 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: March 26, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–7332 Filed 3–29–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 62
Thursday, April 1, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–13; NRC–2010–0088]

Dan Kane; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated February 2, 2010, filed by Dan Kane (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM–51–13. The petitioner is requesting that the NRC amend the regulations that govern environmental protection for domestic licensing and related regulatory functions. Specifically, the petitioner requests that the provisions that govern temporary storage of spent fuel after cessation of reactor operation be revoked, that licensing of new nuclear power plants cease, and that existing operating nuclear power plants be phased out. The petitioner believes these suggestions are necessary until the NRC can be assured of the technical and economic certainties of a waste disposition decision and associated political certainties in light of the current administration's proposed defunding of the Yucca Mountain Repository for permanent disposal and storage of spent nuclear fuel.

DATES: Submit comments by June 15, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include PRM–51–13 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

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 eRulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2010–0088]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: rulemaking.comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays, telephone number 301–415–1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the Federal eRulemaking Portal *http://www.regulations.gov.*

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 the NRC's Agencywide Documents Access and Management System (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 PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

For a copy of the petition, write to Michael T. Lesar, Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The petition is also available electronically in ADAMS at ML100570095.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–492–3663 or *Toll-Free:* 1–800–368–5642 or *E-mail: Michael.Lesar@NRC.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking dated February 2, 2010, submitted by Mr. Dan Kane (petitioner). The petitioner is a registered professional engineer who states that he has designed safety systems for commercial nuclear power plants and prepared some sections of the license application for Yucca Mountain. The petitioner requests that the NRC amend 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." Specifically, the petitioner requests that the regulations at § 51.23, "Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact" be revoked. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition was docketed by the NRC as PRM–51–13 on February 25, 2010. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner notes that on September 15, 2008 (73 FR 53284), the NRC accepted an application for construction of a mined geologic repository for spent nuclear fuel (Yucca Mountain) from the U.S. Department of Energy (DOE) for docketing and began a

technical review of the application. The petitioner also notes that on February 1, 2010, the current administration proposed that the funding for the Yucca Mountain repository be discontinued for what the petitioner believes are political reasons. The petitioner states that the proposed update of the NRC's Waste Confidence Decision and proposed rule that the NRC published on October 9, 2008 (73 FR 59547), specifically Finding 2 (73 FR 59561), indicates that the NRC found reasonable assurance that a mined geologic repository for permanent disposal of spent nuclear fuel would be available within 50–60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor.

The petitioner also states that the DOE Director of the Office of Civilian Radioactive Waste Management expressed concern about adequate funding of the Yucca Mountain repository when DOE informed Congress that Yucca Mountain could be ready to accept spent nuclear fuel in 2020. The petitioner notes that the NRC denied a 2005 petition for rulemaking (PRM–51–8) by declining to define "availability" of a repository based on a presumption that an acceptable disposal site for spent nuclear fuel would become available "at some undefined time in the future." (73 FR 59561.) The petitioner cites, *Natural Resources Defense Council (NRDC)* v. *NRC,* 574 F.2d 633 (DC Cir. 1976), as determining that the NRC's waste confidence decision must demonstrate compliance with the National Environmental Policy Act of 1969, as amended (NEPA), by assuring that "safe and adequate storage methods [for spent nuclear fuel] are technologically and economically feasible." However, the petitioner states that the NRDC decision did not anticipate the "current political reality."

The petitioner has concluded that the current administration's proposed decision to no longer fund Yucca Mountain now places the possibility of construction and licensing of a permanent repository for spent nuclear fuel from U.S. nuclear power facilities and licensees in jeopardy. The petitioner requests that the NRC cease licensing new nuclear power plants and begin to orderly phase out existing operating nuclear power plants. The petitioner also requests that § 51.23, "Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact," be revoked. The petitioner has concluded that the NRC cannot rely on existing regulations to make a determination on issuance of a construction authorization or license for a mined geologic repository at a location that has not been identified at an undetermined future time. The petitioner has also concluded that the NRC needs to strengthen the current regulations by adding additional requirements that address the political considerations of siting a mined geologic repository.

Dated at Rockville, Maryland, March 25, 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–7405 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Models CFM56–3 and –3B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This supplemental NPRM revises an earlier proposed airworthiness directive (AD), for certain CFM International, S.A. models CFM56–3 and –3B turbofan engines. That proposed AD would have required initial and repetitive inspections for damage to the fan blades. That proposed AD resulted from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. This supplemental NPRM revises the proposed AD to reduce the initial inspection compliance threshold, to correct the engine model designations affected, and to clarify some of the inspection wording in the compliance section. This supplemental NPRM results from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. We are proposing this supplemental NPRM to prevent failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

DATES: We must receive any comments on this supplemental NPRM by May 17, 2010.

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

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

You can get the service information identified in this proposed AD from CFM International, S. A., Technical Publication Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov;* telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal**

Register published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

On July 16, 2009, we proposed to amend part 39 of the Code of Federal Regulations (14 CFR part 39) to add an AD for CFM International, S.A. models CFM56–3B1 and–3B2 turbofan engines. That action proposed to require initial and repetitive fan blade inspections. That proposed AD resulted from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper.

Since we issued the proposed AD, we discovered that we need to make some changes to reduce the initial inspection compliance threshold, to correct the engine model designations affected, and to clarify some of the inspection wording in the compliance section of the proposed AD.

Comments

We provided the public the opportunity to participate in the development of that proposed AD. We have considered the comments received.

Request to Correct the Engine Model Designations Affected

One commenter, CFM International, S.A., requests that we correct the engine model designations affected. The commenter states that the proposed AD models of CFM56–3B1 and –3B2 are incorrect and should be changed to CFM56–3–B1 and –3B–2.

We partially agree. We agree that we listed incorrect model designations. We corrected them in this supplemental NPRM to agree with the CFM56 Type Certificate Data Sheet E2GL title block, which lists the affected models as CFM56–3 and –3B. We do not agree that the model designations should be solely listed as CFM56–3–B1 and –3B–2. However, because CFM International, S.A. has added to the basic engine model number on the engine nameplate to identify minor variations in engine configuration, installation components, or reduced ratings peculiar to aircraft installation requirements, engine models CFM56–3–B1 and CFM56–3B–2 are also affected by this proposed AD.

Request To Add an Installation Prohibition

CFM International, S.A. requests that we add an installation prohibition to our proposed AD applicability, that the installation of 25 degrees midspan shroud fan blades is not allowed on the CFM56–3C engine model.

We do not agree. The applicability is clear that the proposed AD does not include the –3C engine model, as it does not list that model. We did not change the NPRM.

Request To Change the Initial Inspection Threshold

CFM International, S.A. requests that we change the initial inspection threshold from 3,000 cycles-in-service (CIS) to within 3 to 6 months of AD issuance to better harmonize our compliance with European Aviation Safety Agency AD 2009–036 (3 months) or with CFM International, S.A. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007 (6 months).

We do not agree that a 3 to 6 month interval is appropriate, as the passage of time without service is unrelated to the progression of the unsafe condition. We do agree that the initial inspection threshold of 3,000 CIS is too long. We reduced the initial inspection threshold to 900 CIS in the NPRM.

Differences Between the Supplemental NPRM and the Manufacturer's Service Information

CFM International Service Bulletin (SB) No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, requires an initial inspection within 6 months. This supplemental NPRM would require the initial inspection within 900 CIS after the effective date of the supplemental NPRM. CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, also requires a repetitive inspection within 1,500 to 3,000 cycles-since-last inspection (CSLI). This supplemental NPRM would require the repetitive inspection within 3,000 CSLI.

FAA's Determination and Requirements of the Supplemental NPRM

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require performing initial and repetitive inspections of the fan blade for wear. The supplemental NPRM would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this supplemental NPRM would affect 50 engines installed on airplanes of U.S. registry. We also estimate that it would take about 8 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $38,000 per engine. Based on these figures, we estimate the total cost of the supplemental NPRM to U.S. operators to be $1,932,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

CFM International, S.A.: Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International, S.A. models CFM56–3 and –3B turbofan engines with 25 degrees midspan shroud fan blades, part numbers (P/Ns) 9527M99P08, 9527M99P09, 9527M99P10, 9527M99P11, 1285M39P01, or fan blade pairs, P/Ns 335–088–901–0, 335–088–902–0, 335–088–903–0, and 335–088–904–0 installed. These engines are installed on, but not limited to, Boeing 737 series airplanes.

(d) CFM International, S.A. has added to the basic engine model number on the engine nameplate to identify minor variations in engine configuration, installation components, or reduced ratings peculiar to aircraft installation requirements.

(e) Those engines marked on the engine data plate as CFM56–3–B1 are included in this AD as CFM56–3 turbofan engines.

(f) Those engines marked on the engine data plate as CFM56–3B–2 are included in this AD as CFM56–3B turbofan engines.

Unsafe Condition

(g) This AD results from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. We are issuing this AD to prevent failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

Compliance

(h) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection for Wear

(i) Within 900 cycles-in-service after the effective date of this AD, perform an on-wing or in-shop inspection of the fan blade and damper for wear. Use paragraphs 3.A.(1) through 3.A.(5) or paragraphs 3.B.(1) through 3.B.(5) respectively, of the Accomplishment Instructions of CFM International Service Bulletin (SB) No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(j) If you find out-of-limit wear on at least one fan blade platform underside, perform the additional inspections and disposition the parts, as specified in paragraphs 3.A.(3) and 3.A.(5) or paragraphs 3.B.(3) and 3.B.(5) respectively, of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(k) Thereafter, within intervals not to exceed 3,000 cycles-since-last inspection, perform an on-wing or in-shop inspection for wear. Use paragraphs 3.A.(1) through 3.A.(5) or paragraphs 3.B.(1) through 3.B.(5) respectively, of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(l) If you find wear on at least one fan blade platform underside, perform additional inspections and disposition the parts, as specified in paragraphs 3.A.(3) and 3.A.(5) or paragraphs 3.B.(3) and 3.B.(5) respectively, of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

Installation Prohibition

(m) After the effective date of this AD, don't install any 25 degrees midspan shroud fan blades, P/Ns 9527M99P08, 9527M99P09, 9527M99P10, 9527M99P11, 1285M39P01, or fan blade pairs, P/Ns 335–088–901–0, 335–088–902–0, 335–088–903–0, and 335–088–904–0, unless they have passed an inspection specified in paragraph 3. of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

Optional Terminating Action

(n) Replacing the 25 degrees midspan shroud fan blade set with a 37 degrees midspan shroud fan blade set terminates the repetitive inspection requirements specified in paragraph (k) of this AD.

Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(p) Contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: antonio.cancelliere@faa.gov;* telephone (781) 238–7751; fax (781) 238–7199, for more information about this AD.

(q) Contact CFM International, S.A., Technical Publication Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of the service information referenced in this AD.

(r) European Aviation Safety Agency AD 2009–0036, dated February 20, 2009, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on March 19, 2010.

Peter A. White,

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

[FR Doc. 2010–7343 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. FDA 1993–N–0259] (formerly Docket No. 1993N–0085)

Beverages: Bottled Water; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 1, 2010 the comment period for the proposed rule, published in the **Federal Register** of August 4, 1993 (58 FR 41612), amending the quality standard for bottled water (currently in 21 CFR 165.110(b)). In the 1993 proposed rule, FDA proposed to revise the bottled water quality standard to establish or modify the allowable levels for 5 inorganic chemicals and 18 synthetic organic chemicals, and to maintain the existing allowable level for the inorganic chemical sulfate. In a final rule published March 26, 1996 (61 FR 13258), FDA maintained the existing allowable level for sulfate and adopted the proposed allowable levels for the 5 inorganic chemicals and 17 of the synthetic organic chemicals, but deferred final action on the proposed allowable level for the chemical di(2-ethylhexyl)phthalate (DEHP). FDA is reopening the comment period on the 1993 proposed rule to seek further comment on finalizing the allowable level for DEHP in the bottled water quality standard.

DATES: Submit written or electronic comments by June 1, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA 1993–N–0259, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *FAX:* 301–827–6870.

• *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick Robin, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1639.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 4, 1993 (58 FR 41612), FDA published a proposal ("the 1993 proposed rule") to revise the bottled water standard of quality regulations in 21 CFR part 103 (now 21 CFR 165.110(b)) to establish or modify the allowable levels in bottled water for 5 inorganic chemicals and 18 synthetic organic chemicals, and to maintain the existing allowable level for the inorganic chemical sulfate. FDA proposed these revisions in response to the publication by the Environmental Protection Agency (EPA) of a final rule (57 FR 31776; July 17, 1992) that established national primary drinking water regulations consisting of maximum contaminant levels (MCLs) for the same 23 chemicals and establishing an MCL for sulfate in public drinking water. In a final rule published March 26, 1996 (61 FR 13258), FDA maintained its existing allowable level for sulfate and adopted the proposed allowable levels for the 5 inorganic chemicals and 17 of the synthetic organic chemicals, but deferred final action on the proposed allowable level of 0.006 milligrams/liter (mg/L) for the chemical di(2-ethylhexyl)phthalate (DEHP). FDA deferred action on DEHP in response to a comment stating that the proposed allowable level conflicted with an existing prior sanction for this substance in § 181.27 (21 CFR 181.27). The comment stated that DEHP is prior sanctioned in § 181.27 for use as a plasticizer when migrating from food-packaging material into foods with high water content and, as such, is approved for use in contact with food in § 177.1210 (21 CFR 177.1210) *Closures with sealing gaskets for food containers*. The comment also stated that DEHP is routinely used as a plasticizer in gaskets used in metal and plastic closures for the packaging of bottled water in accord with this approval, and that such use may result in levels of this chemical migrating into water that exceed the proposed allowable level. Thus, the comment maintained that finalizing the proposed allowable level for DEHP would result in a limit on the level of this chemical in bottled water that conflicts with this chemical's permitted use under the existing food additive regulation for closures with sealing gaskets, and that taking such action would effectively ban the use of this plasticizer. The comment further stated that gaskets containing DEHP are permitted for use in packaging food and bottled water under relevant European national regulations.

In the 1996 final rule, FDA stated that it was not aware of the potential conflict between the proposed allowable level for DEHP and the existing prior sanction for this substance in § 181.27 at the time it published the proposal. FDA also stated that the agency needed additional time to evaluate this matter and to determine an appropriate course of action with respect to the proposed allowable level for DEHP and, therefore, FDA was deferring final action on the proposed allowable level for DEHP at that time.

II. Request for Comments

FDA is now considering finalizing the allowable level of 0.006 mg/L for DEHP in the quality standard for bottled water in § 165.110(b). Because of the length of time that has elapsed since the 1993 proposed rule, FDA is seeking additional comments on establishing an allowable level for DEHP. Comments previously submitted to the Division of Dockets Management on the issue of establishing an allowable level for DEHP do not need to be and should not be resubmitted. All comments on DEHP previously submitted to the docket number found in brackets in the heading of this document, and comments on DEHP submitted in response to this reopening of the comment period, will be considered in any final rule finalizing the allowable level for DEHP in the quality standard for bottled water.

In this document, FDA is addressing the issue of the prior sanction for the use of DEHP under § 181.27, which resulted in deferral of final action in 1996. FDA is also providing updates on the use of DEHP in bottled water bottles and lid gaskets, and on international standards for DEHP in bottled water. Finally, FDA is providing information on analytical methods for measuring DEHP that were adopted by EPA after the 1993 proposed rule, and is seeking comment on the possible inclusion of these methods in the final regulation.

A. Prior Sanction for Use of DEHP

FDA has determined that the prior sanction for the use of DEHP in § 181.27, which exempts the use listed in § 181.27 from the food additive provisions of the Federal Food, Drug, and Cosmetic Act (the act), does not preclude the agency from establishing an allowable level for DEHP in the standard of quality for bottled water under § 165.110(b). The existence of a prior sanction exempts "sanctioned uses from the food additive provisions of the [a]ct but not from the other adulteration or the misbranding provisions of the [a]ct." 21 CFR 181.5(b). Therefore, while a food product containing DEHP consistent with its prior sanction could not be considered adulterated within the meaning of section 402(C)(i) of the act, it could be considered adulterated or misbranded under other adulteration or the misbranding provisions of the act.

Under section 403(h)(1) of the act (21 U.S.C. 343(h)(1)), bottled water that is of a quality below the prescribed standard in § 165.110(b) is required by § 165.110(c) to be labeled with a statement of substandard quality or it is deemed misbranded. Thus, if an allowable level for DEHP is finalized under the quality standard for bottled water, finished bottled water products with DEHP levels above the finalized level will be misbranded if the products do not bear label statements of substandard quality. FDA also notes that under the adulteration provisions of the

act, bottled water containing DEHP at a level considered injurious to health under section 402(a)(1) of the act is deemed to be adulterated.

B. Use of DEHP in Bottled Water Bottles and Lid Gaskets

The comment on the 1993 proposal stated that: (a) DEHP is routinely used as a plasticizer in gaskets used in metal and plastic closures for the packaging of bottled water in accord with the prior sanction, and that such use may result in levels of DEHP migrating into water that exceed the proposed allowable level, and that (b) gaskets containing DEHP are permitted for use in packaging food and bottled water under relevant European national regulations. However, based on information from industry, it appears that DEHP currently is not used in caps or closures for bottled water in the U.S (Ref. 1). Furthermore, FDA notes that current European Commission (EC) regulations limit the use of DEHP as a plasticizer in food contact materials to repeated use materials (Ref. 2). DEHP use is not permitted under EC regulations for plastic caps or plastic lid gaskets in metal caps.

C. International Standards for DEHP in Bottled Water

FDA also notes that several international organizations have adopted standards for DEHP that are the same or similar to FDA's proposed allowable level of 0.006 mg/L. The International Bottled Water Association (IBWA), a trade association representing a large segment of the U.S. bottled water industry, had adopted EPA's 0.006 mg/l standard for DEHP in its Model Code by 1995, suggesting that U.S. manufacturers already are able to meet the proposed level (Refs. 3 and 4). In addition, the World Health Organization (WHO) has established a guideline value for DEHP in drinking water of 0.008 mg/L (Ref. 5). The Codex Alimentarius General Standard for Bottled/Packaged Drinking Waters (Other than Natural Mineral Waters) requires that bottled/packaged drinking waters comply with WHO's guideline values (Ref. 6).

D. Analytical Methodology

In the 1993 proposal, FDA proposed adopting EPA Method 506 (Ref. 7) and EPA Method 525.1, Revision 3.0, (Ref. 8) for analysis of selected chemicals, including DEHP (58 FR 41612). In the 1996 document, FDA adopted EPA Methods 506 and 525.1, Rev. 3.0, for all the chemicals with the exception of DEHP (61 FR 13258). EPA has since updated its methods for DEHP (Refs. 9 and 10). In this document, FDA is making EPA's updated methods for DEHP analysis (Refs. 9 and 10) available for comment on their possible inclusion in the final regulation.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

FDA has placed the following references on display in FDA's Division of Dockets Management (see **ADDRESSES**). You may see them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. John Rost, Crown Packaging Technology, 2010, personal communication, January 5, 2010.
2. European Commission, 2007, Commission Directive 2007/19/EC of 30 March 2007 amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food and Council Directive 85/572/EEC laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs, *Official Journal of the European Union*, 31.3.2007, L 91/17–36.
3. International Bottled Water Association, 2007, IBWA Model Code, Version October 2007, accessed online at *http://www.bottledwater.org/files/IBWA%20Bottled%20Water%20Code%20of%20Practice.pdf.*
4. International Bottled Water Association, 2007, personal communication, August 30, 2007.
5. World Health Organization, 2008, Guidelines for drinking-water quality, third edition, incorporating first and second addenda, World Health Organization: Geneva, accessed online at *http://www.who.int/water_sanitation_health/dwq/fulltext.pdf.*
6. Codex Alimentarius, 2001, General Standard for Bottled/Packaged Drinking Waters (Other than Natural Mineral Waters), CODEX STAN 227–2001, accessed online at *www.codexalimentarius.net/download/standards/369/CXS_227e.pdf.*
7. U.S. Environmental Protection Agency (EPA), EPA Method 506—"Determination of Phthalate and Adipate Esters in Drinking Water by Liquid-Liquid Extraction or Liquid-Solid Extraction and Gas Chromatography with Photoionization Detection, " In "Methods for the Determination of Organic Compounds in Drinking Water, Supplement I," July 1990.
8. U.S. EPA, EPA Method 525.1, Revision 2.2—"Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry." In "Methods for the Determination of Organic Compounds in Drinking Water, Supplement I," May 1991, accessed online at *http://www.epa.gov/waterscience/methods/method/files/525_1.pdf*
9. U.S. EPA, EPA Method 506, Rev. 1.1—"Determination of phthalate and adipate esters in drinking water by liquid/liquid extraction or liquid/solid extraction and gas chromatography with photoionization detection," In "Analytical Methods Approved for Drinking Water Compliance Monitoring of Organic Contaminants," June 2008, accessed online at *http://www.epa.gov/ogwdw000/methods/pdfs/methods/organic_080521b.pdf.*
10. U.S. EPA, EPA Method 525.2, Rev. 2.0—"Determination of organic compounds in drinking water by liquid-solid extraction and capillary column gas chromatography/mass spectrometry, " In "Analytical Methods Approved for Drinking Water Compliance Monitoring of Organic Contaminants," June 2008, accessed online at *http://www.epa.gov/ogwdw000/methods/pdfs/methods/organic_080521b.pdf.*

Dated: March 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7292 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. FDA–2009–N–0458]

RIN 0910–AG29

Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations That Suffer From a Disease or Condition That a Device Is Intended to Treat, Diagnose, or Cure

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations on premarket approval of medical devices to include requirements relating to the submission of information on pediatric subpopulations that suffer from the disease or condition that a device is intended to treat, diagnose, or cure. Elsewhere in this issue of the **Federal Register**, we are publishing a companion direct final rule. This

proposed rule will provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw the direct final rule.

DATES: Submit electronic or written comments on the proposed rule by June 15, 2010. Submit electronic or written comments on the information collection requirements by June 1, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0458, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number and regulatory information number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert Gatling, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1640, Silver Spring, MD 20993, 301–796–6560.

SUPPLEMENTARY INFORMATION:

I. Why Is This Companion Proposed Rule Being Issued?

This proposed rule is a companion to a direct final rule regarding the submission of information on pediatric subpopulations that suffer from a disease or condition that a device is intended to treat, diagnose, or cure. The direct final rule is published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any significant adverse comment and is withdrawn. We are publishing the direct final rule because we believe the rule is noncontroversial, and we do not anticipate receiving any significant adverse comments. If no significant adverse comment is received in response to the direct final rule, no further action will be taken relating to this proposed rule. Instead, we will publish a notice within 30 days after the comment period ends confirming when the direct final rule will go into effect.

If we receive any significant adverse comment regarding the direct final rule we will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using our usual notice-and-comment rulemaking procedures under the Administrative Procedure Act (APA) (5 U.S.C. 552a *et seq.*). The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will be considered as comments regarding the direct final rule and vice versa. We will not provide additional opportunity for comment.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

In the **Federal Register** of November 21, 1997 (62 FR 62466), you can find additional information about FDA's direct final rulemaking procedures in our guidance document entitled "Guidance for FDA and Industry: Direct Final Rule Procedures." This guidance document is available at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm*.

II. What Is the Background of This Proposed Rule?

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA)[1] (Public Law 110–85) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding, among other things, a new section 515A of the act (21 U.S.C. 360e–1). Section 515A(a) of the act requires persons who submit certain medical device applications to include readily available information providing a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients. This proposed rule amends FDA's regulations to implement the requirements of section 515A(a) of the act.

Section 515A(c) of the act states that, for the purposes of that section, the term "pediatric subpopulation" has the meaning given the term in section 520(m)(6)(E)(ii) of the act (21 U.S.C. 360j(m)(6)(E)(ii)). Section 520(m)(6)(E)(ii) of the act defines the term "pediatric subpopulation" to mean one of the following populations:

- Neonates;
- Infants;
- Children; or
- Adolescents.

We have previously issued guidance recommending the age range for each of the populations included in the term "pediatric subpopulation." See *Premarket Assessment of Pediatric Medical Devices* (May 14, 2004); *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089740.htm*.

The term "pediatric patient" is defined, for purposes of section 520(m)(6)(E)(i) of the act as patients who are 21 years of age or younger at the time of the diagnosis or treatment. Because no other definition of "pediatric patient" is included in the Pediatric Medical Device Safety and Improvement Act of 2007, and because the definition in section 520(m)(6)(E)(i) of the act is consistent with the definition of pediatric subpopulations in section 520(m)(6)(E)(ii), FDA has concluded

[1] Title III of FDAAA, which includes new section 515A, is also known as the Pediatric Medical Device Safety and Improvement Act of 2007.

that the term "pediatric patient" in section 515A of the act refers to patients who are 21 years of age or younger at the time of the diagnosis or treatment.

The information submitted under section 515A(a) of the act will help FDA track the following information that it is required to report annually to Congress, in accordance with section 515A(a)(3) of the act:

- The number of approved devices for which there is a pediatric subpopulation that suffers from the disease or condition that the device is intended to treat, diagnose, or cure;
- The number of approved devices labeled for use in pediatric patients;
- The number of approved pediatric devices that were exempted from a review fee under section 738(a)(2)(B)(v) of the act (21 U.S.C. 379j(a)(2)(B)(v)); and
- The review time for each such device.

III. What Applications Are Subject to This Proposed Rule?

In accordance with the act, these requirements apply to the following applications when submitted on or after the effective date of this proposed rule:

- Any request for a humanitarian device exemption (HDE) submitted under section 520(m) of the act;
- Any premarket approval application (PMA) or supplement to a PMA submitted under section 515 of the act; and
- Any product development protocol (PDP) submitted under section 515 of the act.

If the applicant of a supplement to a PMA has previously submitted information satisfying these requirements, the applicant may incorporate that information by reference rather than resubmitting the same information. However, if additional information has become readily available to the applicant since the previous submission, the applicant must submit that information as part of the supplement.

Many PMAs begin with the submission of one or more PMA modules; see *Premarket Approval Application Modular Review—Guidance for Industry and FDA Staff*, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089764.htm*. Applicants who choose to use the modular approach should submit the information required by section 515A(a) of the act in the final PMA module (i.e., the module that includes final clinical data, proposed labeling, and the summary of safety and effectiveness).

IV. What Does This Proposed Rule Do?

This proposed rule would implement new section 515A(a) of the act by amending 21 CFR Part 814, *Premarket Approval of Medical Devices*, to include requirements relating to the submission of information on pediatric subpopulations that suffer from the disease or condition that a device is intended to treat, diagnose, or cure.

A. What Information Must Be Provided?

This proposed rule requires each applicant who submits an HDE, PMA, supplement to a PMA, or PDP to include, if "readily available," a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients.

B. What Are the Consequences of Not Submitting "Readily Available" Information?

If you do not submit the information required by section 515A(a) of the act, FDA may not approve your application until you provide the required information. We intend to contact you during the normal course of our review to inform you that your submission lacks the information required by section 515A(a) of the act and by this proposed rule, and to ask you to amend your application to provide the required information. If your application has no other deficiencies and otherwise meets applicable statutory and regulatory requirements for approval, but still lacks information required by section 515A(a) of the act, we intend to send you an "approvable" letter informing you that we will approve your application after you provide the information required by section 515A(a). If your application has other deficiencies or does not meet all applicable statutory and regulatory requirements for approval, we intend to send you a "not approvable" letter or a "major deficiency" letter describing what information or data you need to provide before FDA can approve your application; the "not approvable" or "major deficiency" letter may cite the absence of 515A(a) information in the section listing minor deficiencies. For additional information concerning the interactive process we will use during our review, see *Guidance for Industry and FDA Staff: Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements*, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089402.htm*. For additional information concerning "approvable," "not approvable," and "major deficiency" letters, see *FDA and Industry Actions on Premarket Approval Applications (PMAs): Effect on FDA Review Clock and Goals*, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089733.htm*.

V. What Is the Legal Authority for This Proposed Rule?

This proposed rule, if finalized, would amend §§ 814.1, 814.2, 814.20, 814.37, 814.39, 814.44, 814.100, 814.104, and 814.116. FDA's legal authority to modify §§ 814.1, 814.2, 814.20, 814.37, 814.39, 814.44, 814.100, 814.104, and 814.116 arises from the same authority under which FDA initially issued these regulations, the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 360e, 360e–1, 360j, and 371).

VI. What Is the Environmental Impact of This Proposed Rule?

FDA has determined under 21 CFR 25.30(h) and 25.34(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. What Is the Economic Impact of This Proposed Rule?

We have examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this regulation only requires that some submissions include a small amount of readily available information, creating little additional burden, the agency certifies that the proposed rule will not have a significant

economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. We do not expect this rule to result in any 1-year expenditure that would meet or exceed this amount.

We believe that the only costs to industry are those that we account for in our Paperwork Reduction Act analysis, which immediately follows this section. The proposed rule does not require additional clinical research or other costly efforts, and simply requires the applicant to briefly summarize readily available information that will have been reviewed by the applicant during the course of its development of the device and preparation of its application to FDA. We have also limited the proposed rule to exclude supplements that do not involve a new intended use; if a supplement does not involve a new intended use, we do not expect the applicant will have new information pertinent to the requirement of section 515A(a) of the act and this rule, and the limitation avoids the needless submission of duplicate information to FDA. We expect FDA's additional costs will be inconsequential, as the information required here will be filed and managed as an integral part of each submission, using existing filing, storage, and data management systems and processes.

VIII. How Does the Paperwork Reduction Act of 1995 Apply to This Proposed Rule?

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection techniques, when appropriate, and other forms of information technology.

Title: Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations That Suffer From a Disease or Condition That a Device Is Intended to Treat, Diagnose, or Cure.

Description: Section 515A(a) of FDAAA requires applicants who submit certain medical device applications to include readily available information providing a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients. The information submitted will allow FDA to track the number of approved devices for which there is a pediatric subpopulation that suffers from the disease or condition that the device is intended to treat, diagnose, or cure; the number of approved devices labeled for use in pediatric patients; the number of approved pediatric devices that were exempted from a review fee under section 738(a)(2)(B)(v) of the act; and the review time for each such device.

Description of Respondents: These requirements apply to applicants who submit the following applications when submitted on or after the effective date of this rule:

- Any request for an HDE submitted under section 520(m) of the act;
- Any PMA submitted under section 515 of the act;
- Any PDP submitted under section 515 of the act; and
- Any supplement to an HDE, PMA, or PDP that proposes a new intended use, whether for an adult population or a pediatric population.

Burden: FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.20(b)(3)(i)	25	1	25	4	100
814.37(b)(2)	10	1	10	4	40
814.39(h)	10	1	10	4	40
814.104(b)(6)	5	1	5	4	20
Totals					200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

All that is required is to access, organize, and submit information that is readily available, using any approach that meets the requirements of section 515A(a) of the act and this rule. FDA expects to receive approximately 40 original PMA/PDP/HDE applications each year, 5 of which FDA expects to be HDEs. This estimate is based on the actual average of FDA's receipt of new PMA applications in FY 2007 through FY 2008. The agency estimates that 10 of those 40 original PMA submissions will fail to provide the required pediatric use information and their sponsors will therefore be required to submit PMA amendments. The agency also expects to receive 10 supplements that describe a new indication for use and will include the pediatric use information required by 515A(a) of the act and this rule. We believe that because the rule requires that the applicant organize and submit only

readily available information, no more than 4 hours will be required to comply with section 515A(a) of the act and this rule. FDA estimates that the total burden created by this rule is 200 hours.

We based this estimate on our experience with similar information collection requirements and on consultations with the Interagency Pediatric Devices Working Group which includes the Agency for Healthcare Research and Quality, FDA, National Institutes of Health, members of the Pediatric Advisory Committee, researchers, healthcare practitioners, medical device trade associations, and medical device manufacturers.

In compliance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. As provided in 5 CFR 1320.5(c)(1), collections of information in a proposed rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this proposed rule (see **DATES**) to the Division of Dockets Management (see **ADDRESSES**).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. What Are the Federalism Impacts of This Proposed Rule?

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. How Do You Submit Comments on This Rule?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is proposed to be amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

2. In § 814.1, revise paragraph (a) to read as follows:

§ 814.1 Scope.

(a) This section implements sections 515 and 515A of the act by providing procedures for the premarket approval of medical devices intended for human use.

* * * * *

3. Revise § 814.2 to read as follows:

§ 814.2 Purpose.

The purpose of this part is to establish an efficient and thorough device review process—

(a) To facilitate the approval of PMAs for devices that have been shown to be safe and effective and that otherwise meet the statutory criteria for approval;

(b) To ensure the disapproval of PMAs that have not been shown to be safe and effective or that do not otherwise meet the statutory criteria for approval; and

(c) To ensure PMAs include readily available information concerning actual and potential pediatric uses of medical devices.

4. In § 814.20, revise paragraph (b)(3)(i) to read as follows:

§ 814.20 Application.

* * * * *

(b) * * *

(3) * * *

(i) *Indications for use.* (A) A general description of the disease or condition the device will diagnose, treat, prevent, cure, or mitigate, including a description of the patient population for which the device is intended.

(B) Information concerning uses in pediatric patients who are 21 years of age or younger: The application must include the following information, if readily available:

(*1*) A description of any pediatric subpopulations (neonates, infants, children, adolescents) that suffer from the disease or condition that the device is intended to treat, diagnose, or cure; and

(*2*) The number of affected pediatric patients.

* * * * *

5. In § 814.37, revise the section heading and paragraph (b) to read as follows:

§ 814.37 PMA amendments and resubmitted PMAs.

* * * * *

(b)(1) FDA may request the applicant to amend a PMA or PMA supplement with any information regarding the device that is necessary for FDA or the appropriate advisory committee to complete the review of the PMA or PMA supplement.

(2) FDA may request the applicant to amend a PMA or PMA supplement with information concerning pediatric uses as required under § 814.20(b)(3)(i).

* * * * *

6. In § 814.39, add paragraph (h) to read as follows:

§ 814.39 PMA supplements.

* * * * *

(h) The application must include the following information, if readily available:

(1) A description of any pediatric subpopulations (neonates, infants, children, adolescents) that suffer from the disease or condition that the device is intended to treat, diagnose, or cure; and

(2) The number of affected pediatric patients who are 21 years of age or younger.

(3) If information concerning the device that is the subject of the supplement was previously submitted under § 814.20(b)(3)(i), that information may be incorporated by reference to the application or submission that contains

the information. However, if additional information required under § 814.20(b)(3)(i) has become readily available to the applicant since the previous submission, the applicant must submit that information as part of the supplement.

7. In § 814.44, redesignate paragraphs (e)(1)(ii) through (e)(1)(iv) as paragraphs (e)(1)(iii) through (e)(1)(v), respectively, and add new paragraph (e)(1)(ii) to read as follows:

§ 814.44 Procedures for review of a PMA.

* * * * *

(e) * * *

(1) * * *

(ii) The submission of additional information concerning potential pediatric uses required by § 814.20(b)(3)(i) that is readily available to the applicant;

* * * * *

8. Amend § 814.100 as follows:

a. Redesignate paragraphs (b) through (e) as paragraphs (d) through (g), respectively;

b. Redesignate paragraph (a) as paragraph (b), and remove the first sentence of redesignated paragraph (b); and

c. Add new paragraphs (a) and (c) to read as follows:

§ 814.100 Purpose and scope.

(a) This subpart H implements sections 515A and 520(m) of the act.

* * * * *

(c) Section 515A of the act is intended to ensure the submission of readily available information concerning actual and potential pediatric uses of medical devices.

* * * * *

9. Amend § 814.104 as follows:

a. Revise the last sentence of paragraph (b)(4)(ii);

b. Revise the last sentence of paragraph (b)(5); and

c. Add paragraph (b)(6) to read as follows:

§ 814.104 Original applications.

* * * * *

(b) * * *

(4) * * *

(ii) * * * The effectiveness of this device for this use has not been demonstrated.

(5) * * * If the amount charged is $250 or less, the requirement for a report by an independent certified public accountant or an attestation by a responsible individual of the organization is waived; and

(6) Readily available information concerning actual and potential pediatric uses of the device, as required by § 814.20(b)(3)(i).

* * * * *

10. In § 814.116, redesignate paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively, and add new paragraph (c)(2) to read as follows:

§ 814.116 Procedures for review of an HDE.

* * * * *

(c) * * *

(2) The submission of additional information concerning potential pediatric uses required by § 814.20(b)(3)(i) that is readily available to the applicant;

* * * * *

Dated: March 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7192 Filed 3–31–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 150 and 165

[Docket No. USCG–2009–0589]

RIN 1625–AA00, RIN 1625–AA11

Regulated Navigation Areas, Safety Zones, Security Zones; Deepwater Ports in Boston Captain of the Port Zone, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish new regulated navigation areas (RNAs) and safety and security zones for deepwater liquefied natural gas (LNG) ports in the Boston Captain of the Port (COTP) Zone, off the coast of Gloucester, Massachusetts. The proposed RNAs and safety and security zones are in waters around the Neptune Deepwater Port Facility (Neptune). They would protect vessels and mariners from the potential safety hazards associated with deepwater port operations, and protect liquefied natural gas carriers (LNGCs) and deepwater port infrastructure from security threats or other subversive acts, by prohibiting certain operations and imposing conditions on others.

DATES: Comments and related material must be received by the Coast Guard on or before June 1, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0589 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LCDR Pamela Garcia, Coast Guard; telephone 617–223–3028; e-mail *Pamela.P.Garcia@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0589), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can

contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rule" and insert "USC–2009–0589" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USC–2009–0589" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

On March 23, 2007, the Maritime Administration (MARAD), in accordance with the Deepwater Port Act of 1974 (DPA), as amended, 33 U.S.C. 1501 *et seq.,* issued a license to Suez Energy to own, construct, and operate a natural gas deepwater port. This port, Neptune Deepwater Port (Neptune), is located in the Atlantic Ocean, approximately eight nautical miles south-southeast of Gloucester, Massachusetts, in Federal waters. The coordinates for its two submerged turret loading buoys are: STL Buoy A, Latitude 42°29′12.3″ N, Longitude 070°36′29.7″ W and STL Buoy B, Latitude 42°27′20.5″ N, Longitude 070°36′07.3″ W. Neptune can accommodate the mooring, connecting, and offloading of two liquefied natural gas carriers at one time. Neptune's operator plans to offload LNGCs by regasifying the liquefied natural gas (LNG) on board the vessels. The regasified natural gas is then transferred through two submerged turret loading buoys via a flexible riser leading to a seabed pipeline that ties into the Algonquin Gas Transmission Pipeline for transfer to shore.

Among other powers, Coast Guard District Commanders may establish, in 33 CFR Part 165:

- *Regulated navigation areas*—Defined water areas determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety;
- *Safety zones*—Water or shore areas to which access may be limited for safety or environmental purposes; and
- *Security zones*—Land or water areas subject to regulation to safeguard vessels, harbors, ports, or waterfront facilities from destruction, loss, or injury from sabotage or similar subversive acts.

33 U.S.C. 1226, 1231; 50 U.S.C. 191; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1, 165.10, 165.11, 165.20, 165.30. Current regulations establishing RNAs, safety zones, and security zones for deepwater ports in the Boston COTP Zone appear at 33 CFR 165.110 and 165.117.

In the case of deepwater ports handling oil or natural gas, RNAs and safety or security zones established by the District Commander may also affect 33 CFR 150.940, which describes safety zones for specific deepwater ports. Insofar as deepwater port safety zones involve anchorage, they are established under the additional authority of the DPA, 33 U.S.C. 1509(a). If a deepwater port safety zone also provides for "no anchoring areas" (NAAs) or "areas to be avoided" (ATBAs), the District Commander must coordinate its establishment in accordance with 33 CFR 150.915, because NAAs and ATBAs require International Maritime Organization (IMO) approval. Current regulations establishing safety zones for the Boston COTP Zone appear at 33 CFR 150.940(c).

Discussion of Proposed Rule

The Coast Guard proposes establishing RNAs around Neptune's STL buoys, to protect mariners from the hazards associated with submerged deepwater port infrastructure and to ensure safety at and around LNGCs engaged in regasification and transfer operations at Neptune. The RNAs would prohibit vessels from anchoring or otherwise deploying equipment that could become entangled in submerged infrastructure within 1,000 meters of Neptune's STL buoys. The RNAs would also prohibit vessels from commercial fishing or other activities on or below the waterway using nets, dredges, traps, or remotely operated vehicles (ROVs). Diving in the RNAs would be prohibited without the permission of the COTP, and this prohibition would be extended to existing RNAs for the Northeast Gateway Deepwater Port (NEGDWP).

The Coast Guard also proposes placing safety and security zones within the corresponding RNAs. These would prohibit any person or vessel, other than an LNGC or support vessel (as defined in 33 CFR 148.5), from coming within 500 meters of Neptune's STL buoys. Because these safety zones affect anchorage at a deepwater port, the Coast Guard also proposes adding Neptune's safety zones to 33 CFR 150.940. The proposed amendment to that section would also provide details of IMO-approved NAAs and an ATBA affecting Neptune, which would be reflected on nautical charts. An IMO subcommittee gave preliminary approval to Neptune's NAAs and ATBA in July 2009, and we will not issue a final rule recognizing those NAAs and the ATBA until the IMO gives them final approval.

Finally, the Coast Guard proposes two amendments to 33 CFR 150.940(c)(4)(iii), which relates to safety zones for the Northeast Gateway Deepwater Port. These amendments would align the regulations for NEGDWP with those proposed for Neptune. The first would prohibit diving in NEGDWP's safety zones, without the permission of the COTP. The second would allow vessels to contact the COTP on VHF–FM Channel 16 (156.8 MHZ) as well as by telephone.

Regulatory Analyses

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

Regulatory Planning and Review

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

The USCG and MARAD are responsible for processing license applications to own, construct, and operate deepwater ports. To meet the requirements of the National Environmental Policy Act of 1969 (NEPA), the Coast Guard, in cooperation with MARAD, prepared an Environmental Impact Statement (EIS) in conjunction with reviewing the Neptune licensing application. Among other things, the EIS assessed the potential economic impacts associated with the construction and operation of Neptune and determined this rule is not a significant regulatory action, including the no anchoring and limited access areas that would be implemented by this proposed rule. That EIS is available in the public docket for the licensing application (USCG–2005–22611) at *http://www.regulations.gov.*

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, fish, or conduct other operations within 1,000 meters of the STL buoys for Neptune. The impact on small entities is expected to be minimal because vessels wishing to transit the Atlantic Ocean in the vicinity of the deepwater port may do so, provided they remain more than 500 meters from Neptune's STL buoys and any LNGC vessels calling on the deepwater port; and provided they refrain from anchoring or deploying nets, dredges, or traps within 1,000 meters of the STL buoys. Vessels wishing to fish in the area may do so in nearby and adjoining areas when otherwise permitted by applicable fisheries regulations, and vessels wishing to conduct diving operations may do so with the permission of the COTP.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Pamela Garcia at 617–223–3028, e-mail: *Pamela.P.Garcia@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the creation of new RNAs and safety and security zones, which falls within the categorical exclusion provisions of Paragraph 34(g) of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, and Reporting and recordkeeping requirements.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 150 and 165 as follows:

PART 150—DEEPWATER PORTS: OPERATIONS

1. The authority citation for Part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

2. Amend § 150.940 by revising paragraph (c)(4)(iii) and adding paragraph (d) to read as follows:

§ 150.940 Safety zones for specific deepwater ports.

* * * * *

(c) * * *

(4) * * *

(iii) All other vessel operators desiring to enter, operate or conduct diving operations within a safety zone described in paragraph (c)(1) of this section must contact the COTP or the COTP's authorized representative to obtain permission by contacting the Sector Boston Command Center at 617–223–5761 or via VHF–FM Channel 16 (156.8 MHZ). Vessel operators given permission to enter, operate, or conduct diving operations in a safety zone must comply with all directions given to them by the COTP or the COTP's authorized representative.

* * * * *

(d) Neptune Deepwater Port (Neptune)

(1) *Location.* The safety zones for Neptune consist of circular zones, each with a 500-meter radius and centered on each of Neptune's two submerged turret loading (STL) buoys. STL Buoy "A" is centered at the following coordinates: Latitude 42°29′12.3″ N, Longitude 070°36′29.7″ W; and STL Buoy "B": Latitude 42°27′20.5″ N, Longitude 070°36′07.3″ W. Each safety zone encompasses, within the respective 500-meter circles, the primary components of Neptune, including a submerged turret loading buoy and a pipeline end manifold. Each safety zone is located approximately eight nautical miles south-southeast of Gloucester, Massachusetts, in Federal waters.

(2) *No anchoring areas.* Two mandatory no anchoring areas for Neptune are established for all waters within circles of 1,000-meter radii centered on the submerged turret loading buoy positions set forth in paragraph (d)(1) of this section.

(3) *Area to be avoided.* An area to be avoided (ATBA) for Neptune is as described in Table 150.940(C):

TABLE 150.940(C)—ATBA FOR NEPTUNE

Plotting guidance	Latitude N	Longitude W
(i) Starting at	42°27′29″	070°35′07″
(ii) A rhumb line to	42°29′21″	070°35′36″
(iii) Then an arc with a 1,250 meter radius centered at point	42°29′12″	070°36′30″
(iv) To a point	42°29′06″	070°37′24″
(v) Then a rhumb line to	42°27′13″	070°36′54″
(vi) Then an arc with a 1,250 meter radius centered at point	42°27′20″	070°36′07″
(vii) To the point of starting	42°27′29″	070°35′07″

(4) *Regulations.* (i) In accordance with the general regulations set forth in 33 CFR 165.23 and elsewhere in this part, no person or vessel may enter the waters within the boundaries of the safety zones described in paragraph (d)(1) of this section unless previously authorized by the Captain of the Port (COTP) Boston, or the COTP's authorized representative.

(ii) Notwithstanding paragraph (d)(4)(i) of this section, liquefied natural gas carriers (LNGCs) and support vessels, as defined in 33 CFR 148.5, calling on Neptune, are authorized to enter and move within such zones in the normal course of their operations following the requirements set forth in 33 CFR 150.340 and 150.345, respectively.

(iii) All other vessel operators desiring to enter, operate or conduct diving operations within a safety zone described in paragraph (d)(1) of this section must contact the COTP or the COTP's authorized representative to

obtain permission by contacting the Sector Boston Command Center at 617–223–5761 or via VHF–FM Channel 16 (156.8 MHZ). Vessel operators given permission to enter or operate in a safety zone must comply with all directions given to them by the COTP or the COTP's authorized representative.

(iv) No vessel, other than an LNGC or support vessel calling on Neptune, may anchor in the area described in paragraph (d)(2) of this section.

PART 165—WATERWAYS SAFETY; REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

3. Amend § 165.117 by adding paragraph (a)(3)(ii) and revising paragraph (d)(1) to read as follows:

§ 165.117 Regulated Navigation Areas, Safety, and Security Zones: Deepwater Ports, First Coast Guard District.

(a) * * *

(3) * * *

(ii) The geographic coordinates forming the loci for the regulated navigation areas, safety, and security zones for Neptune Deepwater Port are: 42°29′12.3″ N, 070°36′29.7″ W; and 42°27′20.5″ N, 070°36′07.3″ W.

* * * * *

(d) * * *

(1) No vessel may anchor, engage in diving operations, or commercial fishing using nets, dredges, traps (pots), or remotely operated vehicles in the regulated navigation areas set forth in paragraph (a)(1) of this section.

* * * * *

Dated: March 14, 2010.

Joseph L. Nimmich,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2010–7161 Filed 3–31–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0087]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the "Baltimore Dragon Boat Challenge," a marine event to be held on the waters of the Patapsco River, Northwest Harbor, Baltimore, MD on June 19, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Chester River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0087 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0087), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0087" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the

"read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0087" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

On June 19, 2010, Baltimore Dragon Boat Club, Inc. will sponsor Dragon Boat Races in the Patapsco River, Northwest Harbor at Baltimore, MD. The event will consist of approximately 15 teams rowing Chinese Dragon Boats in heats of 2 or 3 boats for a distance of 500 meters. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

The Baltimore Dragon Boat Club held these races last year on August 22, 2009, in the same location. The Coast Guard published a Special Local Regulation, docket number USCG–2009–0251. The Notice of Proposed Rulemaking was published on June 2, 2009 (74 FR 26326), and the Temporary Final Rule published on August 6, 2009 (74 Fed. Reg. 39214) No comments were received on last years Special Local Regulation.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patapsco River, Northwest Harbor, Baltimore, MD. The regulations will be in effect from 6 a.m. to 5 p.m. on June 19, 2010. In the case of inclement weather this marine event may be postponed and rescheduled for 6 a.m. to 5 p.m. on June 20, 2010. The regulated area includes all waters of the Patapsco River, Northwest Harbor, in Baltimore, MD, within an area bounded by the following lines of reference; bounded on the west by a line running along longitude 076°35′35″ W; bounded on the east by a line running along longitude 076°35′10″ W; bounded on the north by a line running along latitude 39°16′40″ N; and bounded on the south by the shoreline. The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Patapsco River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Patapsco River during the event.

Although this regulation prevents traffic from transiting a portion of the Patapsco River, Northwest Harbor during the event, this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Coast Guard

Sector Baltimore, MD. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35–T05–0087 to read as follows:

§ 100.35–T05–0087 Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD.

(a) *Regulated area.* The following locations are regulated areas: All waters of the Patapsco River, Northwest Harbor, in Baltimore, MD, within an area bounded by the following lines of reference; bounded on the west by a line running along longitude 076°35′35″ W; bounded on the east by a line running along longitude 076°35′10″ W; bounded on the north by a line running along latitude 39°16′40″ N; and bounded on the south by the shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel

immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) Enforcement period: This section will be enforced from 6 a.m. until 5 p.m. on June 19, 2010, or in the case of inclement weather, from 6 a.m. to 5 p.m. on June 20, 2010.

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

Dated: March 12, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–7426 Filed 3–31–10; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2009–1 CRB Webcasting III]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by broadcasters and noncommercial educational webcasters and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2011, and ending on December 31, 2015.

DATES: Comments and objections, if any, are due no later than April 22, 2010.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000, between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Copyright Act, title 17 of the United States Code, provides a statutory license which allows for the public performance of sound recordings by means of a digital audio transmission by, among others, eligible nonsubscription transmission services and new subscription services. 17 U.S.C. 114(f). For purposes of the section 114 license, an "eligible nonsubscription transmission" is a noninteractive digital audio transmission which does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or other entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6). A "new subscription service" is a "service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or preexisting satellite digital audio radio service." 17 U.S.C. 114(j)(8).

Services using the section 114 license may need to make one or more temporary or "ephemeral" copies of a sound recording in order to facilitate the transmission of that recording. The section 112 statutory license allows for the making of these ephemeral reproductions. 17 U.S.C. 112(e).

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges ("Judges") to conduct proceedings every five years to determine the rates and terms for the sections 114 and 112 statutory licenses, beginning with the license period 2006 through 2010.[1] 17 U.S.C. 801(b)(1), 804(b)(3)(A). The Judges announced their final determination of the rates and terms for the 2006–2010 license period on May 1, 2007. 72 FR 24084 (May 1, 2007), *affirmed in part, remanded in part, Intercollegiate Broadcast System* v. *Copyright Royalty Board,* 574 F.3d 748 (DC Cir. 2009).

Therefore, the next proceeding to determine reasonable terms and rates of royalty payment for the sections 114 and 112 licenses was to be commenced in January 2009, with such rates and terms to become effective on January 1, 2011. 17 U.S.C. 804(b)(3)(A). Pursuant to section 804(b)(3)(A), the Judges published in the **Federal Register** a notice commencing the rate determination proceeding for the license period 2011–2015 and requesting interested parties to submit their petitions to participate. 74 FR 318 (January 5, 2009). Petitions to Participate were received from: Intercollegiate Broadcast System, Inc./Harvard Radio Broadcasting Co.; Live365, Inc.; LoudCity LLC; AccuRadio, LLC, Digitally Imported, Inc., Got Radio, LLC, IoWorldMedia, Inc., Radio Paradise, Inc., and SomaFM.com LLC, filing jointly; SoundExchange, Inc. ("SoundExchange"); Amazon.com; RealNetworks, Inc.; College Broadcasters, Inc. ("CBI"); David W. Rahn; Royalty Logic, Inc.; Commonwealth Broadcasting Corporation; Sirius XM Radio, Inc.; Clear Channel Communications, Inc.; National Religious Broadcasters Music License Committee; National Religious Broadcasters Noncommercial Music License Committee; Apple, Inc.; Digital Media Association, Inc.; Citadel Broadcasting Corporation, Clarke Broadcasting Corporation, Entercom Communications Corp., Galaxy Communications LP, and Greater Media, Inc., filing jointly; CBS Radio, Inc.; NCE Radio Coalition.; Slacker, Inc.; Catholic Radio Association; Yahoo! Inc.; Spatial Audio Solutions; National Association of Broadcasters ("NAB"); Bonneville International Corporation; Pandora Media, Inc.; mSpot, Inc.; MTV Networks Viacom; and Access2ip.

[1] Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004, which established the Copyright Royalty Judges, rates and terms for the sections 114 and 112 statutory licenses were set under the Copyright Arbitration Royalty Panel system, which was administered by the Librarian of Congress.

The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), from March 2, 2009, through June 1, 2009. On June 1, 2009, the Judges received a joint motion from SoundExchange and NAB to adopt a partial settlement for certain Internet transmissions by commercial broadcasters. On June 24, 2009, the Judges set September 29, 2009, as the deadline by which participants were to submit their written direct statements. On August 13, 2009, SoundExchange and CBI submitted to the Judges a joint motion to adopt a partial settlement for certain Internet transmissions by college radio stations and other noncommercial educational webcasters.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

> (i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(1)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of sound recordings and commercial broadcasters and college radio stations and other noncommercial educational webcasters performing the sound recordings for the license period 2011–2015.[2]

As part of this notice, the Judges are modifying two aspects of the proposed rates and terms in proposed Subpart B for broadcasters making certain eligible transmissions of sound recordings. First, SoundExchange and NAB have included language in their proposal that states that the rate for ephemeral recordings has no precedential effect in any judicial, administrative, or other proceeding. The Judges decline to include such language within our regulations. Our task, as set forth in section 112 and chapter 8 of the Copyright Act, is to adopt rates and terms for the compulsory license for the making of ephemeral reproductions to facilitate digital audio transmissions. Such language is not relevant to this task. See Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding, Docket No. 2006–3 CRB DPRA, 73 FR 57033, 57034 (October 1, 2008); Noncommercial Educational Broadcasting Statutory License, Docket No. 2006–2 CRB NCBRA, 72 FR 19138, 19139 (April 17, 2007).

The Judges also decline for the same reason to include the language proposed by SoundExchange and NAB regarding the legal effect of the Collective's acceptance of an election, payment or reporting on the compliance of a Broadcaster or Small Broadcaster with the sections 112(e) or 114 licenses or the reservation of right to sue by the Collective or Copyright Owner for noncompliance. Again, such language is not relevant to our task of setting rates and terms under sections 112 and 114 of the Copyright Act.

The Judges are modifying two aspects of the proposed rates and terms in proposed Subpart C for noncommercial educational webcasters. In the settlement proposal submitted to the Judges, SoundExchange and CBI included a provision governing reporting by noncommercial educational webcasters—proposed §§ 380.23(g)(2) and (g)(3) herein—stating that such reporting requirements would be those in the notice and recordkeeping regulations in part 370 as they existed on January 1, 2009, specifically to then §§ 370.3 and 370.3(c)(2)(vi). The Judges amended these regulations on October 11, 2009, *see* 74 FR 52418, and consequently, sections were renumbered. Proposed §§ 380.23(g)(2) and (g)(3) reflect the current section numbers of part 370, namely, §§ 370.4 and 370.4(d)(2)(vi), respectively, and the references to January 1, 2009, have been deleted. Next, for the reasons stated above in rejecting similar language in the SoundExchange/NAB proposal, the Judges decline to include in our regulations the language proposed by SoundExchange and CBI regarding what represents compliance with the sections 112(e) and 114 licenses and the reservation of right to sue.

As noted above, the public may comment and object to any or all of the proposed regulations contained in this notice. Such comments and objections must be submitted no later than April 22, 2010.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

Subpart A—Commercial Webcasters and Noncommercial Webcasters

2. Designate existing § 380.1 through § 380.8 as Subpart A, and add a heading for Subpart A to read as set forth above.

3. Add Subpart B to read as follows:

Subpart B—Broadcasters

Sec.
380.10 General.
380.11 Definitions.
380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.13 Terms for making payment of royalty fees and statements of account.
380.14 Confidential information.
380.15 Verification of royalty payments.
380.16 Verification of royalty distributions.
380.17 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

Subpart B—Broadcasters

§ 380.10 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions made by Broadcasters as set forth herein in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Broadcasters as set forth herein in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

[2] The Judges are proposing to separate the current section 380 into three subparts. Proposed Subpart A contains the rates and terms for commercial webcasters and noncommercial webcasters for the 2006–2010 license period. Rates and terms for the license period 2011–2015 for these services will be determined after a full hearing before the Judges and will be published in a separate document. Proposed Subpart B contains the rates and terms governing the transmissions of broadcasters under sections 114 and 112 for 2011–2015, and proposed Subpart C contains the rates and terms governing the transmissions of noncommercial educational webcasters under the 114 and 112 licenses for 2011–2015.

(b) *Legal compliance.* Broadcasters relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations not inconsistent with the rates and terms set forth herein.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and digital audio services shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 380.11 Definitions.

For purposes of this subpart, the following definitions shall apply:

Aggregate Tuning Hours means the total hours of programming that the Broadcaster has transmitted during the relevant period to all listeners within the United States from any channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions.

Broadcaster means an entity that

(1) Has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission;

(2) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

(3) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; and

(4) Is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i).

Broadcaster Webcasts mean eligible nonsubscription transmissions made by a Broadcaster over the Internet that are not Broadcast Retransmissions.

Broadcast Retransmissions mean eligible nonsubscription transmissions made by a Broadcaster over the Internet that are retransmissions of terrestrial over-the-air broadcast programming transmitted by the Broadcaster through its AM or FM radio station, including ones with substitute advertisements or other programming occasionally substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained. For the avoidance of doubt, a Broadcast Retransmission does not include programming that does not require a license under United States copyright law or that is transmitted on an Internet-only side channel.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Eligible Transmission shall mean either a Broadcaster Webcast or a Broadcast Retransmission.

Ephemeral Recording is a phonorecord created for the purpose of facilitating an Eligible Transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission *(e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the Broadcaster has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

Small Broadcaster is a Broadcaster that, for any of its channels and stations (determined as provided in § 380.12(c)) over which it transmits Broadcast Retransmissions, and for all of its channels and stations over which it transmits Broadcaster Webcasts in the aggregate, in any calendar year in which it is to be considered a Small Broadcaster, meets the following additional eligibility criteria:

(1) During the prior year it made Eligible Transmissions totaling less than 27,777 Aggregate Tuning Hours; and

(2) During the applicable year it reasonably expects to make Eligible Transmissions totaling less than 27,777 Aggregate Tuning Hours; provided that, one time during the period 2011–2015, a Broadcaster that qualified as a Small Broadcaster under the foregoing definition as of January 31 of one year, elected Small Broadcaster status for that year, and unexpectedly made Eligible Transmissions on one or more channels or stations in excess of 27,777 aggregate tuning hours during that year, may choose to be treated as a Small Broadcaster during the following year notwithstanding paragraph (1) of the definition of "Small Broadcaster" if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 27,777 aggregate tuning hours during that following year. As to channels or stations over which a Broadcaster transmits Broadcast Retransmissions, the Broadcaster may elect Small Broadcaster status only with respect to any of its channels or stations that meet all of the foregoing criteria.

§ 380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* Royalties for Eligible Transmissions made pursuant to 17 U.S.C. 114, and the making of related ephemeral recordings pursuant to 17 U.S.C. 112(e), shall, except as provided in § 380.13(g)(3), be payable on a per-performance basis, as follows:

(1) 2011: $0.0017;

(2) 2012: $0.0020;

(3) 2013: $0.0022;

(4) 2014: $0.0023;

(5) 2015: $0.0025.

(b) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Broadcaster during this license period and used solely by the Broadcaster to facilitate transmissions for which it pays royalties as and when provided in this section is deemed to be included within such royalty payments and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting as set forth in § 380.3.

(c) *Minimum fee.* Each Broadcaster will pay an annual, nonrefundable minimum fee of $500 for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year or part of a calendar year during 2011–2015 during which the Broadcaster is a licensee pursuant to licenses under 17 U.S.C. 112(e) and 114, provided that a Broadcaster shall not be required to pay more than $50,000 in minimum fees in the aggregate (for 100 or more channels or stations). For the purpose of this subpart, each individual stream (e.g., HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum, except that identical streams for simulcast stations will be treated as a single stream if the streams are available at a single Uniform Resource Locator (URL) and performances from all such stations are aggregated for purposes of determining the number of payable performances hereunder. Upon payment of the minimum fee, the Broadcaster will receive a credit in the amount of the minimum fee against any additional royalties payable for the same calendar year for the same channel or station. In addition, an electing Small Broadcaster also shall pay a $100 annual fee (the "Proxy Fee") to the Collective for the reporting waiver discussed in § 380.13(g)(2).

§ 380.13 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Broadcaster shall make the royalty payments due under § 380.12 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Broadcasters due under § 380.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) and 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Board designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments and reporting.* Broadcasters must make monthly payments where required by § 380.12, and provide statements of account and reports of use, for each month on the 45th day following the month in which the Eligible Transmissions subject to the payments, statements of account, and reports of use were made. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Broadcaster shall make any minimum payment due under § 380.12(b) by January 31 of the applicable calendar year, except that payment by a Broadcaster that was not making Eligible Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of said date but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Broadcaster commences to do so.

(e) *Late fees.* A Broadcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by the Collective in compliance with applicable regulations by the due date. The amount of the late fee shall be 1.5% of a late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Broadcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(f) *Statements of account.* Any payment due under § 380.12 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Broadcaster or a duly authorized agent of the owner, if the Broadcaster is not a partnership or corporation;

(ii) A partner or delegee, if the Broadcaster is a partnership; or

(iii) An officer of the corporation, if the Broadcaster is a corporation.

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Broadcaster is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Broadcaster, or officer or partner, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Reporting by Broadcasters in General.* (1) Broadcasters other than electing Small Broadcasters covered by paragraph (g)(2) of this section shall submit reports of use on a per-performance basis in compliance with the regulations set forth in part 370 of this chapter, except that the following provisions shall apply notwithstanding the provisions of such part 370 of this chapter from time to time in effect:

(i) Broadcasters may pay for, and report usage in, a percentage of their programming hours on an Aggregate Tuning Hour basis as provided in paragraph (g)(3) of this section.

(ii) Broadcasters shall submit reports of use to the Collective on a monthly basis.

(iii) As provided in paragraph (d) of this section, Broadcasters shall submit reports of use by no later than the 45th day following the last day of the month to which they pertain.

(iv) Except as provided in paragraph (g)(3) of this section, Broadcasters shall submit reports of use to the Collective on a census reporting basis (*i.e.,* reports of use shall include every sound recording performed in the relevant month and the number of performances thereof).

(v) Broadcasters shall either submit a separate report of use for each of their stations, or a collective report of use covering all of their stations but identifying usage on a station-by-station basis;

(vi) Broadcasters shall transmit each report of use in a file the name of which includes

(A) The name of the Broadcaster, exactly as it appears on its notice of use, and

(B) If the report covers a single station only, the call letters of the station.

(vii) Broadcasters shall submit reports of use with headers, as presently described in § 370.4(e)(7) of this chapter.

(viii) Broadcasters shall submit a separate statement of account corresponding to each of their reports of use, transmitted in a file the name of which includes

(A) The name of the Broadcaster, exactly as it appears on its notice of use, and

(B) If the statement covers a single station only, the call letters of the station.

(2) On a transitional basis for a limited time in light of the unique business and operational circumstances currently existing with respect to Small Broadcasters and with the expectation that Small Broadcasters will be required, effective January 1, 2016, to report their actual usage in compliance with then-applicable regulations. Small Broadcasters that have made an election pursuant to paragraph (h) of this section for the relevant year shall not be required to provide reports of their use of sound recordings for Eligible Transmissions and related Ephemeral Recordings. The immediately preceding sentence applies even if the Small Broadcaster actually makes Eligible Transmissions for the year exceeding 27,777 Aggregate Tuning Hours, so long as it qualified as a Small Broadcaster at the time of its election for that year. In addition to minimum royalties hereunder, electing Small Broadcasters will pay to the Collective a $100 Proxy Fee to defray costs associated with this reporting waiver, including development of proxy usage data.

(3) Broadcasters generally reporting pursuant to paragraph (g)(1) of this section may pay for, and report usage in, a percentage of their programming hours on an Aggregate Tuning Hours basis, if

(i) Census reporting is not reasonably practical for the programming during those hours, and

(ii) If the total number of hours on a single report of use, provided pursuant to paragraph (g)(1) of this section, for which this type of reporting is used is below the maximum percentage set forth below for the relevant year:

(A) 2011: 16%;

(B) 2012: 14%;

(C) 2013: 12%;

(D) 2014: 10%;

(E) 2015: 8%.

(iii) To the extent that a Broadcaster chooses to report and pay for usage on an Aggregate Tuning Hours basis pursuant to paragraph (g)(3) of this section, the Broadcaster shall

(A) Report and pay based on the assumption that the number of sound recordings performed during the relevant programming hours is 12 per hour;

(B) Pay royalties (or recoup minimum fees) at the per-performance rates provided in § 380.12 on the basis of paragraph (g)(3)(iii)(A) of this section;

(C) Include Aggregate Tuning Hours in reports of use; and

(D) Include in reports of use complete playlist information for usage reported on the basis of Aggregate Tuning Hours.

(h) *Election of Small Broadcaster Status.* To be eligible for the reporting waiver for Small Broadcasters with respect to any particular channel in a given year, a Broadcaster must satisfy the definition set forth in § 380.11 and must submit to the Collective a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than January 31 of the applicable year. Even if a Broadcaster has once elected to be treated as a Small Broadcaster, it must make a separate, timely election in each subsequent year in which it wishes to be treated as a Small Broadcaster.

(i) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Broadcasters to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify and pay the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Broadcaster equally based upon information provided under the report of use requirements for Broadcasters contained in § 370.4 of this chapter and this subpart, except that in the case of electing Small Broadcasters, the Collective shall distribute royalties based on proxy usage data in accordance with a methodology adopted by the Collective's Board of Directors.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (g)(1) of this section within 3 years from the date of payment by a Broadcaster, such distribution may be first applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

(j) *Retention of records.* Books and records of a Broadcaster and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 380.14 Confidential information.

(a) *Definition.* For purposes of this subpart, "Confidential Information" shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Broadcaster submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Broadcaster's statement of account pursuant to § 380.15 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.16;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the

statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Broadcaster whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but not less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.15 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Broadcaster.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Broadcaster, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Board a notice of intent to audit a particular Broadcaster, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Broadcaster to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Broadcaster shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Broadcaster being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Broadcaster reasonably cooperates with the auditor to remedy promptly any factual error or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Broadcaster shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.16 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Board a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.17 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C.

114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

4. Add Subpart C to read as follows:

Subpart C—Noncommercial Educational Webcasters

Sec.
380.20 General.
380.21 Definitions.
380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.23 Terms for making payment of royalty fees and statements of account.
380.24 Confidential information.
380.25 Verification of royalty payments.
380.26 Verification of royalty distributions.
380.27 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

Subpart C—Noncommercial Educational Webcasters

§ 380.20 General.

(a) *Scope.* This subpart establishes rates and terms, including requirements for royalty payments, recordkeeping and reports of use, for the public performance of sound recordings in certain digital transmissions made by Noncommercial Educational Webcasters as set forth herein in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Noncommercial Educational Webcasters as set forth herein in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Noncommercial Educational Webcasters relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations not inconsistent with the rates and terms set forth herein. However, if a Noncommercial Educational Webcaster is also eligible for any other rates and terms for its Eligible Transmissions during the period January 1, 2011, through December 31, 2015, it may, by written notice to the Collective in a form to be provided by the Collective, elect to be subject to such other rates and terms rather than the rates and terms specified in this subpart. If a single educational institution has more than one station making Eligible Transmissions, each such station may determine individually whether it elects to be subject to this subpart.

(c) *Relationship to voluntary agreements.* Nothwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and digital audio services shall apply in lieu of the rates and terms of this subpart to transmissions within the scope of such agreements.

§ 380.21 Definitions.

For purposes of this subpart, the following definitions shall apply:

ATH or Aggregate Tuning Hours means the total hours of programming that a Noncommercial Educational Webcaster has transmitted during the relevant period to all listeners within the United States over all channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions, including from any archived programs, less the actual running time of any sound recordings for which the Noncommercial Educational Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Educational Webcaster transmitted one hour of programming to 10 simultaneous listeners, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Educational Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Eligible Transmission means an eligible nonsubscription transmission made by a Noncommercial Educational Webcaster over the Internet.

Ephemeral Recording is a phonorecord created for the purpose of facilitating an Eligible Transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Noncommercial Educational Webcaster means Noncommercial Webcaster (as defined in 17 U.S.C. 114(f)(5)(E)(i)) that

(1) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

(2) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations;

(3) Is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(4) Is not a "public broadcasting entity" (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the Noncommercial Educational Webcaster has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings, including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

§ 380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Minimum fee.* Each Noncommercial Educational Webcaster shall pay an annual, nonrefundable minimum fee for $500 (the "Minimum Fee") for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year it makes Eligible Transmissions subject to this subpart. For clarity, each individual stream (e.g., HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum. In addition, a Noncommercial Educational Webcaster electing the reporting waiver described in § 380.23(g)(1), shall pay a $100 annual fee (the "Proxy Fee") to the Collective.

(b) *Additional usage fees.* If, in any month, a Noncommercial Educational Webcaster makes total transmissions in excess of 159,140 Aggregate Tuning Hours on any individual channel or station, the Noncommercial Educational Webcaster shall pay additional usage fees ("Usage Fees") for the Eligible Transmissions it makes on that channel or station after exceeding 159,140 total ATH at the following per-performance rates:

(1) 2011: $0.0017;

(2) 2012: $0.0020;

(3) 2013: $0.0022;

(4) 2014: $0.0023;

(5) 2015: $0.0025.

(6) For a Noncommercial Educational Webcaster unable to calculate actual total performances and not required to report ATH or actual total performances under § 380.23(g)(3), the Noncommercial Educational Webcaster may pay its Usage Fees on an ATH basis, provided that the Noncommercial Educational Webcaster shall pay its Usage Fees at the per-performance rates provided in paragraphs (b)(1) through (5) of this section based on the assumption that the number of sound recordings performed is 12 per hour. The Collective may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis. In addition, and for the avoidance of doubt, a Noncommercial Educational Webcaster offering more than one channel or station shall pay Usage Fees on a per-channel or -station basis.

(c) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Noncommercial Educational Webcaster and covered by this subpart is deemed to be included within the royalty payments set forth in paragraphs (b)(1) through (5) of this section and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting in § 380.3.

§ 380.23 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Noncommercial Educational Webcaster shall make the royalty payments due under § 380.22 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Noncommercial Educational Webcasters due under § 380.22 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc., should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Board designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Minimum fee.* Noncommercial Educational Webcasters shall submit the Minimum Fee, and Proxy Fee if applicable, accompanied by a statement of account, by January 31st of each calendar year, except that payment of the Minimum Fee, and Proxy Fee if applicable, by a Noncommercial Educational Webcaster that was not making Eligible Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of said date but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Noncommercial Educational Webcaster commences doing so. Payments of minimum fees must be accompanied by a certification, signed by an officer or another duly authorized faculty member or administrator of the institution with which the Noncommercial Educational Webcaster is affiliated, on a from provided by the Collective, that the Noncommercial Educational Webcaster.

(1) Qualifies as a Noncommercial Educational Webcaster for the relevant year; and

(2) Did not exceed 159,140 total ATH in any month of the prior year for which the Noncommercial Educational Webcaster did not submit a statement of account and pay any required Usage Fees. At the same time the Noncommercial Educational Webcaster must identify all its stations making Eligible Transmissions and identify which of the reporting options set forth in paragraph (g) of this section it elects for the relevant year (provided that it must be eligible for the option it elects).

(d) *Usage fees.* In addition to its obligations pursuant to paragraph (c) of this section, a Noncommercial Educational Webcaster must make monthly payments of Usage Fees where required by § 380.22(b), and provide statements of account to accompany these payments, for each month on the 45th day following the month in which the Eligible Transmissions subject to the Usage Fees and statements of account were made. All monthly payments shall be rounded to the nearest cent.

(e) *Late fees.* A Noncommercial Educational Webcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by the Collective in compliance with the applicable regulations by the due date. The amount of the late fee shall be 1.5% of the late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, compounded monthly for the balance due, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use (as applicable) is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Noncommercial Educational Webcaster within 90 days

regarding any noncompliance that is reasonably evident to the Collective.

(f) *Statements of account.* Any payment due under § 380.22 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) The name of the Noncommercial Educational Webcaster, exactly as it appears on the notice of use, and if the statement of account covers a single station only, the call letters or name of the station;

(2) Such information as is necessary to calculate the accompanying royalty payment as prescribed in this subpart;

(3) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(4) The handwritten signature of an officer or another duly authorized faculty member or administrator of the applicable educational institution;

(5) The printed or typewritten name of the person signing the statement of account;

(6) The date of signature;

(7) The title or official position held by the person signing the statement of account;

(8) A certification of the capacity of the person signing; and

(9) A statement to the following effect:

I, the undersigned officer or other duly authorized faculty member or administrator of the applicable educational institution, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Reporting by Noncommercial Educational Webcasters in general*—(1) *Reporting waiver.* In light of the unique business and operational circumstances currently existing with respect to Noncommercial Educational Webcasters, and for the purposes of this subpart only, a Noncommercial Educational Webcaster that did not exceed 55,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 55,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to pay to the Collective a nonrefundable, annual Proxy Fee of $100 in lieu of providing reports of use for the calendar year pursuant to the regulations § 370.4 of this chapter. In addition, a Noncommercial Educational Webcaster that unexpectedly exceeded 55,000 total ATH on one or more channels or stations for more than one month during the immediately preceding calendar year may elect to pay the Proxy Fee and receive the reporting waiver described in paragraph (g)(1) of this section during a calendar year, if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 55,000 total ATH during any month of that calendar year. The Proxy Fee is intended to defray the Collective's costs associated with this reporting waiver, including development of proxy usage data. The Proxy Fee shall be paid by the date specified in paragraph (c) of this section for paying the Minimum Fee for the applicable calendar year and shall be accompanied by a certification on a form provided by the Collective, signed by an officer or another duly authorized faculty member or administrator of the applicable educational institution, stating that the Noncommercial Educational Webcaster is eligible for the Proxy Fee option because of its past and expected future usage and, if applicable, has implemented measures to ensure that it will not make excess Eligible Transmissions in the future.

(2) *Sample-basis reports.* A Noncommercial Educational Webcaster that did not exceed 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 159,140 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to provide reports of use on a sample basis (two weeks per calendar quarter) in accordance with the regulations at § 370.4 of this chapter, except that, notwithstanding § 370.4(d)(2)(vi), such an electing Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances and may in lieu thereof provide channel or station name and play frequency. Notwithstanding the foregoing, a Noncommercial Educational Webcaster that is able to report ATH or actual total performances is encouraged to do so. These reports of use shall be submitted to the Collective no later than January 31st of the year immediately following the year to which they pertain.

(3) *Census-basis reports.* If any of the following three conditions is satisfied, a Noncommercial Educational Webcaster must report pursuant to paragraph (g)(3) of this section:

(i) The Noncommercial Educational Webcaster exceeded 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year;

(ii) The Noncommercial Educational Webcaster expects to exceed 159,140 total ATH for any individual channel or station for any calendar month in the applicable calendar year; or

(iii) The Noncommercial Educational Webcaster otherwise does not elect to be subject to paragraphs (g)(1) or (2) of this section. A Noncommercial Educational Webcaster required to report pursuant to paragraph (g)(3) of this section shall provide reports of use to the Collective quarterly on a census reporting basis (i.e., reports of use shall include every sound recording performed in the relevant quarter), containing information otherwise complying with applicable regulations (but no less information than required by § 370.4 of this chapter), except that, notwithstanding § 370.4(d)(2)(vi), such a Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances, and may in lieu thereof provide channel or station name and play frequency, during the first calendar year it reports in accordance with paragraph (g)(3) of this section. For the avoidance of doubt, after a Noncommercial Educational Webcaster has been required to report in accordance with paragraph (g)(3) of this section for a full calendar year, it must thereafter include ATH or actual total performances in its reports of use. All reports of use under paragraph (g)(3) of this section shall be submitted to the Collective no later than the 45th day after the end of each calendar quarter.

(h) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Noncommercial Educational Webcasters to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify and pay the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Noncommercial Educational Webcaster equally based upon the information provided under the report of use requirements for Noncommercial Educational Webcasters contained in § 370.4 of this chapter and this subpart, except that in the case of Noncommercial Educational Webcasters that elect to pay a Proxy Fee in lieu of providing reports of use pursuant to paragraph (g)(1) of this section, the Collective shall distribute the aggregate royalties paid by electing

Noncommercial Educational Webcasters based on proxy usage data in accordance with a methodology adopted by the Collective's Board of Directors.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (h)(1) of this section within 3 years from the date of payment by a Noncommercial Educational Webcaster, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

(i) *Server logs.* Noncommercial Educational Webcasters shall retain for a period of no less than three full calendar years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting under this subpart. To the extent that a third-party Web hosting or service provider maintains equipment or software for a Noncommercial Educational Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Noncommercial Educational Webcaster shall direct that such server logs be created and maintained by said third party for a period of no less than three full calendar years and/or that such server logs be provided to, and maintained by, the Noncommercial Educational Webcaster.

§ 380.24 Confidential information.

(a) *Definition.* For purposes of this subpart, "Confidential Information" shall include the statements of account and any information contained therein, including the amount of Usage Fees paid, and any information pertaining to the statements of account reasonably designated as confidential by the Noncommercial Educational Webcaster submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to Confidential Information;

(2) An independent Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Noncommercial Educational Webcaster's statement of account pursuant to § 380.25 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.26;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Noncommercial Educational Webcaster whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.25 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Noncommercial Educational Webcaster.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Noncommercial Educational Webcaster, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Board a notice of intent to audit a particular Noncommercial Educational Webcaster, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Noncommercial Educational Webcaster to be audited. Any such audit shall be conducted by an independent Qualified Auditor identified in the notice and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Noncommercial Educational Webcaster shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Noncommercial Educational Webcaster being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Noncommercial Educational Webcaster reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Noncommercial Educational Webcaster shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.26 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Board a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.27 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: March 29, 2010.

James Scott Sledge,

Chief, U.S. Copyright Royalty Judge.

[FR Doc. 2010–7368 Filed 3–31–10; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1186–201013(b); FRL–9133–2]

Approval and Promulgation of Air Quality Implementation Plan: Kentucky; Approval Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Owensboro Area; Limited Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: EPA is announcing a limited 30-day reopening of the public comment period for the proposed rule entitled "Approval and Promulgation of Air Quality Implementation Plan: Kentucky; Approval Section 110(a)(1) Maintenance Plan for the 1997 8–Hour Ozone Standard for the Owensboro Area," for the purpose of limited public review and comment on supplemental information that was provided by the Commonwealth of Kentucky on July 15, 2009, in support of the Owensboro Area 110(a)(1) maintenance plan. The Owensboro, Kentucky Area consists of Daviess and a portion of Hancock Counties. The proposed rule was initially published in the **Federal Register** on January 20, 2010. The reason for this limited reopening of the comment period is that EPA has learned that supplemental information relating to projected emissions for the Owensboro Area that was referenced in the proposed rulemaking January 20, 2010 (75 FR 3183) was inadvertently omitted from the electronic docket when that proposed rulemaking was published. EPA has since made that information available in the electronic docket and wants to ensure an opportunity for the public to comment on that information. The July 15, 2009, supplemental information can be viewed online at *http://www.regulations.gov* using docket ID No. EPA–R04–OAR–2007–1186–0043.

Thus, EPA is reopening the comment period for an additional thirty days, for the limited purpose of providing an opportunity for public comment only on the supplemental information added to the docket after publication of the proposed rulemaking.

DATES: The comment period for the proposed rule published on January 20, 2010 (75 FR 3183) is reopened. Comments must be received on or before May 3, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–1186, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* "EPA–R04–OAR–2007–1186," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official

hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2007–1186." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–1186. All documents in the docket are listed on the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, 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 electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Acting Regional Administrator on January 20, 2010, and published in the **Federal Register** on January 20, 2010 (75 FR 3183). The comment period for this proposed action closed on February 19, 2010. EPA did receive adverse comments during this public comment period. However, EPA noticed an inadvertent omission of the July 15, 2009, supplement that Kentucky, provided from the electronic docket at *http://www.regulations.gov.* The July 15, 2009, supplement (which was included in the electronic docket on February 4, 2010), contains updated emissions inventory projections for both the Paducah and Owensboro Areas. Since EPA makes reference to this supplement in the January 20, 2010, proposed rulemaking, EPA is reopening the comment period for this proposed action for the limited purpose of allowing the public the opportunity to review and consider this supplemental information in regards to EPA's proposed rulemaking. EPA is already in receipt of adverse comments provided for the initial proposed rulemaking published on January 20, 2010, for the Owensboro 110(a)(1) maintenance plan. These comments will still be under consideration for any final rulemaking action for this area's 110(a)(1) maintenance plan.

Dated: March 17, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–7317 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–1014–201002; FRL–9133–1]

Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky: Prevention of Significant Deterioration and Nonattainment New Source Review Rules: Nitrogen Oxide as Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to Kentucky's State Implementation Plan (SIP), submitted by the Kentucky Energy and Environment Cabinet, through the Kentucky Division of Air Quality (KDAQ) to EPA on February 5, 2010. The proposed revision modifies Kentucky's prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) permitting regulations in the SIP to address permit requirements promulgated in the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation Rule—Phase 2 (hereafter referred to as the "Ozone Implementation NSR Update"). The Ozone Implementation NSR Update revised permit requirements relating to the implementation of the 1997 8-hour ozone NAAQS specifically incorporating nitrogen oxides (NO_X) as a precursor to ozone. The proposed revision also includes provisions addressing permit requirements promulgated by EPA on May 1, 2007, which exclude from the NSR major source permitting requirements "chemical process plants" that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule".)

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–1014, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2009–1014, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2009–1014." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. *Telephone number:* (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. *Telephone number:* (404) 562–9214; *e-mail address: adams.yolanda@epa.gov.* For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. *Telephone number:* (404) 562–9029; *e-mail address: spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

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III. What Is EPA's Analysis of Kentucky's SIP Revision?
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I. What Action Is EPA Proposing Today?

The Commonwealth of Kentucky, through KDAQ, submitted a revision on February 5, 2010, to the Kentucky SIP which relates to Kentucky's Air Quality Regulations, Chapter 51—401 KAR 51:001 "Definitions for 401 KAR Chapter 51," 401 KAR 51:017 "Prevention of Significant Deterioration of Air Quality," and 401 KAR 51:052 "Review of New Sources in or Impacting upon Nonattainment Areas." The SIP revision addresses the Ozone Implementation NSR Update requirements for Kentucky to include NO_X as an ozone precursor for permitting purposes. Specifically, the Ozone Implementation NSR Update requirements included changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO_X emissions are ozone precursors. The proposed revision also includes provisions for excluding "chemical process plants" that produce ethanol through a natural fermentation process from the NSR major source permitting requirements. Pursuant to section 110 of the Clean Air Act (CAA or Act), EPA is proposing to approve these revisions into the Kentucky SIP.

Additionally, the rule revision provided in Kentucky's February 5, 2010, submittal updates Kentucky's PSD and NSR permitting regulations to make them consistent with changes to the Federal regulations by removing the existing standards and requirements for clean units (CU) and pollution control projects (PCP). However, EPA is not taking action on the Kentucky rule updates regarding CU and PCP because these portions of Kentucky's rule are specifically not approved into Kentucky's federally-approved SIP.

II. What Is the Background for the Action That EPA Is Proposing To Take Today?

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. As part of the 2004 designations, EPA also promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases. Phase 1 of EPA's 1997 8-hour ozone implementation rule (Phase 1 Rule), published on April 30, 2004, effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23857).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone standards—also known as the Phase 2 Rule (70 FR 71612). The Phase 2 Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations and NSR, and the impact to reformulated gas for

the 1997 8-hour ozone NAAQS transition. Specific to this rulemaking, the Phase 2 Rule made changes to Federal regulations 40 CFR 51.165 and 51.166, which govern the NNSR and PSD permitting programs. Pursuant to these changes, states were required to submit SIP revisions incorporating NO_X as an ozone precursor by no later than June 15, 2007. Kentucky's February 5, 2010, SIP submission (the subject of this action) addresses the state requirement to adopt provisions to include NO_X as a precursor for ozone for PSD and NNSR permitting purposes.

In addition, on May 1, 2007, EPA promulgated revisions to the PSD and NNSR regulations to address applicability of permitting requirements for "chemical process plants" (72 FR 24059). The revisions to 40 CFR 51.165, 51.166, 52.21, and Appendix S, define "chemical process plants" under the regulatory definition of "major stationary source" to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. Kentucky's February 5, 2010, SIP submission addresses these minimum program elements of the PSD and NNSR programs for "chemical processing plants."

III. What Is EPA's Analysis of Kentucky's SIP Revision?

On February 5, 2010, the Commonwealth of Kentucky submitted a revision to EPA for approval which revised the Commonwealth's permitting provisions to adopt EPA's Federal regulations specified in the Ozone Implementation NSR Update relating to the incorporation of NO_X as an ozone precursor and to address permitting requirements specified in EPA's Ethanol Rule. Specifically, the revision relates to Kentucky's Air Quality Regulations, Chapter 51—401 KAR 51:001 "Definitions for 401 KAR Chapter 51," 401 KAR 51:017 "Prevention of Significant Deterioration of Air Quality," and 401 KAR 51:052 "Review of New Sources in or Impacting upon Nonattainment Areas." The revision became state-effective on February 5, 2010. The submittal revised Kentucky's PSD and NNSR permit programs to make them consistent with changes to the Federal regulations set forth in the Ozone Implementation NSR Update. These changes include changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO_X emissions are ozone precursors. In addition, the submittal revised Kentucky's PSD and NNSR permit programs to make them consistent with changes to the Federal regulations set forth in EPA's Ethanol Rule. These changes include changes to the regulatory definition of "major stationary source" to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. These changes affect both the applicability threshold and whether this industry must count fugitive emissions in determining its major source status.

The revision included in Kentucky's PSD and NNSR programs are substantively the same as the Ozone Implementation NSR Update and the Ethanol Rule. The Kentucky rules have been formatted to conform to Kentucky rule drafting standards (KRS Chapter 13A), but in substantive content the rules are the same as the Federal rules. As part of its review of the Kentucky submittal, EPA performed a line-by-line review of the proposed revisions and has determined that they are consistent with the permit program requirements for NSR, set forth at 40 CFR 51.165 and 51.166.

Kentucky's February 5, 2010, SIP submission providing the PSD and NNSR rule revisions also includes the removal of provisions that were vacated by the United States Court of Appeals for the District of Columbia Circuit.[1] Since EPA did not take action on Kentucky's SIP with regard to the vacated portions (i.e., these provisions were not incorporated into the federally-approved SIP), EPA is not taking action through this rulemaking on the removal of these provisions as provided in Kentucky's February 5, 2010, submittal.

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Kentucky's SIP revision, submitted February 5, 2010, which incorporates NO_X as an ozone precursor for permitting purposes into the Kentucky SIP, and addresses major source applicability for ethanol manufacturing facilities. EPA is proposing to approve these revisions because they are consistent with the CAA, and EPA regulation and policy.

[1] On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." On June 24, 2005, the United States Court of Appeals for the DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to CU and PCP.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 17, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–7319 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, 390, 391, and 392

[Docket No. FMCSA–2009–0370]

RIN 2126–AB22

Limiting the Use of Wireless Communication Devices

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to prohibit texting by commercial motor vehicle (CMV) drivers while operating in interstate commerce and to impose sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce, for drivers who fail to comply with this rule. Additionally, motor carriers would be prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA also proposes amendments to its commercial driver's license (CDL) regulations to add to the list of disqualifying offenses a conviction under State or local laws, regulations, or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Recent research commissioned by FMCSA shows that the odds ratio of being involved in a safety-critical event (*e.g.,* crash, near-crash, lane departure) is 23.2 times greater for drivers who engage in texting while driving than for those who do not. This rulemaking would increase safety on the Nation's highways by reducing the prevalence of or preventing certain truck- and bus-related crashes, fatalities, and injuries associated with distracted driving.

DATES: Comments and related material must be received on or before May 3, 2010.

ADDRESSES: You may submit comments identified by docket number FMCSA–2009–0370 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Mr. Brian Routhier, Transportation Specialist, Federal Motor Carrier Safety Administration, Vehicle and Roadside Operation Division, at 202–366–1225 or *Brian.Routhier@dot.gov.*

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I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

Pilot Project on Open Government and the Rulemaking Process

On January 21st, 2009, President Obama issued a Memorandum on Transparency and Open Government in which he described how: "public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge."

To support the President's open government initiative, DOT has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, *http://www.regulationroom.org,* to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. In this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments

prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit individual views to the rulemaking docket through the Federal rulemaking portal Regulations.gov, or by any of the other methods identified at the beginning of this Notice.

For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at 202–421–9216 or *brett.jortland@dot.gov.*

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2009–0370), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rules," insert "FMCSA–2009–0370" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2009–0370" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** notice published on April 11, 2000 (65 FR 19476).

II. Abbreviations

AAMVA	American Association of Motor Vehicle Administrators.
ATA	American Trucking Association.
CDL	Commercial Driver's License.
CFR	Code of Federal Regulations.
CMV	Commercial Motor Vehicle.
CTA	Chicago Transit Authority.
DOT	Department of Transportation.
FARS	Fatality Analysis Reporting System.
FMCSA	Federal Motor Carrier Safety Administration.
FMCSRs	Federal Motor Carrier Safety Regulations.
FR	FEDERAL REGISTER.
GES	General Estimates System.
MCSAC	Motor Carrier Safety Advisory Committee.
MCSAP	Motor Carrier Safety Assistance Program.
MCSIA	Motor Carrier Safety Improvement Act of 1999.
NAICS	North American Industry Classification System.
NCSL	National Conference of State Legislators.
NGA	National Governors Association.
NHTSA	National Highway Traffic Safety Administration.
NMVCCS	National Motor Vehicle Crash Causation Survey.
NSC	National Safety Council.
NTSB	National Transportation Safety Board.
OMB	Office of Management and Budget.
PDA	Personal Digital Assistant.
s	seconds.
§	Section symbol.
TCA	Truckload Carriers Association.
U.S.C	United States Code.
VTTI	Virginia Tech Transportation Institute.

III. Background

A. Legal Authority

FMCSA proposes: (1) To prohibit texting using electronic devices by certain drivers while operating CMVs in interstate commerce; (2) to provide sanctions for certain drivers convicted of texting while operating a CMV in interstate commerce, including civil penalties and/or disqualification from driving CMVs, as defined in 49 CFR 390.5, for a specified period of time; and (3) to provide sanctions for CDL drivers convicted of violating a State or local law or ordinance prohibiting texting while operating a CMV, specifically, a disqualification for a specified period of time from operating any CMV. The authority for this proposed rule derives from the Motor Carrier Safety Act of 1984 (1984 Act), 49 U.S.C. chapter 311, and the Commercial Motor Vehicle

Safety Act of 1986 (1986 Act), 49 U.S.C. chapter 313.

The 1984 Act (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984) provides authority to regulate the safety of operations of CMV drivers and motor carriers and vehicle equipment. It requires the Secretary of Transportation to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles" (49 U.S.C. 31136(a)). Although this authority is very broad, the 1984 Act also includes specific requirements:

> At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators. *Id.*

This proposed rule is based primarily on 49 U.S.C. 31136(a)(1), which requires regulations that ensure that CMVs are operated safely, and secondarily on section 31136(a)(2), to the extent that drivers' texting activities might impact their ability to operate CMVs safely. The changes proposed in this NPRM would improve the safety of drivers operating CMVs. This NPRM does not address the physical condition of drivers (49 U.S.C. 31136(a)(3)), nor does it impact possible physical effects caused by driving CMVs (49 U.S.C. 31136(a)(4)).

The applicability to CMV drivers of the relevant provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR subtitle B, chapter III, subchapter B), is governed by whether the drivers involved are employees operating a CMV. The 1984 Act defines a CMV as a self-propelled or towed vehicle used on the highways to transport persons or property in interstate commerce; and that either: (1) Has a gross vehicle weight/gross vehicle weight rating of 10,001 pounds or greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers, not for compensation; or (4) is transporting any quantity of hazardous materials requiring placards to be displayed on the vehicle (49 U.S.C. 31132(1)). All employees operating CMVs are subject to the FMCSRs, except those who are employed by Federal, State, or local governments (49 U.S.C. 31132(2)).

In addition to the statutory exemption of government employees, there are several other regulatory exemptions in the FMCSRs that are authorized under the 1984 Act, including one for school bus operations (49 CFR 390.3(f)(1) and (3)–(7)). The school bus operations exemption only applies to interstate transportation of school children and/or school personnel between home and school. This exemption is not based on any statutory provisions, but is instead a discretionary rule promulgated by the Agency. Therefore, FMCSA has authority to modify the exemption. Modification of the school bus operations exemption requires the Agency to find that such action "is necessary for public safety, considering all laws of the United States and States applicable to school buses" (former 49 U.S.C. 31136(e)(1)).[1] Other than transportation covered by statutory exemptions, FMCSA has authority to prohibit texting by drivers operating CMVs, as defined above.

Violations of such a prohibition may include civil penalties imposed on drivers, in an amount up to $2,750 (49 U.S.C. 521(b)(2)(A), 49 CFR 386.81 and App. B, ¶ A(4)). Disqualification of a CMV driver for violations of the Act and its regulations is also within the scope of the Agency's authority under the 1984 Act. Such disqualifications are specified by regulation for other violations (49 CFR 391.15). In summary, both a texting prohibition and associated sanctions, including civil penalties and disqualifications, are authorized by statute and regulation for operators of CMVs, as defined above, in interstate commerce, with limited exceptions. However, before prescribing any regulations under the 1984 Act, FMCSA must consider their costs and benefits (49 U.S.C. 31136(c)(2)(A)).

The 1986 Act (Title XII of Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), which authorized creation of the CDL program, is primarily the basis for licensing programs for certain large CMVs. There are several key distinctions between the authority conferred under the 1984 Act and that under the 1986 Act. First, the CMV for which a CDL is required is defined under the 1986 Act, in part, as a motor vehicle operating "in commerce," a term separately defined to cover broadly both interstate commerce and operations that "affect" interstate commerce (49 U.S.C. 31301(2), (4)). Also under the 1986 Act, a CMV means a motor vehicle used in commerce to transport passengers or property that: (1) Has a gross vehicle weight/gross vehicle weight rating of 26,000 pounds or greater; (2) is designed to transport 16 or more passengers including the driver; or (3) is used to transport certain quantities of "hazardous materials," as defined in 49 CFR 383.5 (49 U.S.C. 31301(4)). In addition, a provision in the FMCSRs implementing the 1986 Act recognizes that all school bus drivers (whether government employees or not) and other government employees operating vehicles requiring a CDL (*i.e.,* vehicles above 26,000 pounds in most States, or designed to transport 16 or more passengers) are subject to the CDL standards set forth in 49 CFR 383.3(b).

There are no statutory exceptions from coverage under the 1986 Act. There are several regulatory exceptions, which include the following individuals: active duty military service members who operate a CMV for military purposes (a mandatory exemption for the States to follow) (49 CFR 383.3(c)); farmers, firefighters, and CMV drivers employed by a unit of local government for the purpose of snow/ice removal; and persons operating a CMV for emergency response activities (all of which are permissive exemptions for the States to implement at their discretion) (49 CFR 383.3(d)). Certain other drivers would be issued restricted CDLs under 49 CFR 383.3(e)–(g); such drivers may be covered by a texting disqualification under the 1986 Act.

The 1986 Act does not expressly authorize the Agency to adopt regulations governing the safety of operations of CMVs by drivers required to obtain a CDL. Most of these drivers are subject to safety regulations under the 1984 Act, as described above. However, the 1986 Act does authorize disqualification of CDL drivers. Specific authority exists for disqualification for various types of offenses by CDL drivers. This is true even if they are operating a CMV illegally because they have not obtained a CDL. Related rulemaking authority exists to include serious traffic violations as grounds for

[1] Former section 31136(e)(1) was amended by section 4007(c) of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 107, 403 (June 9, 1998) (TEA–21). However, TEA–21 also provides that the amendments made by section 4007(c) "shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the day before the date of enactment of [TEA–21] under * * * section 31136(e) of title 49, United States Code." Section 4007(d), TEA–21, 112 Stat. 404 (set out as a note under 49 U.S.C. 31136). The exemption for school bus operations in 49 CFR 390.3(f)(1) became effective on November 15, 1988, and was adopted pursuant to section 206(f) of the 1984 Act, later codified as section 31136(e) (*Federal Motor Carrier Safety Regulations; General,* 53 FR 18042–18043, 18053 (May 19, 1988) and section 1(e), Public Law 103–272, 108 Stat 1003 (July 5, 1994)). Therefore, any action by FMCSA affecting the school bus operations exemption would require the Agency to comply with former section 31136(e)(1).

such disqualifications (49 U.S.C. 31301(12) and 31310).

Further, in addition to specifically enumerated "serious traffic violations," the 1986 Act allows FMCSA to designate additional violations by rulemaking if the underlying offense is based on the CDL driver committing a violation of a "State or local law on motor vehicle traffic control" (49 U.S.C. 31301(12)(G)). The FMCSRs state, however, that unless and until a CDL driver is convicted of the requisite number of specified offenses within a certain time frame (described below), the required disqualification may not be applied (49 CFR 383.5 (defining "conviction" and "serious traffic violation") and 383.51(c)).

Under the statute, a driver who, in a 3-year period, commits 2 serious traffic violations involving a CMV operated by the individual must be disqualified from operating a CMV for at least 60 days. A driver who, in a 3-year period, commits 3 or more serious traffic violations involving a CMV operated by the individual must be disqualified from operating a CMV for at least 120 days (49 U.S.C. 31310(e)(1)–(2)). FMCSA has determined that violations by CDL drivers of State motor vehicle traffic control laws prohibiting texting while driving CMVs should result in a disqualification under this provision, because texting results in distracted driving and increases the risk of CMV crashes, fatalities, and injuries. Consequently, under its statutory authority to find that the violation of a State texting law constitutes a serious traffic violation for CMV drivers, FMCSA may exercise its rulemaking authority to address this major safety risk by requiring the States to disqualify CDL drivers who violate such laws.

FMCSA is authorized to carry out these statutory provisions by delegation from the Secretary of Transportation as provided in 49 CFR 1.73(e) and (g).

B. Overview of Driver Distraction and Texting

This rulemaking addresses one type of driver distraction. Driver distraction can be defined as the voluntary or involuntary diversion of attention from the primary driving tasks due to an object, event, or person that shifts the attention away from the fundamental driving task. The diversion reduces a driver's situational awareness, decision making, or performance and it may result in a crash, near-crash, or unintended lane departure by the driver.

In an effort to understand and mitigate crashes associated with driver distraction, the National Highway Traffic Safety Administration (NHTSA) has been researching driver distraction with respect to both behavioral and vehicle safety countermeasures. Researchers and writers classify distraction into various categories, depending on the nature of their work. In work involving equipment such as vehicles, one distraction classification system includes three categories: visual (taking one's eyes off the road), physical (taking one's hands off the wheel), and cognitive (thinking about something other than the road/driving). Texting while driving applies to these three types of driver distraction (visual, physical, and cognitive), and thus may pose a considerably higher safety risk than other sources of driver distraction.

Prevalence of Texting

Texting is a relatively new phenomenon, growing dramatically among cell phone and personal digital assistant (PDA) users. The Department recognizes that the problem is growing worse, especially with young drivers on our roadways, as noted in a Pew Research Center Report, "Teens and Distracted Driving." [2] According to the CTIA, The Wireless Association, the number of text messages transmitted by its members' customers increased from 32.6 billion in the first 6 months of 2005 to 740 billion in the first 6 months of 2009. This represents a 2,200 percent increase in 5 years. While FMCSA's research reveals significant insight into the safety risks associated with texting, the Agency does not have, at this time, data on the prevalence of texting by motorists in general or CMV drivers specifically. FMCSA requests that commenters share with the Agency any data and studies on texting by CMV drivers.

Considering the alarming increase in texting, FMCSA believes that texting by CMV drivers while operating on public roads has the potential of becoming a widespread safety problem in the absence of an explicit Federal prohibition and that this inherently unsafe practice should be prohibited to reduce the risks of crashes, injuries, and fatalities.

FMCSA solicits comments on definition, causes, and prevalence of "distracted driving".

C. Support for a Texting Prohibition

There is an overwhelming amount of public support for a ban on texting, or other distracting behaviors, while operating a motor vehicle. It is likely that most Americans have either had first hand experience with or know someone who has had a motor vehicle near-crash event involving a distracted driver. FMCSA and other U.S. Department of Transportation (DOT) operating administrations have been studying the distracted driving issue for decades. With the exponentially increasing use of electronic devices, and numerous crashes and other incidents related to distracted driving in recent years, expedited Federal action is required. Because of the safety risks, FMCSA is addressing the issue of texting through a rulemaking as quickly as possible, which will include a review of the comments received in response to this NPRM.

FMCSA's Motor Carrier Safety Advisory Committee's Recommendation

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144, 1748 (Aug. 10, 2005) required the Secretary of Transportation to establish a Motor Carrier Safety Advisory Committee (MCSAC). The committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2).

In its March 27, 2009, report to FMCSA, "Developing a National Agenda for Motor Carrier Safety," the MCSAC recommended that FMCSA adopt new Federal rules concerning distracted driving, including texting.[3] The MCSAC believed the available research shows that cognitive distractions pose a safety risk and that there will be increases in crashes from cell phone use and texting unless the problem is addressed. Therefore, one of MCSAC's recommendations for the National Agenda for Motor Carrier Safety was that FMCSA initiate a rulemaking to prohibit texting while driving.

Distracted Driving Summit

The information and feedback DOT received during its Distracted Driving Summit, held September 30—October 1, 2009, in Washington, DC demonstrated both a need and widespread support for a ban against texting while driving.

[2] Madden, M. & Lenhart, A. (November 2009). Teens and distracted driving. Pew Research Center's Pew Internet and American Lifer Project. Retrieved January 24, 2010 from: *http://www.pewinternet.org//media//Files/Reports/2009/PIP_Teens_and_Distracted_Driving.pdf.*

[3] Parker, David R., Chair, Motor Carrier Safety Advisory Committee (March 27, 2009). Letter to Rose A. McMurray on MCSAC national agenda for motor vehicle safety. Retrieved January 11, 2010, from: *http://mcsac.fmcsa.dot.gov/documents/MCSACTask09-01FinalReportandLetterto Administrator090428.pdf.*

Attendees included safety experts; researchers; elected officials, including four United States Senators and several State legislators; safety advocacy groups; senior law enforcement officials; the telecommunications industry; and the transportation industry.

Summit participants shared their expertise, experiences, and ideas for reducing distracted driving behaviors. They addressed the safety risk posed by this growing problem across all modes of surface transportation. At the conclusion of the Summit, U.S. Transportation Secretary Ray LaHood announced a series of concrete actions the Obama Administration and DOT are taking to address distracted driving. On October 1, 2009, the President issued Executive Order 13513, which prohibited texting by Federal employees (details are discussed later in this preamble).

Actions following the Summit included the DOT's plan to immediately start rulemakings that would ban texting and restrict, to the extent possible, the use of cell phones by truck and interstate bus operators, as well as to initiate rulemaking by the Federal Rail Administration (FRA) to codify provisions of the FRA's Emergency Order No. 26 regarding restricting distracting electronic devices (*see* discussion below in Part E). As a result of the Summit, and based on data from studies on distracted driving, FMCSA is considering a number of actions to combat distracted driving by CMV drivers. Specifically, in addition to this rulemaking, FMCSA is considering future rulemaking actions that would address whether to limit the use of cell phones and other interactive devices in CMVs.

Secretary LaHood stated: "Keeping Americans safe is without question the Federal government's highest priority—and that includes safety on the road, as well as on mass transit and rail." In addition, the Secretary pledged to work with Congress to ensure that the issue of distracted driving is appropriately addressed.

General Public

Several surveys show that there is public support for a texting prohibition. For example, a survey in December 2008 by the AAA Foundation for Traffic Safety determined that 94.1 percent of drivers consider it unacceptable for a driver to send text messages or e-mail while driving while 86.7 percent consider text messaging and e-mailing by drivers to be a very serious threat to their personal safety.[4] A CBS News/New York Times poll reported that 90 percent of Americans think texting behind the wheel should be outlawed. Over 94 percent of those who admit to texting or e-mailing while driving acknowledge that it makes them at least a little bit more likely to be involved in a crash.[5] Finally, a nationally representative survey by Nationwide Insurance,[6] conducted in August 2009, found that 80 percent of Americans support laws prohibiting text messaging or e-mailing while driving.

Safety Advocacy Organizations

Many safety advocacy groups have voiced support for a prohibition on texting while driving. In January 2009, the National Safety Council (NSC) called for a nationwide prohibition on all cell phone use while driving.[7] The NSC is focused on alerting the American public to the fact that different distractions have different levels of crash risk. NSC stated that sending text messages has a much higher risk than most other actions that drivers take while driving. Additionally, Advocates for Highway and Auto Safety applauded DOT's effort to ban texting by truck and motor coach drivers.[8]

Transportation Industry Associations

The American Trucking Association's (ATA) executive committee voted overwhelmingly to support S. 1536 to prohibit texting (while driving by all motorists).[9] ATA believes that the use of hand-held electronic devices and the act of texting with such devices while a motor vehicle is in motion should be prohibited.[10]

Many fleets do not allow drivers to operate any electronic devices at all while the vehicle is moving, including dispatching equipment. ATA conducted an opinion survey of its safety committees on the use of "non-integrated electronic devices." From the responses of these industry leaders, ATA found that 67 percent of respondents had a policy restricting or limiting the use of portable electronic devices while driving. United Parcel Service, Inc. has an existing policy of no distractions while behind the wheel (*e.g.,* two hands on the wheel and no two-way communication) and FedEx does not allow drivers to use any electronic device while operating FedEx vehicles.[11] Additionally, ExxonMobil and Shell are examples of large companies that prohibit employees' use of any type of cell phone while driving during work hours.[12] Because numerous large commercial trucking operations already have policies that prohibit the use of portable electronic devices while driving, which would presumably include texting, a prohibition on texting is not expected to have an adverse impact on trucking fleets.

FMCSA solicits comments on whether and how companies have implemented policies on drivers' use of portable electronic devices while driving.

School Bus Operations

School bus operations have been the focus of distracted driving policies; and many cities, towns, and counties prohibit cell phone use or texting by school bus operators. The National Association of State Directors of Pupil Transportation Services, in a letter to the U.S. Senate dated August 7, 2009, stated that it supports S. 1536, which would require States to prohibit all

[4] AAA Foundation for Traffic Safety (October 12, 2009). Safety culture: text messaging and cell phone use while driving. Retrieved January 11, 2010, from: *http://www.aaafoundation.org/pdf/TextingFS091012.pdf.*

[5] Connelly, M. (November 1, 2009). Many in U.S. want texting at the wheel to be illegal. NYTimes.com. Retrieved January 11, 2010, from: *http://www.nytimes.com/2009/11/02/technology/02textingside.html.*

[6] Gillespie, C. (August 31, 2009). New Nationwide Insurance survey shows overwhelming support for laws banning texting while driving: Data suggests legislation alone will not solve the problem. Nationwide.com. Retrieved January 11, 2010, from: *http://www.nationwide.com/newsroom/twd-survey-results.jsp.*

[7] National Safety Council, (n.d.). Distracted driving. Retrieved January 11, 2010, from: *http://www.nsc.org/safety_road/Distracted_Driving/Pages/distracted_driving.aspx.*

[8] Gillan, J.S. (October 1, 2009). Safety Advocates respond to U.S. DOT Secretary's announcement on measures to reduce distracted driving by commercial operators. Retrieved January 11, 2010, from the Advocates for Highway and Auto Safety Web site: *http://www.saferoads.org/files/file/Distracted%20Driving%20Statement%20by%20Judith%20Stone%20October%201,%202009.pdf.*

[9] American Trucking Associations (October 14, 2009). ATA leaders vote overwhelmingly to support anti-texting bill. Retrieved January 11, 2010, from: *http://www.truckline.com/pages/article.aspx?id=52%2F0599B3C5-1DA2-463F-8FE5-AF9814303C64.*

[10] American Trucking Associations (October 29, 2009). Addressing the problem of distracted driving. Written testimony to the Subcommittee on Highways and Transit, U.S. House of Representatives' Transportation and Infrastructure Committee. Retrieved January 11, 2010, from: *http://www.truckline.com/Newsroom/Testimony1/Randy%20Mullett%20--%20Distracted%20Driving%20testimony.pdf.*

[11] Halsey, A. (October 2, 2009). Obama to Federal employees: Don't text and drive. Washingtonpost.com. Retrieved January 11, 2010, from: *http://www.washingtonpost.com/wp-dyn/content/article/2009/10/01/AR2009100103447_pf.html.*

[12] Insurance Information Institute (December 2009). Cellphones and driving. Retrieved January 11, 2010, from: *http://www.iii.org/IU/Cellphone-and-driving/.*

motorists from writing, sending, or reading text messages while driving.[13]

Transit Agencies

The importance of the distracted driving issue has led virtually all transit agencies to ban the use of cell phones and electronic devices or specifically to ban texting while operating a vehicle in passenger service. For example, the Chicago Transit Authority (CTA) prohibits texting by employees and discharges offenders. Furthermore, several large transit agencies (Massachusetts Bay Transportation Authority, CTA, Greater Cleveland Region Transit Authority) have prohibited operators from carrying cell phones or other electronic devices in the cab, presumably eliminating texting.

While FMCSA is aware that many organizations have policies on texting, FMCSA solicits further comments on texting policy and enforcement and on the applicability of State laws and local ordinances to school bus drivers and transit employees.

D. Studies on Driver Distraction

On November 14, 2004, a motorcoach crashed into a bridge overpass on the George Washington Memorial Parkway in Alexandria, Virginia. This crash was the impetus for a National Transportation Safety Board (NTSB) investigation and subsequent recommendation to FMCSA regarding cell phone use by passenger-carrying CMVs. In a letter to NTSB dated March 5, 2007, the Agency agreed to initiate a study to assess:

- The potential safety benefits of restricting cell phone use by drivers of passenger-carrying CMVs,
- The applicability of an NTSB recommendation to property-carrying CMV drivers,
- Whether adequate data existed to warrant a rulemaking, and
- The availability of statistically meaningful data regarding cell phone distraction.

Driver Distraction in Commercial Vehicle Operations ("the VTTI Study")—Olson *et al.,* 2009[14]

Under contract with FMCSA, the Virginia Tech Transportation Institute (VTTI) recently completed its "Driver Distraction in Commercial Vehicle Operations" study[15] and released the final report on October 1, 2009. The purpose of the study was to investigate the prevalence of driver distraction in CMV safety-critical events (*i.e.,* crashes, near-crashes, lane departures, as explained in the VTTI study) recorded in a naturalistic data set that included over 200 truck drivers and 3 million miles of data. The dataset was obtained by placing monitoring instruments on vehicles and recording the behavior of drivers conducting real-world revenue-producing operations. Key findings were that drivers were engaged in tertiary (non-driving related) tasks in 71 percent of crashes, 46 percent of near-crashes, and 60 percent of all safety-critical events. Tasks that significantly increased risk included texting, looking at a map, writing on a notepad, or reading.

Odds ratios (OR) were calculated to identify tasks that were high risk. For a given task, an odds ratio of "1.0" indicated the task or activity was equally likely to result in a safety-critical event as it was a non-event or baseline driving scenario. An odds ratio greater than "1.0" indicated a safety-critical event was more likely to occur, and odds ratios of less than "1.0" indicated a safety-critical event was less likely to occur. The most risky behavior identified by the research was "text message on cell phone,"[16] with an odds ratio of 23.2. This means that the odds of being involved in a safety-critical event are 23.2 times greater for drivers who text message while driving than for those who do not. Texting drivers took their eyes off the forward roadway for an average of 4.6 seconds during the 6-second interval surrounding a safety-critical event. At 55 mph (or 80.7 feet per second), this equates to a driver traveling 371 feet, the approximate length of a football field, including the end zones, without looking at the roadway. At 65 mph (or 95.3 feet per second), the driver would have traveled approximately 439 feet without looking at the roadway. This clearly creates a significant risk to the safe operation of the CMV.

Other tasks that drew drivers' eyes away from the forward roadway in the study involved the driver interacting with technology: calculator (4.4 s), dispatching device (4.1 s), and cell phone dialing (3.8 s). Technology-related tasks were not the only ones with high visual demands. Non-technology tasks with high visual demands, including some mundane or common activities, were: writing (4.2 s), reading (4.3 s), looking at a map (3.9 s), and reaching for an object (2.9 s).

The study further analyzed population attributable risk (PAR), which incorporates the frequency of engaging in a task. If a task is done more frequently by a driver or a group of drivers, it will have a greater PAR percentage. Safety could be improved the most if a driver or group of drivers were to stop performing a task with a high PAR. The PAR percentage for texting is 0.7 percent, which means that 0.7 percent of the incidence of safety-critical events are attributable to texting, and thus, could be avoided by not texting.

TABLE 1—ODDS RATIO AND POPULATION ATTRIBUTABLE RISK PERCENTAGE BY SELECTED TASK

Task	Odds ratio	Population attributable risk percentage*
Complex Tertiary Task:		
Text message on cell phone	23.2	0.7
Other—Complex (*e.g.,* clean side mirror)	10.1	0.2
Interact with/look at dispatching device	9.9	3.1
Write on pad, notebook, *etc.*	9.0	0.6
Use calculator	8.2	0.2

[13] Hood, C., President of the National Association of State Directors of Pupil Transportation Services (August 7, 2009). Letter to Senators Schumer, Menendez, Hagan and Landrieu. Retrieved January 11, 2010, from: *http://www.nasdpts.org/documents/alert_act-nasdpts-support.pdf.*

[14] Olson, R. L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009) Driver distraction in commercial vehicle operations. (Document No. FMCSA–RRR–09–042) Washington, DC: Federal Motor Carrier Safety Administration, July 2009. Retrieved October 20, 2009, from *http://www.fmcsa.dot.gov/facts-research/art-public-reports.aspx?*

[15] The formal peer review of the "Driver Distraction in Commercial Vehicle Operations Draft Final Report" was completed by a team of three technically qualified peer reviewers who are qualified (via their experience and educational background) to critically review driver distraction-related research.

[16] Although the final report does not elaborate on texting, the drivers were engaged in the review, preparation and transmission of, typed messages via wireless phones.

TABLE 1—ODDS RATIO AND POPULATION ATTRIBUTABLE RISK PERCENTAGE BY SELECTED TASK—Continued

Task	Odds ratio	Population attributable risk percentage*
Look at map	7.0	1.1
Dial cell phone	5.9	2.5
Read book, newspaper, paperwork, *etc.*	4.0	1.7
Moderate Tertiary Task:		
Use/reach for other electronic device	6.7	0.2
Other—Moderate (*e.g,* open medicine bottle)	5.9	0.3
Personal grooming	4.5	0.2
Reach for object in vehicle	3.1	7.6
Look back in sleeper berth	2.3	0.2
Talk or listen to hand-held phone	1.0	0.2
Eating	1.0	0
Talk or listen to CB radio	0.6	*
Talk or listen to hand-free phone	0.4	*

* Calculated for tasks where the odds ratio is greater than one.

A complete copy of the final report for this study is included in the docket referenced at the beginning of this rulemaking notice.

In addition to FMCSA-sponsored research, the Agency has considered other research reports and studies that highlight the safety risks of distracted driving in general or of texting, specifically. These studies conclude that texting is extremely risky and that it impairs a driver's ability to respond to driving situations. Most of these studies were small simulator studies, involving young automobile drivers. But they provide support for the conclusions of the comprehensive study of CMV operations commissioned by FMCSA and conducted by VTTI. This information, which includes ongoing research, is summarized below and FMCSA welcomes additional studies or data that commenters may provide.

Text Messaging During Simulated Driving—Drews, *et al.,* 2009 [17]

This research aimed to identify the impact of text messaging on simulated driving performance. Using a high fidelity driving simulator, researchers measured the performance of 20 pairs of participants while: (1) Only driving; and (2) driving and text messaging. Participants followed a pace car in the right lane, which braked 42 times, intermittently. Participants were 0.2 seconds slower in responding to the brake onset when driving and text messaging, compared to driving-only. There was no significant difference in responding to the brake onset between entering and reading text messages, however. When drivers are concentrating on texting of any sort, their reaction times to braking events are significantly longer.

Driver Workload Effects of Cell Phone, Music Player, and Text Messaging Tasks With the Ford SYNC Voice Interface Versus Handheld Visual-Manual Interfaces ("The Ford Study")—Shutko, *et al.,* 2009 [18]

A recent study by Ford Motor Company [19] involving 25 participants compared using a hands-free voice interface to complete a task while driving with using personal handheld devices (cell phone and music player) to complete the same task while driving. Of particular interest was the results of this study with regard to total eyes-off-road time when texting while driving. The study found that texting, both sending and reviewing a text, was extremely risky. The median total eyes-off-road time when reviewing a text message on a handheld cell phone while driving was 11 seconds. The median total eyes-off-road time when sending a text message using a handheld cell phone while driving was 20 seconds.

The Effects of Text Messaging on Young Novice Driver Performance—Hosking, *et al.,* 2006 [20]

Hosking studied a very different driver population, but obtained similar results. This study used an advanced driving simulator to evaluate the effects of text messaging on 20 young, novice Australian drivers. The participants were between 18 and 21 years old, and they had been driving 6 months or less. Legislation in Australia prohibits hand-held phones, but a large proportion of the participants said that they use them anyway.

The young drivers took their eyes off the road while texting, and they had a harder time detecting hazards and safety signs, as well as maintaining the simulated vehicle's position on the road than they did when not texting. While the participants did not reduce their speed, they did try to compensate for the distraction of texting by increasing their following distance. Nonetheless, retrieving and particularly sending text messages had a detrimental effect on driving:

- Difficulty maintaining the vehicle's lateral position on the road.
- Harder time detecting hazards.
- Harder time detecting and responding to safety signs.
- Drivers spent up to 400 percent more time with eyes off the road than when not texting.

[17] Drews, F.A., Yazdani, H., Godfrey, C.N., Cooper, J.M., & Strayer, D.L. (Dec. 16, 2009). Text messaging during simulated driving. Salt Lake City, Utah: *The Journal of Human Factors and Ergonomics Society Online First.* Published as doi:10.1177/0018720809353319. Retrieved December 22, 2009, from *http://hfs.sagepub.com/cgi/rapidpdf/0018720809353319?ijkey=gRQOLrGlYnBfc&keytype=ref&siteid=sphfs.*

[18] Shutko, J., Mayer, J., Laansoo, E., & Tijerina, L. (2009). Driver workload effects of cell phone, music player, and text messaging tasks with the Ford SYNC voice interface versus handheld visual-manual interfaces (paper presented at SAE World Congress & Exhibition, April 2009, Detroit, MI). Warrendale, PA: Society of Automotive Engineers International. Available from SAE International at: *http://www.sae.org/technical/papers/2009–01–0786.*

[19] The Engineering Meetings Board has approved this paper for publication. It has successfully completed SAE's peer review process under the supervision of the session organizer. This process requires a minimum of three (3) reviews by industry experts.

[20] Hosking, S., Young, K., & Regan, M. (February 2006). The effects of text messaging on young novice driver performance. Victoria, Australia: Monash University Accident Research Centre. Retrieved October 15, 2009, from: *http://www.monash.edu.au/muarc/reports/muarc246.pdf.*

The Effect of Text Messaging on Driver Behavior: A Simulator Study—Reed and Robbins, 2008 [21]

The RAC Foundation commissioned this report [22] to assess the impact of text messaging on driver performance and the attitudes surrounding that activity in the 17 to 25-year old driver category. There were 17 participants in the study, aged 17 to 24. The results demonstrated that driving was impaired by texting. Researchers reported that "failure to detect hazards, increased response times to hazards, and exposure time to that risk have clear implications for safety." They reported an increased stopping distance of 12.5 meters, or three car lengths, and increased variability of lane position.

Synthesis of Literature and Operating Safety Practices Relating to Cell Phone/Personal Data Assistant Use in Commercial Truck and Bus Operations—Bergoffen [23]

The objectives of this ongoing research project are threefold. First, the project will synthesize findings related to cell phone use in automobiles and CMVs. Second, the project will identify current cell phone practices, PDA use, including texting, and the magnitude of the use in the motor carrier industry. FMCSA will consider how these car-driver findings apply to truck and bus drivers and what led fleet managers to restrict or manage cell phone and PDA use. Finally, the project will identify the scope and objectives of ongoing related studies, and any significant knowledge gaps that might influence a regulatory approach.

Cell Phone Distraction in Commercial Trucks and Buses: Assessing Prevalence in Conjunction With Crashes and Near-Crashes—Hickman [24]

The purpose of this ongoing research is to conduct an analysis of naturalistic data collected by DriveCam over a 1-year period. Commercial trucks (3-axle and tractor-trailer) and buses will be the target vehicles in the analyses. This will provide FMCSA with descriptive data on the adverse consequences of cell phone use and other distractions while driving, including texting. In addition, DriveCam will re-review all valid cell phone events within the last 90 days to determine the frequency of the following cell phone variables: dial cell phone, reach for cell phone, reach for Bluetooth/headset/earpiece, talk/listen on hands-free cell phone, talk/listen on hand-held cell phone, and text/e-mail/surf Web on cell phone. The results of these analyses will provide information on the scope of cell phone use, and other distractions, during valid safety events and crashes. FMCSA will carefully review the applicability of any findings to the current proposed rule.

E. Existing Texting Bans by Federal, State, and Local Governments

Executive Order 13513

The President immediately used the feedback from the DOT Summit on Distracted Driving and issued an Executive Order titled "Federal Leadership on Reducing Text Messaging While Driving" (74 FR 51225) on October 1, 2009, which ordered that:

> Federal employees shall not engage in text messaging (a) when driving a Government Owned Vehicle, or when driving a Privately Owned Vehicle while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.

The Executive Order is applicable to the operation of CMVs by Federal government employees carrying out their duties and responsibilities, or using electronic equipment supplied by the government. This order also encourages contractors to comply while operating CMVs on behalf of the Federal government.

Regulatory Guidance

On January 27, 2010, FMCSA issued regulatory guidance in the **Federal Register** (75 FR 4305) concerning texting while driving a CMV in interstate commerce. Specifically, it clarified that while there is not an explicit prohibition on "texting" in § 390.17, *Additional equipment and accessories,* there is a general restriction against the use of equipment and accessories that decrease the safety of operation of a CMV. Because handheld or electronic devices brought into the CMV are considered "additional equipment and accessories" and because texting decreases safety through visual, cognitive, and manual distraction, the use of electronic devices for texting by CMV operators while driving in interstate commerce is prohibited by 49 CFR 390.17. The guidance document was not intended as a substitute for notice-and-comment rulemaking but rather, interpreted and explained the effect of existing regulations on texting while driving. This NPRM, if adopted as a final rule, would take the guidance a step further by establishing more detailed, binding requirements on industry. Accordingly, we encourage active participation and input from the public in this rulemaking through the notice-and-comment process.

Federal Railroad Administration

On October 7, 2008, the Federal Railroad Administration (FRA) published Emergency Order 26 (73 FR 58702). Pursuant to FRA's authority under 49 U.S.C. 20102, 20103, the order, which took effect on October 1, 2008, restricts railroad operating employees from using distracting electronic and electrical devices while on duty. Among other things, the order prohibits both the use of cell phones and texting. FRA cited numerous examples of the adverse impact that electronic devices can have on safe operations. These examples included fatal accidents that involved operators who were distracted while texting or talking on a cell phone. In light of these incidents, FRA is imposing restrictions on the use of such electronic devices, both through its order and a rulemaking that seeks to codify the order.

State Restrictions

Texting while driving is prohibited in 19 States, the District of Columbia, and Guam. A list can be found at the following DOT Web site: *http://www.distraction.gov/state-laws.* Generally, the State requirements are applicable to all drivers operating motor vehicles within those jurisdictions, including CMV operators. Because some States do not currently prohibit texting while driving, there is a need for a Federal regulation to address the safety risks associated with texting by CMV drivers. The Federal restriction would provide uniform language applicable to CMV drivers engaged in interstate commerce, regardless of the presence or absence of a State law or regulation. Generally, State laws and regulations would remain in effect and could continue to be enforced with regard to CMV drivers, provided those laws and regulations are compatible with the Federal requirements. This rulemaking would not affect the ability of States to institute new prohibitions on texting while driving. For more information *see*

[21] Reed, N. & Robbins, R. (2008). The effect of text messaging on driver behaviour: A simulator study. Report prepared for the RAC Foundation by Transport Research Laboratory. Retrieved January 12, 2010, *http://www.racfoundation.org/files/textingwhiledrivingreport.pdf.*

[22] The work described in this report was carried out in the Human Factors and Simulation group of the Transport Research Laboratory. The authors are grateful to Andrew Parkes who carried out the technical review and auditing of this report.

[23] Bergoffen, G. (Final Report due Spring 2010). Synthesis of literature and operating safety practices relating to cell phone/personal data assistant use in commercial truck and bus operations. Ongoing FMCSA Study.

[24] Hickman, J. (Preliminary results available Spring 2010). Cell phone distraction in commercial trucks and buses: Assessing prevalence in conjunction with crashes and near-crashes. Ongoing FMCSA study.

the Federalism section later in this document.

IV. Discussion of Proposed Rule

Federal Prohibition Against Texting by Interstate CMV Drivers

FMCSA proposes to prohibit CMV drivers who are operating in interstate commerce from texting while driving. The Agency would include definitions and add a driver disqualification provision for interstate drivers convicted of violating the Federal rule.

This proposed rule would amend regulations in 49 CFR parts 390, 391, and 392. Generally, for CMV drivers subject to Parts 390, 391, and 392 of the FMCSRs, it would reduce the risks of distracted driving by prohibiting texting by CMV drivers who are operating in interstate commerce and impose sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce, for drivers who fail to comply with this rule.

FMCSA acknowledges the concerns of motor carriers that have invested significant resources in electronic dispatching tools and fleet management systems; this rulemaking should not be construed as a proposal to prohibit the use of such technology. The rulemaking should also not be construed as a proposal to prohibit the use of cell phones for purposes other than texting. The Agency will address the use of these and other electronic devices while driving in separate notice-and-comment rulemaking proceedings.

It is worth noting, however, that while fleet management systems and electronic dispatching tools are used by many of the Nation's largest trucking fleets, the Department believes safety-conscious fleet managers would neither allow nor require their drivers to type or read messages while driving. To the extent that there are fleets that require drivers to type and read messages while they are driving, the Agency will consider appropriate regulatory action to address the safety problem.

FMCSA recognizes that the proposed amendments to its CDL regulations would be applicable to Federal, State, or local government-employed school bus drivers who are required to possess a CDL. The explicit prohibition of texting while driving that would apply to CMV drivers under 49 CFR Part 392 would not be applicable to Federal, State, or local government-employed school bus drivers. The amendment to the CDL disqualifying offenses, however, would apply to them if they are convicted, while driving a school bus, of violating a State or local law or ordinance concerning texting.

Finally, the proposed amendments to the Agency's CDL regulations would be applicable to transit employees who are required to possess a CDL. Because of the statutory exception, the explicit prohibition against CMV drivers under 49 CFR Part 392 would not be applicable to these transit employees, the amendment to the CDL disqualifying offences would apply to them if they are convicted, while operating their transit vehicle, of violating a State or local law or ordinance concerning texting.

Section 390.5

The Agency proposes to add new definitions for the terms "electronic device" and "texting," for general application. The definition of "driving" would be incorporated into the prohibition of texting while driving a CMV in the proposed new § 392.80, in order to restrict the use of the term to texting activities and to avoid limiting the scope of the term as used in other provisions of the FMCSRs.

The Agency did not incorporate explanatory adjectives such as "handheld," "portable," and "personal" that had been included in other documents because the Agency wanted to focus on the behavior not the device. Furthermore, the proposed texting definition clarifies that non-texting functions, which smart phones and similar "multi-function" devices can perform (*e.g.,* Global Positioning System capabilities and music playing), would not be prohibited by this rulemaking.

Section 391.2

FMCSA would amend 49 CFR 391.2, which provides certain exceptions to the requirements of Part 391 for custom farm operations, apiarian industries, and specific farm vehicle drivers, to enable the Agency to make violations of the Federal texting prohibition proposed today a disqualifying offense for such drivers. While the explicit Federal prohibition against texting would apply directly to these drivers, the disqualification provision would not apply without this amendment to the current exception under 49 CFR 391.2.

Section 391.15

The Agency would add a new paragraph (e) to this section to provide for the disqualification of any driver convicted of 2 or more violations of the new prohibition set forth in § 392.80 from operating a CMV in interstate commerce. The proposed change would mirror the corresponding proposed new provisions governing the disqualification of CDL drivers in § 383.51(c). The required number of convictions to cause a disqualification and the period of disqualification would be the same: at least 60 days for the second offense within 3 years and at least 120 days for 3 or more offenses within 3 years. In addition, the first and each subsequent violation of such a prohibition would be subject to civil penalties imposed on such drivers, in an amount up to $2,750 (49 U.S.C. 521(b)(2)(A), 49 CFR 386.81 and App. B, ¶ A(4)).)

Section 392.80

In this section the Agency proposes a new prohibition against texting while driving a CMV, as defined in 49 CFR 390.5. Furthermore, this proposed rule states that motor carriers will not allow nor require drivers to text while driving. FMCSA also includes a provision in this proposed section to apply this new prohibition to "school bus operations notwithstanding the general exception in 49 CFR 390.3(f)(1)." Therefore, school bus drivers who are employed by non-government entities and who transport school children and/or school personnel between home and school in interstate commerce would be subject to the proposed prohibition. FMCSA has determined this proposed rule is necessary for public safety regarding school bus transportation by interstate motor carriers. A definition of driving is included in the proposed rule.

FMCSA also proposes a provision in 49 CFR 390.3(f)(1) to clarify that this new prohibition is not subject to the general exception for "school bus operations" (49 CFR 390.5). It thus makes it clear that drivers engaged in school bus operations would be subject to both the new prohibition and the new disqualification provisions.

The Agency proposes a limited exception to the texting prohibition to allow CMV drivers to text if necessary to communicate with law enforcement officials or other emergency services.

Federal Disqualification Standard for CDL Drivers

FMCSA proposes that any CDL driver operating a CMV (as defined in § 383.5) who is convicted of violating a State prohibition against texting would be disqualified after his or her second conviction for the texting offense or any serious traffic violation (as defined by § 383.51(c)). The CDL disqualifying offense would be applicable to all persons who are required to possess a CDL, in accordance with the requirements of 49 CFR part 383, and who are subject to a State or local law or ordinance prohibiting texting. Therefore, the amendment to the CDL rules would be applicable to drivers employed by Federal, State, or local

government agencies, transit authorities, and school districts.

To assist in the enforcement of a texting prohibition for CMVs and the application of the provisions for disqualification, the proposed regulations would include definitions of the words "driving," "electronic devices," and "texting." These definitions would provide clarity so that, for example, the operation of in-vehicle controls or other portable devices while the vehicle is operating would not be a texting violation.

Section 383.5

FMCSA proposes to add new definitions for the terms "electronic device" and "texting" for application in part 383. The Agency proposes a broad definition of electronic device in order to cover the multitude of devices that allow users to enter and read text messages. However, the Agency does not propose to prohibit the use of such devices by CMV drivers when used for purposes other than texting. The definition of texting would identify the type of activity that would be construed to be prohibited by this rule.

Section 383.51

In Table 2, FMCSA would add a new serious traffic violation that would result in a CDL driver being disqualified. This serious traffic violation would be a conviction for violating a State or local law or ordinance prohibiting texting while driving a CMV. FMCSA proposes to add a description of what is considered "driving" for the purpose of this disqualification. FMCSA notes that the conviction must involve "texting" while operating a CMV and excludes convictions for texting by a CDL driver while operating a vehicle for which a CDL is not required. The Agency's decision is consistent with the provisions of 49 U.S.C. 31310(e), which indicates the serious traffic violation must occur while the driver is operating a CMV that requires a CDL; the operative provisions in the revised table would limit the types of violations that could result in a disqualification accordingly.

As proposed, every State that issues CDLs would be required to impose this disqualification on a driver required to have a CDL issued by that State whenever that CDL driver was convicted of the necessary number of violations while operating in States where such conduct is prohibited. This would be the case even if the issuing State did not have its own law on motor vehicle traffic control prohibiting texting while operating a CMV. *See* 49 U.S.C. 31310(e) and 31311(a)(15), and 49 CFR 384.218 and 384.219.

Section 384.301

A new paragraph (e) is proposed for addition to § 384.301. It would require all States that issue CDLs to implement the new provisions proposed in § 383.51(c) that relate to disqualifying CDL drivers for violating the new serious traffic violation of texting while driving a CMV.

State Compatibility

Motor Carrier Safety Assistance Program (MCSAP)

States that receive MCSAP grant funds would be required, as a condition of receiving the grants, to adopt regulations on texting that are compatible with final regulations issued as a result of this rulemaking (49 U.S.C. 31102(a) and 49 CFR 350.201(a)). If a prohibition on texting (such as proposed in § 392.80) and the related disqualification (such as proposed in § 391.15(e)) are adopted by FMCSA, States under MCSAP would have to adopt compatible regulations applicable to both interstate and intrastate transportation as soon as practicable, but not later than 3 years thereafter (49 CFR 350.331(d)). If States do not adopt compatible regulations prohibiting texting while driving a CMV and related disqualifications they may not receive full MCSAP grant funding.

CDL Program

States that issue CDLs would be required to adopt and implement the proposed CDL disqualification provisions that require disqualification for two or more convictions of violating a State or local law or ordinance prohibiting texting while driving a CMV. States should be in compliance as soon as practicable, but not later than 3 years after FMCSA adopts the disqualification provisions. If they do not comply, they may be subject to the loss of up to 5 percent in the first year of substantial non-compliance and up to 10 percent in subsequent years of certain Federal-aid highway amounts apportioned to the State (49 U.S.C. 31311(a) and 31314).

V. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review because of the level of public interest in distracted driving in general and texting while driving in particular. The Office of Management and Budget (OMB) has reviewed the NPRM in accordance with that Order. Section 6(a)(3) of the Executive Order requires an assessment of potential costs and benefits. Accordingly, a draft Regulatory Evaluation has been prepared and is available in the docket referenced at the beginning of this rulemaking notice. A summary of the Regulatory Analysis (RA) follows:

FMCSA proposes amendments to the FMCSRs in order to reduce the prevalence of driver distraction-related crashes involving CMV drivers through a prohibition against texting by CMV drivers and the imposition of related disqualification sanctions. The goal of the proposed revisions is to reduce or prevent truck and bus crashes, fatalities, and injuries due to texting while driving.

Texting while driving is a recent phenomenon, so quantitative safety analyses concerning its specific impact on safety are limited. There are, however, numerous studies on driver distraction in general that provide a compelling safety argument for taking this action at this time. FMCSA analyzed those studies and found that many of their findings provide relevant information in support of a texting prohibition. With regard to the recent data that provides an assessment of the safety risks of texting, the regulatory analysis focuses on one particular study—"the VTTI Study"[25]—which, though limited in sample size, sheds light on the potential harm of texting while driving CMVs through data gathered from a naturalistic driving study in which there was real-world video monitoring of drivers' activities during the work day. The odds of being in a safety critical event are 23 times greater when a CMV driver is texting while driving.

Because current empirical literature lacks specific findings on the safety benefits of prohibiting texting while driving a CMV, FMCSA conducted a threshold analysis of the impact of the proposed rule. A threshold analysis answers the question, how small does the value of the non-quantified benefits (safety benefits in terms of crash prevention) have to be in order for the rule's benefits to equal its costs. In this case, the proposed rule has minimal costs and presently yields unquantifiable (though potentially considerable) benefits.

The regulatory evaluation considers the following potential costs: (a) Value of time lost due to texting while not

[25] Olson, R. L. *et al.* (2009). "Driver distraction."

driving during on-duty time; (b) increased crash risk due to trucks that are parked on the shoulder of the road; (c) increased fuel cost due to idling and exiting and entering the travel lanes of the roadway; and (d) increased crash risk due to trucks exiting and entering the travel lanes of the roadway. The regulatory evaluation also considers potential costs to States. Because the analysis does not yield appreciable costs, further analysis pursuant to the Unfunded Mandates Reform Act of 1995 was deemed unnecessary.

The Agency estimates that, at most, CMV drivers will bear a cost of approximately $ 2.7 million annually. This cost consists of the value of driver time lost due to choosing to pull off the roadway to perform texting activities, increased fuel usage due to choosing to pull over to the side of the roadway, and the increased risk of a possible rear-end collision for CMVs being parked off the roadway and pulling into and out of the roadway. Current guidance from the Office of the Secretary of Transportation places the value of a statistical life at $6.0 million. (This guidance is available in the docket for this rulemaking.) Consequently, the proposed texting prohibition would have to eliminate only one fatal CMV crash for the benefits of this rule to exceed the costs.

SUMMARY OF COSTS AND THRESHOLD ANALYSIS

Lost Driver Time (millions)	$2.2
Increased Fuel Consumption (millions)	0.3
Entering and Exiting Roadway Crashes (millions)	0.2
Total Costs	2.7
Benefit of Eliminating One Fatality (millions)	6.0
Break-even Number of Lives Saved	1

FMCSA solicits comment on State compliance costs and other cost estimates (*e.g.* those relating to delayed communication) not addressed in this NPRM or its associated Regulatory Evaluation. Additionally, the Agency solicits comments and data addressing fatality, injury, and property damage only crashes caused by texting while driving a CMV.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA has conducted an economic analysis of the impact of this proposed rule on small entities and certifies that a Regulatory Flexibility Analysis is not necessary because the proposed rule will not have a significant economic impact on a substantial number of small entities subject to the requirements of this rule. This rulemaking will affect all of the approximately 357,000 small entities covered by the rule; however, the direct costs of this rule to small entities are only expected to be the costs for lost driver time from foregoing texting while on-duty and costs for pulling to the side of the road to idle the truck and send a text message. The majority of motor carriers are small entities. Therefore, FMCSA will use the total cost of the proposed rule ($2.7 million) applied to the number of small entities (357,000) as a worse case evaluation which would average less than $8 per carrier. This is well below DOT's threshold for a substantial economic impact on a small entity. FMCSA requests comments on this certification.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the proposed rule. FMCSA will not retaliate against small entities that question or complain about this rule or any policy or action of FMCSA.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $141.3 million (which is the value of $100 million in 2008 after adjusting for inflation) or more in any 1 year. Though this proposed rule would not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

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

Privacy Impact Assessment

FMCSA conducted a Privacy Threshold Analysis (PTA) for the proposed rule on limiting the use of wireless communication devices and determined that it is not a privacy-sensitive rulemaking because the rule will not require any collection, maintenance, or dissemination of Personally Identifiable Information (PII) from or about members of the public.

Executive Order 13132 (Federalism)

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

FMCSA recognizes that, as a practical matter, this rule may have an impact on the States. Accordingly, the Agency sought advice from the National Governors Association (NGA), National Conference of State Legislators (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA) on the topic of texting by a letter dated December 18, 2009. (A copy of these letters is available in the docket for this rulemaking.) FMCSA offered NGA, NCSL, and AAMVA officials the opportunity to meet and discuss issues of concern to the States. State and local governments will also be able to raise Federalism issues during the comment period for this NPRM.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13211 (Energy Supply, Distribution, or Use)

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

Technical Standards

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

The Agency is not aware of any technical standards used to address texting and therefore did not consider any standards.

National Environmental Policy Act

The Agency analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action requires an Environmental Assessment (EA) to determine if a more extensive Environmental Impact Statement (EIS) is required. In the event that FMCSA finds the impacts to the environment do not warrant the more extensive EIS, FMCSA will issue a Finding of No Significant Impact (FONSI). The findings of the draft EA reveal that there are no significant positive or negative impacts on the environment expected to result from the rulemaking action. There could be minor impacts on emissions, hazardous materials spills, solid waste, socioeconomics, and public health and safety. FMCSA requests comments on this draft environmental assessment.

FMCSA has also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it would not result in any potential increase in emissions that are above the general conformity rule's *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). Moreover, based on our analysis, it is reasonably foreseeable that the rule would not significantly increase total CMV mileage, nor would it change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely establishes requirements to prohibit texting while driving and establishes a procedure for disqualification.

FMCSA seeks comment on these determinations.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this NPRM in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact that could result from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. None of the alternatives analyzed in the Agency's EA, discussed under NEPA, would result in high and adverse environmental impacts.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons discussed in the preamble, FMCSA proposes to amend 49 CFR parts 383, 384, 390, 391, and 392 as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

2. Amend § 383.5 by adding the definitions for "Electronic device," and "Texting" in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or other device used to input, write, send, receive, or read text.

* * * * *

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(ii) Using an in-cab fleet management system or citizens band radio;

(iii) Inputting or selecting information on a global positioning system or navigation system; or

(iv) Using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this rule.

* * * * *

3. Amend § 383.51 by adding a new paragraph (c)(9) to Table 2 to read as follows:

§ 383.51 Disqualifications of Drivers.

* * * * *

(c) * * *

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of: * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for * * *
.				
*	*	*	*	*
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving[2].	60 days	Not applicable	120 days	Not applicable.
*	*	*	*	*

[2] Driving, for the purpose of this disqualification, means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

4. The authority citation for part 384 continues to read as follow:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

5. Amend § 384.301 by adding a new paragraph (e) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(e) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of [*EFFECTIVE DATE OF FINAL RULE*] as soon as practical, but not later than [*DATE 3 YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*].

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

6. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; and 49 CFR 1.73.

7. Amend § 390.3 by revising paragraph (f)(1) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5 (except for the provisions of §§ 391.15(e) and 392.80);

* * * * *

8. Amend § 390.5 by adding the definitions for "Electronic device," and "Texting" in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or other device used to input, write, send, receive, or read text.

* * * * *

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or electronic text entry for present or future communication.

(2) Texting does not include:

(i) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(ii) Using an in-cab fleet management system or citizens band radio;

(iii) Inputting or selecting information on a global positioning system or navigation system; or

(iv) Using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this rule.

* * * * *

PART 391—QUALIFICATION OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTIONS

9. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

10. Revise § 391.2 to read as follows:

§ 391.2 General exceptions.

(a) *Farm custom operation.* The rules in this part (except for § 391.15(e)) do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part (except for § 391.15(e)) do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part (except for § 391.15(e)) do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. (For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, *see* § 391.67.)

11. Amend § 391.15 by adding a new paragraph (e) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(e) Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the prohibition of texting in § 392.80(a) of this chapter is disqualified for the period of time specified in paragraph (e)(2) of this section.

(2) *Duration.* Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(i) *Second violation.* A driver is disqualified for not less than 60 days if the driver is convicted of two violations of § 392.80(a) of this chapter in separate incidents during any 3-year period.

(ii) *Third or subsequent violation.* A driver is disqualified for not less than 120 days if the driver is convicted of three or more violations of § 392.80(a) of this chapter in separate incidents during any 3-year period.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

12. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

13. Amend part 392 by adding a new subpart H to read as follows:

Subpart H—Limiting the Use of Electronic Devices

§ 392.80 Prohibition against texting.

(a) *Prohibition.* No driver shall engage in texting while driving.

(b) *Motor Carriers.* No motor carrier shall allow or require its drivers to engage in texting while driving.

(c) *Definition.* For the purpose of this section only, *driving* means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

(d) *Exceptions.* (1) The provisions of § 390.3(f)(1) of this chapter (school bus operations) are not applicable to this section.

(2) Texting is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

Issued on: March 29, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–7367 Filed 3–31–10; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2009-0078]
[MO 99210-0-0009-B4]

50 CFR Part 17

RIN 1018-AW53

Endangered and Threatened Wildlife and Plants; Proposed Revised Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for the Lane Mountain milk-vetch (*Astragalus jaegerianus*) under the Endangered Species Act of 1973, as amended (Act). The previous final rule designated 0 acres (ac) (0 hectares (ha)) of critical habitat and was published in the **Federal Register** on April 8, 2005. We now propose to designate approximately 16,156 ac (6,538 ha) of land located in the Mojave Desert in San Bernardino County, California, which, if finalized as proposed, would result in an increase of approximately 16,156 ac (6,538 ha).

DATES: We will accept comments until June 1, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by May 17, 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-R8-ES-2009-0078].
- U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-R8-ES-2009-0078]; 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: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644-1766; facsimile (805) 644-3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend any final action resulting from this proposal to be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other governmental agencies, Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- The amount and distribution of *Astragalus jaegerianus* habitat included in this proposed revised rule;
- What areas within the geographic area occupied by the species at the time of listing contain features essential to the conservation of the species and why; and
- What areas outside the geographical area occupied by the species at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Comments or information that may assist us in identifying or clarifying the primary constituent elements;

(6) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential;

(7) Information on the currently predicted effects of climate change on *Astragalus jaegerianus* and its habitat;

(8) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed revised designation and, in particular, any impacts on electricity production, and the benefits of including or excluding any particular areas that exhibit these impacts; and

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Our final determination concerning critical habitat for *Astragalus jaegerianus* will take into consideration all written comments we receive during the comment period, including comments from peer reviewers, comments we receive during a public hearing, should one be requested, and any additional information we receive during the 60–day comment period. All comments will be included in the public record for this rulemaking. On the basis of peer reviewer and public comments, we may, during the development of our final determination, find that areas within the proposed designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide 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. We will post all hardcopy comments on *http://www.regulations.gov*. Please include sufficient information with your comment to allow us to verify any scientific or commercial data you submit.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed revised rule by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the *Federal eRulemaking Portal* at *http://www.regulations.gov*.

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat in this proposed rule. Additional information on the Lane Mountain milk-vetch may also be found in the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596) and the previous proposed critical habitat of April 6, 2004 (69 FR 18018). These documents are available on the Ventura Fish and Wildlife Office website at *http://www.fws.gov/ventura*.

Species Description

Astragalus jaegerianus is a member of the pea family (Fabaceae), and has a range restricted to a portion of the west Mojave Desert that is north of Barstow, in San Bernardino County, California. The plant is an herbaceous perennial that typically dies back at the end of each growing season, and persists through the dry season as a taproot. The stems often grow in a zigzag pattern, usually up through low bushes, referred to in this proposed rule as host shrubs.

This species can be considered a hemicryptophyte (partially hidden), because it is usually found growing within the canopy of a host shrub. Like other species of *Astragalus*, the roots of *Astragalus jaegerianus* contain nodules that fix nitrogen. Gibson *et al.* (1998, p. 81) postulate that *A. jaegerianus* may have a mutually beneficial relationship with the host shrub, wherein the host shrub provides trellis-like support for *A. jaegerianus*, and benefits from higher levels of soil nitrogen derived from the litter and roots of *A. jaegerianus*.

Life History

As with other perennial species in the Mojave Desert, the plant begins regrowth in the late fall or winter, once sufficient soil moisture is available. Individuals go dormant in the late spring or summer when soil moisture has been depleted (Bagley 1999, p. 2). Blooming typically occurs in April and May. However, if climatic conditions are unfavorable, the plants may desiccate (dry out) prior to flowering or setting seed. Therefore, substantial contributions to the seed bank may occur primarily in climatically favorable years.

Production of pods and the number of seeds per pod can be highly variable, both in the field and in greenhouse conditions. Seed pods can contain as many as 18 seeds, but more typically 4 to 14 seeds (Sharifi *et al.* 2003, p. 5). In the field, seeds that do not germinate during the subsequent year become part of the seed bank. Seed germination rates

in the field may resemble the low germination rate of 5 percent that is observed in germination trials of unscarified (outer cover is not broken) seed (Sharifi in litt. 2004, p. 1).

Seeds collected from *Astragalus jaegerianus* range in size from .000053 ounces (1.5 milligrams) to .000764 ounces (5.0 milligrams) in weight (Sharifi in litt. 2003, p. 5). The relatively large size of these seeds, compared to those of many desert annual species, makes them an attractive food source to ants and other large insects, small mammals, and birds (Brown *et al.* 1979, p. 203). These animal species would also be the most likely vectors to disperse *A. jaegerianus* seeds within and between populations. Sharifi (pers. comm. 2004) confirmed the presence of *A. jaegerianus* seeds within native ant coppices (mounds).

Limited observations on *Astragalus jaegerianus* pollinators were carried out in 2003 (Kearns 2003, pp. 9-16), 2004, and 2005 (Hopkins 2005, p. 1). Kearns made observations at two plants in one population for 7 days. Although 30 different insect species were observed visiting flowers in the area, only 4 visited *A. jaegerianus* flowers. The most frequent pollinator was *Anthidium dammersi*, a solitary bee in the megachilid family (Megachilidae). *Anthidium dammersi* occurs in the Mojave and Colorado deserts of California, Nevada, and Arizona (Kearns 2003, p. 12), and will fly up to 0.6 mile (1 kilometer (km)) away from their nest; although if floral resources are abundant, they will decrease their flight distances accordingly (Yanega, pers. comm. 2003). Kearns (2003) found that the *Anthidium* individuals he inspected carried pollen primarily from phacelia (*Phacelia distans*) (82 percent of individuals) and *A. jaegerianus* (64 percent of individuals). The three occasional visitors to *A. jaegerianus* were a hover fly (*Eupeodes volucris*), a large anthophrid bee (*Anthophora* sp.), and the white-lined sphinx moth (*Hyles lineata*). The extent to which *Astragalus jaegerianus* relies on these and other pollinators to achieve seed set is not yet known. However, in a greenhouse experiment, 25 percent of pollinated *Astragalus jaegerianus* flowers set seed, while only 5 percent of nonpollinated flowers set seed (Sharifi pers. comm. 2004).

In a study conducted in 2004 and 2005, Hopkins collected three bee species observed on the flowers of *Astragalus jaegerianus.* Yanega identified the three bee species as *Osmia laisulcata, Anthidium emarginatum*, and *Anthidium dammersi*, all of which belong to the megachilid family. Hopkins also observed two species of flies associated with *Astragalus jaegerianus* flowers. However, Hopkins concluded that the common hoverfly (*Eupeodes volucris*) and bee fly (*Lordotus albidus*) were not effective pollinators of *A. jaegerianus* flowers (Hopkins 2005, p. 1).

Although the aboveground portion of the plant dies back each year, individuals of *Astragalus jaegerianus* persist as a perennial rootstock through the dry season. The perennial rootstock may also allow *A. jaegerianus* to survive occasional dry years, while longer periods of drought might be endured by remaining dormant (Beatley in Bagley 1999, p. 2). In another federally listed species, Osterhout milk-vetch (*Astragalus osterhoutii*), which occurs in sagebrush steppe habitat in Colorado, individuals have remained dormant for up to 4 years (Dawson in litt. 1999, p. 1).

Although a substantial *Astragalus jaegerianus* seedbank most likely exists, establishment of new individuals may not occur with great frequency, and may pose a large bottleneck for the continued persistence of the species. In addition to the possible low seed germination rates discussed earlier, several other observations contribute to this assertion. First, we have some indication that individuals may have a long life span; in one long-term plot, individuals have been tracked for a period of 13 years. Out of a total of 9 individuals, 1 has persisted over a period of 13 years, 1 has persisted 12 years, 1 has persisted 10 years, 1 has persisted 6 years, 1 has persisted 5 years, and 2 have persisted 3 years (Rutherford in litt. 2004). Secondly, despite careful observation, very few seedlings have been observed. During the extensive surveys of 2001, approximately 2 percent of the 4,964 individuals observed were thought to be seedlings (Charis 2002, p. 36). However, the actual number of seedlings may have been even lower, because resprouts from established individuals were most likely mistaken for seedlings (Sharifi pers. comm. 2004).

Geographical Area Occupied at the Time of Listing

At the time of listing, *Astragalus jaegerianus* was known to occur in four geographically distinct areas, referred to as Brinkman Wash, Montana Mine, Paradise Wash, and Coolgardie. The species was found from a fifth area, referred to as Goldstone in 2001. Based on what we understand about the lifespan of the species, we infer that the Goldstone area was also occupied at the time of listing (see below).

Current Distribution

After the early collections in 1939 and 1941, the plant was not collected again until 1985 at the sites referred to as Brinkman Wash, Montana Mine, and Paradise Wash. Throughout the 1990s, hundreds more plants were located in these areas (Lee and Ro Consulting Engineers 1986, pp. 10-13; Brandt *et al.* 1993, p. 4; Prigge 2000a, p. 6) in surveys sponsored by the Department of the Army (Army). Surveys in 1999 established that the Brinkman Wash and Montana Mine sites together support one large spatially contiguous population (Prigge *et al.* 2000a, p. 7), and thus these areas are now considered one population. In 1992, the southernmost and now considered the third population was found 9 miles (mi) (14 kilometers (km)) to the south, on Coolgardie Mesa, a few miles west of Lane Mountain. This site closely approximates the location of the type locality (the location where a type specimen originated) as described by Edmund C. Jaeger (1940, p. 119).

Extensive surveys funded by the Army were conducted in 2001 (Charis 2002, pp. 1-85). The 2001 surveys contributed greatly to our knowledge of the overall distribution and abundance of *Astragalus jaegerianus* in the three populations (Brinkman Wash–Montana Mine, Paradise Wash, and Coolgardie). In addition, a fourth population was located during these surveys on Army lands within the bounds of the National Training Center at Fort Irwin (NTC) in an area referred to as Goldstone. Approximately 20 percent of this population is on lands leased by the Army to the National Aeronautics and Space Administration (NASA) for tracking facilities. Much of the information on population distribution included in this proposed rule is taken from the Army survey report (Charis 2002, pp. 1-85).

Individuals of *Astragalus jaegerianus* are concentrated in four geographically distinct areas. In this rule, a population refers to a concentration of *A. jaegerianus* individuals, a site refers to the land that supports the population, and a unit refers to specific sites that are being considered for critical habitat designation. The four populations of *A. jaegerianus* are arrayed more or less linearly along a 20-mile-long (32-kilometer) axis that trends in a northeasterly-to-southwesterly direction. The names of the four populations, from northeast to southwest, and land ownership are as follows: the Goldstone population occurs on Army lands including a portion leased to NASA; the Brinkman

Wash–Montana Mine population occurs entirely on Army lands; the Paradise Wash population occurs primarily on Army lands, with a small portion of the remaining population occurring on Bureau of Land Management (Bureau) lands intermixed with private lands along the southwestern fringe of the population; the Coolgardie population occurs primarily on Bureau-managed lands and to a lesser extent lands owned by the Army, with a number of small privately owned parcels scattered within.

Based on the information available, including historic records and current location information, there is nothing to suggest that *Astragalus jaegerianus* was more widespread prior to listing than the currently-known distribution. The Army surveys in 2001 (Charis 2002, p. 17) included reconnaissance surveys on habitat that appeared suitable but outside the known range of *A. jaegerianus*, including the Mount General area near Barstow and in the Alvord Mountains 20 mi (32 km) to the east. In addition, since 1996, rare plant surveys have been conducted on the Naval Air Weapons Station at China Lake 6 miles (4.8 km) northwest of the known distribution (Silverman in litt. 2003). None of these surveys have resulted in the location of any other populations.

Habitat

Astragalus jaegerianus is most frequently found on shallow soils derived from Jurassic or Cretaceous granitic bedrock. A small portion of the individuals located to date occur on soils derived from diorite or gabbroid bedrock (Charis 2002, p. 35). In one location on the west side of the Coolgardie site, plants were found on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand. Soils tend to be shallower immediately adjacent to milk-vetch plants (within 30 feet (ft) (10 meters (m))) than in the surrounding landscape (Brandt *et al.* 1997, p. 8). At the Montana Mine site, highly weathered granite bedrock was reached within 2 inches (6 centimeters (cm)) of the soil surface near *A. jaegerianus* plants (Fahnestock 1999, p. 3). The topography where *A. jaegerianus* most frequently occurs is on low ridges and rocky low hills where bedrock is exposed or near the surface and the soils are coarse or sandy (Prigge 2000b, p. 5; Charis 2002, p. 35). Most of the individuals found to date occur between 3,100 and 4,200 ft (945 and 1,280 m) in elevation (Charis 2002, p. 40). At lower elevations, the alluvial soils appear to be too fine to support *A. jaegerianus*, and at higher elevations the soils may not be developed enough to support *A. jaegerianus* (Prigge 2000b, p. 6; Charis 2002, p. 40). Prigge (pers. comm. 2003) examined and found no relationship between the abundance and distribution of *A. jaegerianus* and levels of micronutrients or heavy metals, such as selenium, in the soil.

At the broad landscape level, the plant community within which *Astragalus jaegerianus* occurs can be described as Mojave mixed woody scrub (Holland 1986 p. 13), Mojave creosote bush scrub (Cheatham and Haller 1975, p. 2; Thorne 1976, p. 23; Holland 1986, p. 13), or creosote bush series (Sawyer and Keeler-Wolf 1995, p. 144). These broad descriptions, however, are not sufficiently detailed to be useful in describing the communities where *A. jaegerianus* is found. While creosote bush (*Larrea tridentata*) is present in the landscape, its presence and abundance is not as extensive in the specific areas where *A. jaegerianus* occurs, presumably because these soils are shallower than optimal depth for creosote bush.

Data gathered from the four sites that support *Astragalus jaegerianus* populations have been detailed, and thus very useful in describing the particular plant community within which *A. jaegerianus* grows. Common to all four sites is the remarkably high diversity of desert shrub species, although the relative frequency of these species varies slightly from site to site. The shrub species that occur in the highest densities at *A. jaegerianus* sites include turpentine bush (*Thamnosma montana*), white bursage (*Ambrosia dumosa*), Mormon tea (*Ephedra nevadensis*), Cooper goldenbush (*Ericameria cooperi* var. *cooperi*), California buckwheat (*Eriogonum fasciculatum* var. *polifolium*), brittlebush (*Encelia farinosa or E. actoni*), desert aster (*Xylorrhiza tortifolia*), goldenheads (*Acamptopappus spherocephalus*), spiny hop-sage (*Grayia spinosa*), cheesebush (*Hymenoclea salsola*), winter fat (*Kraschenninikovia lanata*), and paper bag bush (*Salazaria mexicana*).

Astragalus jaegerianus utilizes a variety of species as host shrubs. Individuals of *A. jaegerianus* are sometimes found growing within dead shrubs, and are rarely observed on bare ground. Host shrubs may be important in providing appropriate microhabitat conditions for *A.jaegerianus* seed germination and seedling establishment (Charis 2003, p. 25).

At the Brinkman-Montana Mine site, Prigge *et al.* (2000b, p. 6) showed that the difference between the relative frequency of use of host shrub species by *Astragalus jaegerianus* and the relative frequency with which these shrubs occurred in the plant community was statistically significant, indicating that some shrubs are more suitable as hosts than others. During Army surveys in 2001, host shrubs were noted for 4,899 individuals of *A. jaegerianus*. Six shrub species (*Thamnosma montana, Ambrosia dumosa, Eriogonum fasciculatum* ssp. *polifolium, Ericameria cooperi* var. *cooperi, Ephedra nevadensis, Salazaria mexicana*) accounted for 75 percent of the host shrub records. Some relatively frequent shrubs had an extremely low frequency of occurrence as a host. These included *Larrea tridentata, Krameria erecta, Psorothamnus arborescens* var. *minutifolius, Lepidium fremontii*, and *Lycium cooperi* (Charis 2001, p. 41).

Population Characteristics

The cumulative total number of *Astragalus jaegerianus* individuals found from all surveys to date is approximately 5,800 (Charis 2002, p. 34). Charis (2002) attempted to extrapolate the total number of individuals by factoring in the amount of intervening suitable habitat between transects in confirmed occupied habitat, along with an "observability" factor ranging from 30 percent to 70 percent; this results in estimations of the total number of individuals ranging from 20,524 to 47,890. The actual numbers of individuals observed during the surveys at the four population sites during the climatically favorable year of 2001 are as follows: Goldstone, 555; Brinkman Wash–Montana Mine, 1,487; Paradise Wash, 1,667; Coolgardie, 2,014 (Charis 2002, p. 36). Low numbers of individuals observed in prior and subsequent years (2000, 2002, and 2003) suggest that this species may well follow the pattern of other perennial desert species that rely on climatic conditions (particularly a heavy rainfall during October or November) that are infrequent and unpredictable (Beatley 1974, p. 860; Kearns 2003, p. 5; Prigge, pers. comm. 2003).

Reasons for Decline and Threats

At the time *Astragalus jaegerianus* was listed as endangered in 1998, threats to the species included: Dry wash mining, recreational off-highway vehicle use, military maneuvers on Army lands at the NTC and its future training expansion lands (see New Information Since the Time of Listing section below), and the lack of regulatory mechanisms that would offer formal protection for the species or its habitat. Stochastic extinction (extinction

from random natural events) resulting from flooding (that could wash substantial amounts of the seedbank into unsuitable habitat), prolonged drought (that could reduce the abundance of viable seed in the seedbank), or unforeseen events including wildfire, wildfire suppression activities, or pipeline breaks or repairs were also of concern.

New Information Since the Time of Listing

Survey information

Surveys conducted in 2001 (Charis 2002, pp. 1-85) increased our understanding of the distribution of the species. The areal extent of the three populations that were previously known was found to be much greater, and the fourth population (Goldstone) was discovered during these surveys. Also, the size of the populations (as represented by the number of individuals that can be observed in a favorable climatic year) is now known to be larger than was thought at the time of listing.

Army land transfers and management

A substantial change in land management occurred since the time of listing. On January 11, 2002, the Fort Irwin Military Lands Withdrawal Act of 2001 (Public Law 107-107) was signed into law. This legislation withdrew approximately 110,000 acres (ac) (44,516 hectares (ha)) of land, formerly managed by the Bureau, for military use and management by the Army at the NTC. Subsequent surveys and Geographic Information System (GIS) analysis indicated that the expansion area was actually 118,674 ac (48,026 ha).

As part of their Integrated Natural Resources Management Plan (INRMP) responsibilities, the Army established 40 study plots in 2005 to study the demographics of *Astragalus jaegerianus* and reports annually to the Service. Ten study plots were established in each of the four populations. Information summarized from the 2008 annual monitoring report indicates that the total number of *A. jaegerianus* plants observed above-ground within the plots has decreased since 2005 (Hessing 2008, pp. 2-6). Study plot surveys in 2005 documented 224 individuals. In 2006 the total number of individual plants increased to 230. In 2007, the total number of plants observed in the study plots was 4 plants; drought conditions are suspected to be the cause of decreased numbers observed above-ground. In 2008 the observed population total rose to 123 plants. Fourteen of the 123 plants (11.4 percent) were new recruits (new individuals from seeds) in 2008; this was correlated with increased rainfall that resulted in the germination of new individuals as well as the reappearance of older, established individuals that had gone dormant during the previous years of drought. In 2009, the total number of living plants observed in the study plots was 124 plants. Eleven of these plants were new plants that had not been observed or tagged previously (Hessing 2009, p. 3). Long-term recruitment into the population is expected to be less, because of seedling and juvenile mortality. For example, only 35 percent of the new recruits in 2006 plants survived until 2008 (Hessing 2008, pp. 2-6).

Population demography studies conducted at permanent survey plots showed that *Astragalus jaegerianus* populations at the Montana Mine and Goldstone sites are failing to recruit new plants into those populations as a result of low seedling survival and perhaps a depleted seed bank (Sharifi *et al.* 2009, p. 10). Additionally, recruitment is probably episodic and requires two or more uncommon conditions such as: A large seed bank, precipitation greater than 200 mm and frequently spaced (approximately four times a month), and a subsequent wet year or summer precipitation (Sharifi *et al.* 2009, p. 10). Recent genetic analysis of *A. jaegerianus* showed that the species exhibits low levels of genetic variation likely due to its small population size and restricted geographical range (over a 20-mi long (32-km) area) (Walker and Metcalf 2009, p. 18).

Three of the four populations of *Astragalus jaegerianus* (Goldstone, Brinkman Wash–Montana Mine, and Paradise Wash populations) occur almost entirely on Army lands at the NTC. The Army established two conservation areas for *A. jaegerianus* in 2005. The first conservation area, referred to as the Goldstone Conservation Area, comprises 2,470 ac (1,000 ha) at the Goldstone site where the Goldstone population occurs and encompasses almost the entire population. The second conservation area, referred to as Paradise Valley Conservation Area, comprises 4,302 ac (1,741 ha) along the southwestern boundary of the NTC where the Paradise Wash population occurs. A portion of the Brinkman Wash-Montana Mine population occurs on a site designated as a "no-dig zone" by the Army; while not as protective as a conservation area, the no-dig zone limits the extent of ground disturbance, and hence disturbance to the habitat of *Astragalus jaegerianus.* Therefore, of the three populations on the NTC lands, all of one and a portion of a second are on sites that have been designated as conservation areas, and a portion of a third population is on a site designated as a no-dig zone.

Bureau land transfers and management

As discussed above under "Army land transfers and management," approximately 118,674 ac (48,026 ha) of lands, primarily Bureau lands, were transferred to the Army in 2002. This transfer included lands that support a large portion of the population of *Astragalus jaegerianus* at Brinkman Wash–Montana Mine and almost all the *Astragalus jaegerianus* population at Paradise Wash. The Bureau continues to have jurisdiction on lands that support the *Astragalus jaegerianus* population at Coolgardie.

In 2005, the Bureau amended the California Desert Conservation Area plan with respect to the management of approximately 3,300,000 ac (1,335,477 ha) of Bureau lands in the western Mojave Desert. As part of the plan amendment of the CDCA, the Bureau established two Areas of Critical Environmental Concern (ACEC) for *Astragalus jaegerianus*. The first ACEC, referred to as the West Paradise Conservation Area, comprises 1,243 ac (503 ha), and is contiguous with the Army's Paradise Valley Conservation Area along the southwestern boundary of the NTC. This area was previously designated as land-use class L by the Bureau, which denotes limited use. The second ACEC is the Coolgardie Mesa Conservation Area (CMCA); it comprises approximately 13,354 ac (5,404 ha) at the Coolgardie site. This area was previously designated as land-use class M by the Bureau, which denotes moderate use. Under the plan amendments to the CDCA, both conservation areas are now managed to maintain habitat for *A. jaegerianus* with the following management prescriptions: Implement a minerals withdrawal and notify claimholders of the presence of *A. jaegerianus*, prohibit grazing, issue no permits that allow take of this species, require a 5-to-1 mitigation ratio for land-disturbing projects, acquire private lands to the extent feasible, and limit total ground disturbance to 1 percent of the conservation areas.

Since 2005, Congress and the Department of Interior supported the use of public lands for alternative energy development, including passage of the Energy Policy Act of 2005. The purpose of the act is to encourage energy efficiency and conservation,

promote alternative and renewable energy sources, reduce our dependence on foreign sources of energy, and increase domestic production in an environmentally responsible way. Stepdown orders address more specifically how to implement the Energy Policy Act of 2005 (for example, Order No. 3283 (DOI 2009a pp. 1-2) and Order No. 3285 (DOI 2009b pp. 1-3)). In addition, the Bureau has issued its own guidelines for implementing these policies and orders on Bureau lands. In 2008, the Bureau issued IM 2009-043, the Wind Energy Development Policy, which includes guidelines for the development of wind energy projects within designated ACEC areas (Bureau 2008, p. 2). In accordance with these guidelines, the Bureau will not issue right-of-way authorizations for wind energy development in ACECs when wind energy development is incompatible with specific resource values. Since 2005, the Bureau has received two applications to install meteorological monitoring towers adjacent to *Astragalus jaegerianus* habitat on Coolgardie Mesa. These applications were denied due to concerns over habitat alteration and potential impacts to *A. jaegerianus*. The Bureau worked with the applicants to relocate these two wind energy projects outside of the ACECs designated for *A. jaegerianus* (Trost 2009), thereby avoiding impacts to *A. jaegerianus* while pursuing alternative energy development.

Previous Federal Action

The final rule listing *Astragalus jaegerianus* as an endangered species was published on October 6, 1998 (63 FR 53596).

On November 15, 2001, our decision not to designate critical habitat for *Astragalus jaegerianus* and seven other plant and wildlife species at the time of listing was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Norton* (Case No. 01-CV-2101-IEG (S.D.Cal.). On July 1, 2002, the court ordered the Service to reconsider its not prudent determination, and propose critical habitat, if prudent, for the species by September 15, 2003, and a final critical habitat designation, if prudent, no later than September 15, 2004. In light of *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F.3d 1121 (9th Cir. 1997), and the diminished threat of overcollection, the Service reconsidered its decision and determined that it was prudent to propose critical habitat for the species. However, the Service exhausted the funding appropriated by Congress to work on critical habitat designations in 2003 prior to completing the proposed rule. On September 8, 2003, the court issued an order extending the date for issuance of the proposed critical habitat designation for *A. jaegerianus* to April 1, 2004, and the final designation to April 1, 2005.

On April 6, 2004 (69 FR 18018), we published a proposed critical habitat designation that included 29,522 ac (11,947 ha) in 4 units in San Bernardino County, California. On April 8, 2005 (70 FR 18220), we published our final designation of critical habitat for *Astragalus jaegerianus*. Because we excluded all proposed acreage from the designation, the final designation included zero (0) acres (0 hectares).

On December 19, 2007, the 2005 critical habitat determination was challenged by the Center for Biological Diversity (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.*, Case No. CV-07-08221-JFW-JCRx). In a settlement agreement accepted by the court on June 27, 2008, we agreed to reconsider the critical habitat designation for *A. jaegerianus*. The settlement stipulated that we submit a proposed revised critical habitat rule for *A. jaegerianus* to the **Federal Register** for publication on or before April 1, 2010, and submit a final revised determination on the proposed critical habitat rule to the **Federal Register** for publication on or before April 1, 2011. This revised proposed rule complies with the June 27, 2008, court order.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species, and

(b) that may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to discretionary actions carried out, funded, or authorized by a Federal agency. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner seeks or requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species. Areas containing the essential physical and biological features are identified, to the extent known using the best scientific data available, as the habitat areas that provide essential life cycle needs of the species; that is, areas on which are found the primary constituent elements laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Habitat within the geographical area occupied by the species at the time of listing that contains features essential to the conservation of the species meets the definition of critical habitat only if these features may require special management considerations or protection. Under the Act and the regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed

only when we determine that the best available scientific data demonstrate that the designation of those areas is essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our "Policy on Information Standards Under the Endangered Species Act" (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas to propose as revised critical habitat, our primary source of information is generally the information developed during the listing process for the species and any previous designation of critical habitat. Additional information sources may include the recovery plan and 5–year reviews for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat patches. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11; Cayan *et al.* 2009, p. xi). However, predictions of climatic conditions for smaller subregions such as California remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other effects. Thus, the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of *Astragalus jaegerianus* that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed revised critical habitat for this species to respond to potential effects of climate change; however, we specifically request information from the public on the currently predicted effects of climate change on *A. jaegerianus* and its habitat. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that support populations of *Astragalus jaegerianus*, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy prohibition, as determined on the basis of the best available information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act and 50 CFR 424.12, we used the best scientific information available in determining which areas within the geographic area occupied by the species at the time of listing contain the features essential to the conservation of *Astragalus jaegerianus,* and which areas outside the geographic area occupied at the time of listing are essential for the conservation of the species. We reviewed information used to prepare the 2004 proposed critical habitat rule (69 FR 18018); the 5–year review (Service 2008, pp. 1–21); published peer-reviewed articles; data from our files that we used for listing the species; geologic maps (California Geologic Survey 1953); recent biological surveys and reports, particularly from the Army surveys of 2001 (Charis 2002, pp. 1-85); additional information provided by the Army, the Bureau, and other interested parties; and discussions with botanical experts. We also conducted site visits to all three units that are being proposed for designation.

The long-term probability of the survival and recovery of *Astragalus jaegerianus* is dependent upon: The protection of existing population sites; the maintenance of ecologic functions within these sites, including connectivity within and between populations in close geographic proximity to one another (to facilitate pollinator activity and seed dispersal mechanisms); and keeping these areas free of major ground-disturbing activities. The areas we are proposing to designate as critical habitat provide all of the features essential for the conservation of *A. jaegerianus*.

In our delineation of the proposed critical habitat units, we initially selected areas to provide for the conservation of *Astragalus jaegerianus* at the four population sites where it is known to occur. As discussed under the section on Distribution, at the time of listing, *A. jaegerianus* was known to occur from Brinkman Wash and Montana Mine (these two sites subsequently determined to be contiguous and thus considered one population), Paradise Wash, and Coolgardie; due to our understanding of the lifespan of the species, we also conclude that the Goldstone site was occupied at the time of listing even though this was not confirmed until three years subsequent to listing. All four sites are important because *A. jaegerianus* exhibits life history attributes, including variable seed production, low germination rates, and habitat specificity in the form of a dependence on a co-occurring organism (host shrubs), that make it vulnerable to extinction (see previous rules (69 FR 18018 and 70 FR 18220) and Keith 1998, p. 1080; Gilpin and Soule 1986, p. 33). We believe the proposed designation is of sufficient size to maintain landscape-scale processes and to minimize the secondary impacts resulting from human occupancy and human activities occurring in adjacent areas. We mapped the units with a degree of precision commensurate with the best available information and the size of the unit.

Of principle importance in the process of delineating the proposed critical habitat units are data in a

geographic information system (GIS) format provided by the Army, depicting the results of Army field surveys for *Astragalus jaegerianus* conducted in 2001 (Charis 2002, pp. 1-85). These data consisted of three files depicting the locations of transects that were surveyed for *A. jaegerianus*, the locations of *A. jaegerianus* individuals found during the surveys, and minimum convex polygons (MCP) calculated to represent the outer bounds of *A. jaegerianus* populations (Charis 2002, pp. 1-85).

For mapping proposed critical habitat units, we proceeded through a multi-step process. First, we started with the MCPs that had been calculated by the Army (Charis 2002, pp. 1-85) based on the presence of documented individuals. We then expanded these boundaries outward from the edge of each of the 4 populations by a distance of 0.25 mi (0.4 km). We did this to include *Astragalus jaegerianus* individuals that are part of these populations, but were not noted during surveys. The basis for determining that these additional land areas are occupied is as follows: (1) This habitat has the appropriate elevational range, and includes the granitic soils and plant communities that support host plants required by *A. jaegerianus*; (2) botanists involved in the Army surveys stated that "the estimate of [*A. jaegerianus*] distribution is a minimum" (SAIC 2003, pp. 1-2), and that additional individuals of *A. jaegerianus* most likely occurred on the fringes of the MCPs (SAIC 2003, pp. 1-2); (3) this 0.25-mi (0.4-km) distance is commensurate in scale with the distance between transects where individuals were found and the distance between individuals along one transect, and it is well within the distance that can be traversed by pollinators and seed dispersers; (4) mapping errors during the 2001 surveys indicated that the location of individuals did not match up precisely with the location of the transect boundaries (Charis 2002); and (5) limited surveys were conducted in 2003, and despite the unfavorable climatic conditions for *A. jaegerianus*, 13 additional individuals were located outside the MCPs (SAIC 2003). Three of the four areas where new plants were found were within the 0.25-mi (0.4-km) distance around the MCPs.

We next removed areas on the margins of the resultant polygons where we determined, by referring to digital raster graphic maps, the topography is either too steep or the elevation too high to support additional *Astragalus jaegerianus* individuals. This boundary modification involved editing the eastern and southeastern edge of the Coolgardie MCP and a cirque-shaped sliver from the central portion of the southern boundary of the Brinkman-Montana MCP.

For the Goldstone and Brinkman-Montana populations, expansion of the MCP boundaries by 0.25 mi (0.4 km) left a narrow corridor (about 0.125 mi (0.2 km)) between the revised polygons. We chose to bridge the gap between the two polygons by incorporating the intervening habitat that is within the geographic area occupied by the species between the Goldstone and Brinkman-Montana polygons into a single critical habitat unit, called the Goldstone-Brinkman unit. We did this for several reasons: The intervening habitat between the two MCPs contains the PCEs with the appropriate elevational range, granitic soils, and plant communities (based on topographic maps, geologic maps, and aerial photos) that *Astragalus jagerianus* requires; there were no obvious physical barriers between the two MCPs; the distance between the two closest *A. jaegerianus* individuals across the gap of the two MCPs was smaller than the distance between individuals within the MCPs; and the distance between the two MCPs was small enough that it could be easily traversed by a pollinator with a potential flight distance of 0.6 mi (1 km), or a seed disperser such as certain small mammals and birds. Granitic soil and the plant community in the intervening area between the two polygons also provide habitat for the pollinators that visit *A. jaegerianus* flowers, habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and the area functions as long-term storage for the soil seedbank of *A. jaegerianus*.

For the Paradise population, we removed a small portion of habitat (47 ac (19 ha)) from the eastern edge of the 5,497-ac (2,225-ha) MCP, thereby eliminating a small cluster of three individuals and the surrounding suitable habitat from the proposed critical habitat unit. We did this for two reasons: The distance between this small cluster of three individuals and the other 1,487 individuals mapped within the MCP was greater than the distance between other clusters of individuals within the MCP, and this cluster of individuals was not adjacent or providing connectivity to any other known population of *Astragalus jaegerianus*.

Finally, the boundaries of the critical habitat units were modified slightly in the process of creating the legal descriptions of the critical habitat units. This process consisted of overlaying the critical habitat units with grid lines spaced at 100-m intervals; the grid lines following the Universal Transverse Mercator (UTM) coordinate system ties to the North American Datum of 1927. Vertices defining the critical habitat boundary polygon were then moved to the closest vertex on the 100-m UTM grid lying inside of the critical habitat boundary. Vertices not necessary to define the shape of the boundary polygon were deleted. Changing the boundaries in this fashion serves two purposes: (1) It creates a list of coordinates that is easier for the public to use when looking at USGS 7.5–minute topographic maps, and (2) it minimizes the number of coordinates necessary to define the shapes of the critical habitat units.

In selecting areas of proposed critical habitat, we typically make an effort to avoid developed areas that are unlikely to contribute to the conservation of the species at issue. However, we did not map critical habitat in sufficient detail to exclude patches of habitat within the larger areas being mapped that are unlikely to contain the primary constituent elements essential for the conservation of *Astragalus jaegerianus*. Land within the boundaries of the mapped units upon which are located facilities, such as buildings, roads, parking lots, communication tower pads, and other paved areas, does not and will not contain any of the primary constituent elements. In addition, old mining sites, where the soil profile and topography have been altered such that no native vegetation can grow, also do not and will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation under the Act, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to:

1. Space for individual and population growth and for normal behavior;

2. Food, water, air, light, minerals, or other nutritional or physiological requirements;

3. Cover or shelter;

4. Sites for breeding, reproduction, or rearing (or development) of offspring; and

5. Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

The appropriate quantity and spatial arrangement of the principal biological or physical features within the defined area essential to the conservation of the species compromise the "primary constituent elements" (PCEs) of critical habitat. As defined by our implementing regulations at 50 CFR 424.12(b), these primary constituent elements may include, but are not limited to, features such as roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetlands or drylands, water quality and quantity, host species or plant pollinators, geological formations, vegetation types, tides, and specific soil types.

Much of what is known about the specific physical and biological requirements of *Astragalus jaegerianus* is described in the Background section of this proposal and in the final listing rule. The proposed revised critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *A. jaegerianus* throughout its range and to provide those habitat components essential for the conservation of the species. The proposed revised critical habitat: (1) provides for individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed banks; (2) provides sites for the host plants that provide structural support for *A.jaegerianus*; (3) includes intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and (4) includes areas that provide basic requirements for growth, such as water, light, and minerals.

Annual distribution of *Astragalus jaegerianus* varies due to a variety of factors. Some of the factors associated with the observed and actual distribution of this species include the following: The degree to which germination requirements of scarification and moisture are met within a germination time frame for the species; the distribution of the seed bank in the soils; and the existence of favorable climatic conditions in a particular year. Therefore, including habitat surrounding the known populations outward for a distance of 0.25 mi (0.4 km) would ensure inclusion of most of the population.

Based on our current knowledge, the primary constituent elements of critical habitat for *Astragalus jaegerianus* consist of:

(1) Shallow soils at elevations between 3,100 and 4,200 ft (945 to 1,280 m) derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently on soils derived from diorite or gabbroid bedrock, or on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(2) Host shrubs at elevations between 3,100 and 4,200 ft (945 to 1,280 m). The primary host shrubs are *Thamnosma montana, Ambrosia dumosa, Eriogonum fasciculatum* ssp. *polifolium, Ericameria cooperi* var. *cooperi, Ephedra nevadensis*, and *Salazaria mexicana* that are usually found in mixed desert shrub communities.

Special Management Considerations or Protection

The term critical habitat is defined in section 3(5)(A) of the Act as geographic areas on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Accordingly, when designating critical habitat, we assess whether the primary constituent elements within the areas occupied at the time of listing may require special management considerations or protection. Although the determination that special management may be required is not a prerequisite to designating critical habitat in areas essential to the conservation of the species that were unoccupied at the time of listing, all areas being proposed as critical habitat require some level of management to address current and future threats to *Astragalus jaegerianus*, to maintain or enhance the physical and biological features essential to its conservation, and to ensure the recovery and survival of the species.

A detailed discussion of threats affecting the physical and biological features essential to the conservation of *Astragalus jaegerianus*, and that may require special management considerations or protection, can be found in the previous proposed critical habitat of April 6, 2004 (69 FR 18018), and the 5–year review (Service 2008, pp. 1-21). In summary, these threats include surface mining, off-highway vehicle recreation, military training activities competition with nonnative species, and habitat fragmentation. In addition, the Bureau has received interest from wind energy companies that are seeking sites for wind energy development.

The areas proposed for designation as revised critical habitat will require some level of management to address the current and future threats to *Astragalus jaegerianus* and to maintain the physical and biological features essential to the conservation of the species. In units that were occupied at the time of listing and are currently occupied, special management will be needed to ensure that designated habitat is able to provide areas for germination, pollination, reproduction, and sites for the host plants that provide structural support for *A. jaegerianus*; intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and areas that provide basic requirements for growth, such as water, light, and minerals.

There will be impacts from military activities on *Astragalus jaegerianus* and its habitat at NTC. We will not discuss the impacts any further, because areas where *A. jaegerianus* occurs on NTC are being exempted. Army-owned lands in the Paradise and Coolgardie units are not part of the NTC. The lands were purchased for *A. jaegerianus* conservation and will not be impacted by military activities.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *Astragalus jaegerianus*. Activities with a Federal nexus that may affect those areas outside of critical habitat, such as development, surface mining, agricultural, military, and road construction activities, are still subject to review under section 7 of the Act if they may affect *A. jaegerianus*. The prohibitions of section 9 of the Act applicable to plants also continue to apply both inside and outside of designated critical habitat. With respect to plants, section 9 of the Act includes among its prohibitions the import or export of listed species, the removal to possession or malicious damage or destruction of species on areas under Federal jurisdiction, or the removal, damage or destruction of species in violation of State law (16 U.S.C. §1538(a)(2)).

Criteria Used to Identify Critical Habitat

Using the best scientific and commercial data available as required by section 4(b)(1)(A) of the Act, we identified those areas to propose for revised designation as critical habitat that, within the geographical area occupied by the species at the time of listing (see "Geographical Range Occupied at the Time of Listing" section), possess those physical and biological features essential to the conservation of *Astragalus jaegerianus* and which may require special

management considerations or protection. We also considered the area outside the geographical area occupied by the species at the time of listing for any areas that are essential for the conservation of *A. jaegerianus*. The material we used included the 1998 final listing rule (63 FR 53596), the 2004 proposed critical habitat rule (69 FR 18018), data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles and presented in academic theses and agency reports, the 5–year review (Service 2008, pp. 1-21), Army surveys of 2001 (Charis 2002, pp. 1-85), and regional GIS coverages. We analyzed this information to develop criteria for identifying areas that contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the *Astragalus jaegerianus* that may require special management considerations or protection, or that are essential for the conservation of *A. jaegerianus*. Extensive surveys funded by the Army were conducted in 2001 (Charis 2002). The 2001 surveys were conducted under optimal growing conditions for the species and contributed greatly to our knowledge of the overall distribution and abundance of *A. jaegerianus*. We believe the survey results capture the fullest expression of *A. jaegerianus* and provide an accurate representation of habitat occupied by the species.

We are proposing to designate all habitat occupied by *Astragalus jaegerianus* during the extensive Army surveys conducted in 2001. Because the species is long lived and the surveys were conducted under optimal conditions, we believe the species was growing in all potential habitat for the species.

Summary of Changes from Previously Proposed Critical Habitat

In our proposed revised critical habitat rules, we typically provide a Summary of Changes that compares the proposed revised critical habitat designation with the previously designated critical habitat. However, we designated zero (0) acres (0 hectares) in our previous designation. Therefore, we are also providing comparison between the previously proposed critical habitat designation from April 6, 2004 (69 FR 18018), and the current proposed revised critical habitat designation The current proposed revision compares with the previous proposed designation as follows:

(1) In 2004 we proposed 9,627 ac (3,896 ha) of Bureau lands and 4,427 ac (1,792 ha) of private lands. Currently we are proposing 9,888 ac (4,002 ha) of Bureau lands and 2,899 ac (1,169 ha) of private lands.

(2) In 2004 we proposed 211 ac (85 ha) of lands inaccurately identified as State Lands. Currently we are not including, through exemption, 211 ac (85 ha) of the NTC lands covered under the Army's INRMP. The land was inaccurately identified as State Lands in our 2004 proposed critical habitat rule.

(3) Currently we are proposing 1,282 ac (519 ha) of lands that were formerly in private ownership but have been acquired by the Department of the Defense for the purposes of conservation of *Astragalus jaegerianus.* These lands are not contiguous with the NTC and are not covered under the Army's INRMP.

(4) Currently we are not including through exemption 16,462 ac (6,662 ha) of the NTC lands covered under the Army's INRMP.

Below is a table that compares the acreage by land ownership included in the previous proposed critical habitat designation and the previous final critical habitat designation with what we are proposing in this proposed revised critical habitat designation.

TABLE 1: COMPARISON OF ACREAGES INCLUDED IN 2004 PROPOSED CRITICAL HABITAT RULE, 2005 FINAL CRITICAL HABITAT RULE, AND 2010 PROPOSED REVISED CRITICAL HABITAT RULE.

Name of critical habitat unit	2004 proposed designation of critical habitat (69 FR 18018)	2005 final revision to the critical habitat designation (63 FR 53596)	2010 revised proposed designation of critical habitat
Goldstone-Brinkman	9,906 ac (4,008 ha)	Excluded0 ac (0 ha)	10,394 ac (4,206 ha) exempted due to INRMP on NTC lands
Paradise	6,828 ac (2,763 ha)	Excluded0 ac (0 ha)	A portion exempted due to INRMP on NTC lands, 6,068 ac (2,456 ha); a portion included 964 ac (390 ha)
Coolgardie	12,788 ac (5,175 ha)	Excluded0 ac (0 ha)	13,105 ac (5,303 ha) included
Totals	29,522 ac (11,947 ha)	0 ac (0 ha)	14,069 ac (5,693 ha)

Proposed Revised Critical Habitat Designation

The proposed revised critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. The two units being proposed as critical habitat are all within an area that is north of the town of Barstow in the Mojave Desert in San Bernardino County, California, were occupied at the time of listing, are currently occupied, and contain the primary constituent elements that sustain *Astragalus jaegerianus*. We are exempting the previously proposed Goldstone-Brinkman unit and a large portion of the previously proposed Paradise unit (from the 2004 proposed critical habitat rule) because NTC now has an approved INRMP. Please see discussion in *Exemptions* section below for a description of the importance of these exempted areas to *A. jaegerianus*.

Paradise Unit:

The Paradise unit consists of approximately 7,032 ac (2,846 ha). We are proposing critical habitat for *Astragalus jaegerianus* on 964 ac (390 ha). Of this, 318 ac (129 ha) is Army-owned land adjacent to the NTC (off Fort Irwin), 237 ac (96 ha) is privately owned land located adjacent to the NTC, and approximately 409 ac (166 ha) is on adjacent Federal lands managed by the Bureau. The remaining 6,068 acres (2456 ha) within this unit are on Army lands at NTC subject to the INRMP and have been exempted as discussed below, in the *Exemptions* section.

As part of the plan amendments to the CDCA, the Bureau in 2005 designated an area of approximately 1,000 ac (405 ha) as part of the West Paradise Valley Conservation Area (See section on *Bureau land transfers and management* above for a description of current management of this ACEC). It generally overlaps with the 964 ac (390 ha) being

proposed here for critical habitat. The boundary of the West Paradise Valley Conservation Area encompasses some Army lands not on NTC and some private inholdings. This unit is important because it supports a portion of the Paradise population, only one of four populations of *Astragalus jaegerianus*; in 2001 surveys, 1,667 individuals were observed in this population. The land within this unit supports the granitic soils (PCE 1) and host shrubs (PCE 2) that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals. These granitic soils and host shrubs also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and the soils provide sites for long-term storage for seedbank of *A. jaegerianus*.

The Paradise unit may require special management considerations or protection due to the threats to the species and its habitat posed by: Invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) and other plant species that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant and plant-pollinator interactions (i.e., composition and structure of the desert scrub community), leading to a decline in species reproduction and increasing susceptibility to nonnative plant invasion; and vehicles that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *Astragalus jaegerianus* in the Paradise unit has been fragmented to a minor extent. We anticipate that in the future, habitat fragmentation may increase, composition and structure of the plant community may be altered by the spread of nonnative plants, and direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them.

Coolgardie Unit:

The Coolgardie unit consists of approximately 13,105 ac (5,303 ha), primarily on Federal lands managed by the Bureau. The proposed Coolgardie critical habitat unit overlaps to a great extent with the Bureau's Coolgardie Mesa Conservation Area (CMCA) (See section on *Bureau land transfers and management* above for a description of current management of the CMCA). Of this acreage, approximately 9,479 ac (3,836 ha) are managed by the Bureau, and approximately 964 ac (390 ha) were formerly in private ownership, but have been acquired by the Army for the purposes of conservation of *Astragalus jaegerianus* since 2005. These lands are not contiguous with the NTC and are not covered under the Army's INRMP. Parcels of private land are scattered throughout this unit and total approximately 2,662 ac (1,077 ha). Some of these parcels may be acquired by the Bureau and added to the CMCA. This unit supports one of only four populations of *A. jaegerianus*. In 2001, surveyors observed 2,014 plants in this population.

The land within this unit supports the granitic soils (PCE 1) and host shrubs (PCE 2) that are necessary for the growth, reproduction, and establishment of *Astragalus jaegerianus* individuals. It should be noted that the proposed critical habitat does not include the "donut hole" in the center of the unit, where granitic soils are absent. Within the proposed unit, the granitic soils and host shrubs (1) provide habitat for the pollinators that visit *A. jaegerianus* flowers and result in the production of seed; (2) provide habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs; and (3) provide for long-term seedbank storage for *A. jaegerianus*.

The Coolgardie unit may require special management considerations or protection due to the threats to the species and its habitat posed by: Invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) and other plant species that may take over habitat for the species; habitat fragmentation that detrimentally affects plant–host plant and plant-pollinator interactions (composition and structure of the desert scrub community), leading to a decline in species reproduction and increasing susceptibility to nonnative plant invasion; vehicles that cause direct and indirect impacts, such as excessive dust, to the plant; and limited mining activities that can lead to changes in habitat conditions (e.g., decreases in plant cover, and increases in nonnative species). Habitat for *Astragalus jaegerianus* in the Coolgardie unit has been fragmented to a moderate extent from current and historical mining and from off-road vehicle use, and nonnative species have been introduced into the area. We anticipate that in the future, habitat fragmentation may increase, and composition and structure of the plant community may be altered by the continued spread of nonnative plants. Due to increased recreational pressure, off-road vehicle use has increased in the past 4 years. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them.

TABLE 2. APPROXIMATE AREAS, GIVEN IN ACRES (AC)[1] AND HECTARES (HA), OF PROPOSED CRITICAL HABITAT FOR *Astragalus jaegerianus* BY LAND OWNERSHIP.

Unit Name	Army lands (Federal)	Bureau of Land Management (Federal)	State Lands Commission	Private lands	Totals
Paradise	318 ac(129 ha)	409 ac(166 ha)	0 ac(0 ha)	237 ac(96 ha)	964 ac (390 ha)
Coolgardie	964 ac(390 ha)	9,479 ac (3,836 ha)	0 ac(0 ha)	2,662 ac (1,077 ha)	13,105 ac (5,303 ha)
Totals	1,282 ac(519 ha)	9,888 ac (4,002 ha)	0 ac(0 ha)	2,899 ac (1,173 ha)	14,069 ac(5,693ha)

[1] Approximate acres have been converted to hectares (1 ac = 0.4047 ha). Fractions of acres and hectares have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeal have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish*

and Wildlife Service, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. U.S. Fish and Wildlife Service *et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once proposed species become listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) of the Act apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts with the proposed species or proposed critical habitat that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

As a result of this consultation, we document compliance with the requirements of section 7(a)(2) of the Act through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Astragalus jaegerianus* or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit under section 10 of the Act from the Service or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Designation of critical habitat could affect the following agencies and/or actions:

(1) Military-related and construction activities of the Army on its lands or lands under its jurisdiction not covered by an INRMP;

(2) Activities of the Bureau of Land Management on its lands or lands under its jurisdiction;

(3) Activities of the Federal Energy Regulatory Commission (FERC);

(4) The release or authorization of release of biological control agents by Federal agencies, including the Bureau of Land Management, the Army, and the U.S. Department of Agriculture; and

(5) Habitat restoration projects on private lands receiving funding from Federal agencies, such as from the Natural Resources Conservation Service.

As discussed previously in this rule, we completed consultation with both the Army and the Bureau on activities that are being proposed on their lands. We consulted with the Army on its proposed addition of training lands on the NTC (Charis 2003; Service 2005). We also consulted with the Bureau as the lead Federal agency on the plan amendments to the CDCA plan (Bureau 2005; Service 2005).

Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit, under section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. The Superior-Cronese Critical Habitat Unit for the desert tortoise (*Gopherus agassizii*), a species that is listed as threatened under the Act, overlaps in range with *Astragalus jaegerianus* in a portion of the Paradise

and population of the species. We anticipate that most of the activities occurring on private lands within the range of *A. jaegerianus* will eventually be included under the umbrella of the HCP to be prepared by the County of San Bernardino. However, there may be activities proposed for private lands that either need to be completed prior to the approval of the HCP, or there may be a proposed activity that is not covered by the HCP, and therefore may require a separate habitat conservation plan.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Pacific Southwest Region, 2800 Cottage Way, Suite W-2606, Sacramento, CA 95825-1846 (telephone (916) 414-6464; facsimile (916) 414-6486).

Application of the Jeopardy and Adverse Modification Standard

Jeopardy Standard

Currently, the Service applies an analytical framework for *Astragalus jaegerianus* jeopardy analyses that relies heavily on the importance of known populations to the species' survival and recovery. The section 7(a)(2) of the Act analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Astragalus jaegerianus* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the range-wide statuses of *A. jaegerianus*, the factors responsible for that condition, and what is necessary for the species to survive and recover. An emphasis is also placed on characterizing the conditions of *A. jaegerianus* in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of *A. jaegerianus*. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination.

Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features, or other conservation role and function of the affected designated area, to an extent that appreciably reduces the conservation value of critical habitat for *Astragalus jaegerianus*. Generally, the conservation role of *A. jaegerianus* critical habitat units is to support viable core populations and areas that maintain connectivity between core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly affect critical habitat and, therefore, should result in consultation for *Astragalus jaegerianus* include, but are not limited to:

(1) Activities that would disturb the upper layers of soil, including disturbance of the soil crust, soil compaction, soil displacement, and soil destabilization. These activities include, but are not limited to, livestock grazing, fire management, and recreational use that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, off-highway vehicles (including motorcycles), and mining activities, such as "club mining" with drywashers and sluices.

(2) Activities that appreciably degrade or destroy the native desert scrub communities that support host shrubs, including but not limited to livestock grazing, clearing, discing, fire management, and recreational use that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, off-highway vehicles (including motorcycles), and mining activities such as "club mining" with drywashers and sluices.

(3) The application or runoff of chemical or biological agents into the air, onto the soil, or onto native vegetation, including substances such as pesticides, herbicides, fertilizers, tackifiers, obscurants, and chemical fire retardants.

Exemptions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Endangered Species Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

The Sikes Act required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife, and enforcement of applicable natural resource laws.

Army lands within the boundaries of the NTC at Fort Irwin are subject to an INRMP for 2006-2011 (NTC 2005), which includes management guidelines for *Astragalus jaegerianus*. The Service will monitor the status of the INRMP to assure that it adequately addresses management guidelines for *Astragalus jaegerianus* prior to the completion of the final critical habitat rule. As part of the Army's consultation on the proposed expansion of training lands at

NTC (Service 2005), the Army established a 4,300-ac (1,740-ha) East Paradise Conservation Area on NTC. This area contains approximately 80 percent of the East Paradise population of *A. jaegerianus*. The Army established a 3,700-ac (1497-ha) Brinkman Wash Restricted Access Area (no-dig zone) on NTC. This area contains 1,872 ac (758 ha) of *A. jaegerianus* habitat and approximately 51 percent of the Montana Mine population of *A. jaegerianus.* The Army also maintains the 2,471-ac (1,000-ha) Goldstone Conservation Area. The Army's INRMP management guidelines provide a benefit to *A. jaegerianus* by prohibiting off-road activity. The Army will reduce threats *to A. jaegerianus* caused by dust through the application of soil binders. They will also collect and store site-specific seed from host plants to restore closed routes and other disturbed areas with *A. jaegerianus* habitat. Contingent on funds, the Army will perform intensive nonnative species control and eradication efforts at conservation areas if such species are found there.

In the previous 2004 proposed designation (69 FR 18018), the Army had not yet completed its INRMP and, therefore, was not exempted under section 4(a)(3)(B) of the Act. However, the Army was excluded under section 4(b)(2) of the Act for reasons of national security, and because existing management plans provided a benefit to *Astragalus jaegerianus*. The Army's INRMP was approved in 2006, and includes management actions that the Secretary has determined benefit *A. jaegerianus*. With our current exemption of all areas within the Army's NTC (see "Relationships to Sections 4(a)(3) of the Act" section), the entire Goldstone-Brinkman unit has been exempted from proposed designation as revised critical habitat. Similarly, almost all (6,068 acres (2456 ha) of 7,032 ac (2,846 ha)) of the Paradise Unit on NTC has been exempted from proposed designation as revised critical habitat. Army lands outside the NTC are not subject to the INRMP and therefore not exempted.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we consider all relevant impacts, including economic impacts. In compliance with section 4(b)(2) of the Act, we are preparing a new analysis of the economic impacts of this proposed revision to critical habitat for *Astragalus jaegerianus* to evaluate the potential economic impact of the proposed revised designation. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or from the Ventura Fish and Wildlife office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of the final revised designation, we will consider economic impacts, public comments, and other new information. Certain areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

At this time, we are not proposing any specific exclusions of areas from critical habitat under section 4(b)(2) of the Act for *Astragalus jaegerianus*. We will consider any available information about areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act, including whether the benefit of exclusion of those lands would outweigh the benefits of their inclusion. For example, we consider whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Tribal lands or Tribal Trust resources that might be affected, and consider the government-to-government relationship of the United States with the Tribal entities. We also consider any social impacts that might occur because of the designation.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is 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 designation of critical habitat.

We will consider all comments and information received within the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Required Determinations

Regulatory Planning and Review – Executive Order 12866

The Office of Management and Budget (OMB) determines whether this rule is significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) 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.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

At this time, we do not believe that the rule would have an annual effect on the economy of $100 million or more or affect the economy in a material way. We base this on information provided in the economic analysis that was prepared

for the previous proposed critical habitat designation in 2004 (Industrial Economics 2005). In that economic analysis, the predesignation costs (from the time of listing, 1998 to 2004) ranged from $2.23 to $2.75 million, and the annualized (over 20 years) postdesignation costs ranged from $351,000 to $787,000 at a 3-percent discount rate. However, we will be conducting a new economic analysis in conjunction with this revised proposed designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121-201 (also found at *http://www.sba.gov/size/*), which the Regulatory Flexibility Act requires all federal agencies to follow. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result.

An analysis of the economic impacts of the 2004 proposed critical habitat designation was made available to the public on December 8, 2004 (69 FR 70971). In that analysis, we summarized that the estimated predesignation costs ranged from $1.58 million to $2.1 million. These costs were associated primarily with two major conservation efforts: those taken by the Army to plan for and implement conservation actions at Fort Irwin, and those taken by the BLM to plan for, and implement, conservation actions within the framework of the West Mojave Plan. The total post-designation costs were estimated to range from $5.84 million to $13.01 million. These estimated costs were associated primarily with land management activities and project-related surveys and monitoring associated with the conservation of *Astragalus jaegerianus* over a 20–year time period. Note that although zero (0) acres of critical habitat were designated in the previous final rule in 2005, some of these estimated costs have been borne by the Army and BLM since then for activities related to the conservation of *A. jaegerianus*.

We do not anticipate significant impacts to small entities as a result of this rulemaking. Of the approximately 14,069 acres proposed for critical habitat for *Astragalus jaegerianus*, approximately 1,282 acres are on Army lands but outside the boundaries of the NTC, about 9,888 acres are lands managed by the Bureau, and 2,899 acres are privately owned. The prospective costs associated with conservation measures for *A. jaegerianus* are a result of multiple causative factors, including implementation of conservation measures proposed as parts of the Army's NTC expansion plan and the Bureau's CDCA plan amendments. Conservation measures associated with *A. jaegerianus* are not expected to result in appreciable reduction of either mining or dual-sport activities in the area.

Energy Supply, Distribution, or Use – Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the *Astragalus jaegerianus*, as described above, is not expected to significantly affect energy supplies, distribution, or use. There are no transmission power lines identified on the proposed designated habitat, or energy extraction activities (Bureau of Land Management 1980). Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(1) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies

must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. State lands will not be proposed. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from this proposed designation of critical habitat are anticipated. We will examine any potential impacts to small governments in our economic analysis, and revise our determination if necessary.

Takings – Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Astragalus jaegerianus*. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed revised rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism – Executive Order 13132

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Astragalus jaegerianus* would have little incremental impact on State and local governments and their activities. This is because the proposed revised critical habitat occurs to a great extent on Federal lands managed by the Department of Defense and the Bureau of Land Management, and less than 2 percent occurs on private lands that would involve State and local agencies.

The proposed designation of critical habitat may have some benefit to State and local governments, in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this information does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform – Executive Order 12988

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this proposed revised rule does not unduly burden the judicial system and that it does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. This proposed revision uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus jaegerianus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection that requires approval by OMB under the Paperwork Reduction Act of 1995. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) 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.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Astragalus jaegerianus*. Therefore, designation of critical habitat for *A. jaegerianus* has not been proposed on Tribal lands.

References Cited

A complete list of all references cited herein is available at *http://www.regulations.gov* and upon request

from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this proposed rule are the staff of the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, 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; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. In §17.96(a), revise critical habitat for *Astragalus jaegerianus* under Family Fabaceae to read as follows:

§17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Astragalus jaegerianus* (Lane Mountain milk-vetch)

(1) Critical habitat units are depicted for San Bernardino County, California, on the map below.

(2) Critical habitat consists of the mixed desert scrub community within the range of *Astragalus jaegerianus* that is characterized by the following primary constituent elements:

(i) Shallow soils derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently soils derived from diorite or gabbroid bedrock and at one location granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

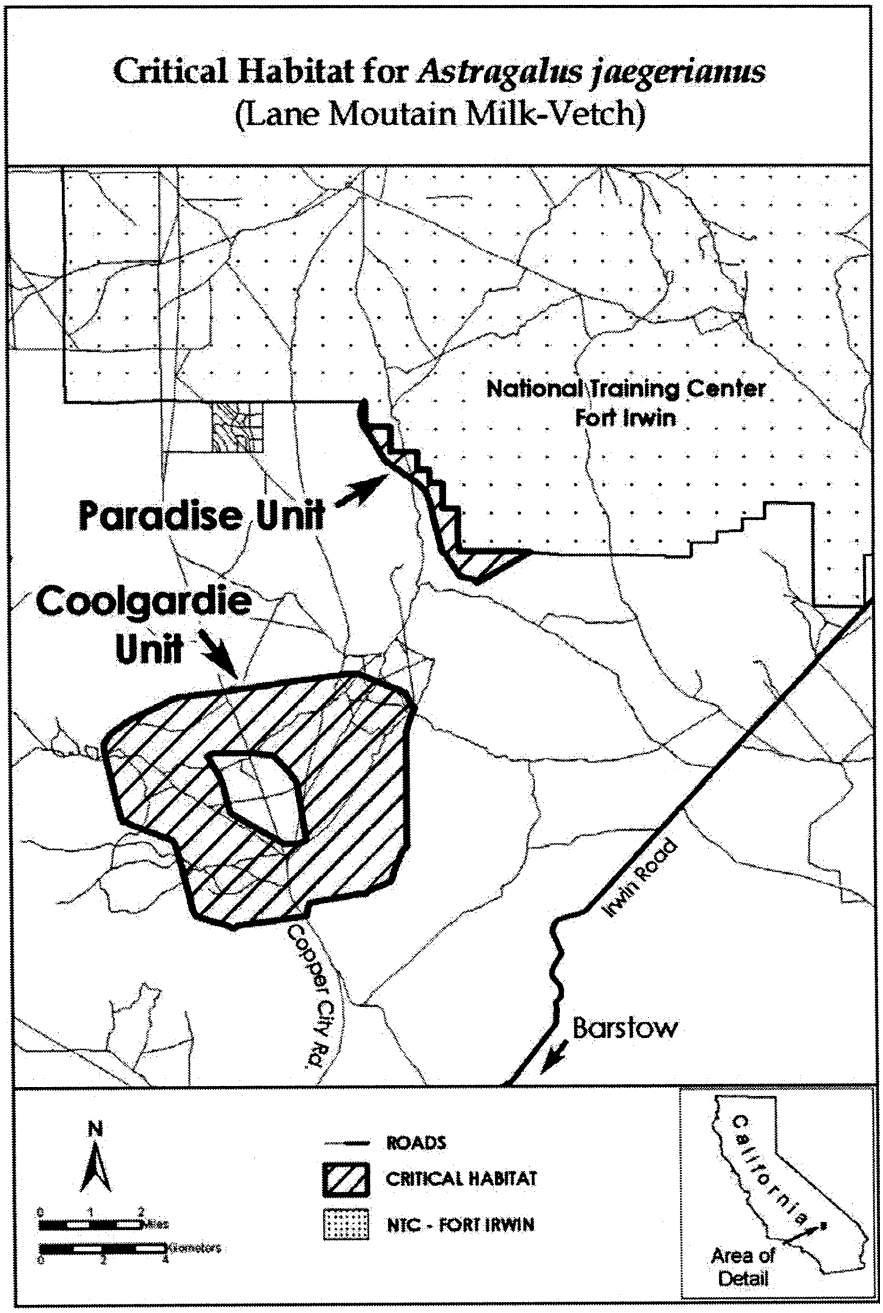
(ii) The highly diverse mixed desert scrub community that includes the host shrubs within which *Astragalus jaegerianus* grows, most notably: *Thamnosma montana, Ambrosia dumosa, Eriogonum fasciculatum* ssp. *polifolium, Ericameria cooperi* var. *cooperi, Ephedra nevadensis*, and *Salazaria mexicana.*

(3) Critical habitat does not include manmade structures (including, but not limited to, buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. These critical habitat units were mapped using Universal Transverse Mercator, Zone 10, North American Datum 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices and endpoints of the boundaries of the units.

(5) *Note:* Map of Paradise and Coolgardie Critical Habitat Units for *Astragalus jaegerianus* follows:

BILLING CODE 4310–55–S



(6) Paradise Unit, San Bernadino County, CA [Description of unit location to be inserted here.]

(7) Coolgardie Unit, San Bernadino County, CA [Description of unit location to be inserted here.]

* * * * *

Dated: March 18, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–7117 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register

Vol. 75, No. 62

Thursday, April 1, 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.

FINANCIAL CRISIS INQUIRY COMMISSION

Notice of Public Hearing

AGENCY: Financial Crisis Inquiry Commission.

ACTION: Notice.

SUMMARY: The Financial Crisis Inquiry Commission (FCIC) announces that it will hear from public and private sector entities in a hearing titled "Subprime Lending and Securitization and Government-Sponsored Enterprises (GSEs)." Hearing sessions will include the following entities: The Board of Governors of the Federal Reserve System, Citigroup, Fannie Mae, the Federal Housing Finance Agency (FHFA) and its predecessors, the Federal Housing Finance Board (FHFB) and the Office of Federal Housing. The forum will also be webcast live at *http://www.FCIC.gov.*

DATES: The hearing will be held on:

Wednesday, April 7, 2010, 9 a.m. EDT;
Thursday, April 8, 2010, 9 a.m. EDT; and
Friday, April 9, 2010, 9 a.m. EDT

ADDRESSES: The hearing will be held at: 2123 Rayburn House Office Building (Committee on Energy and Commerce), Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Gretchen Kinney Newsom, Financial Crisis Inquiry Commission, 1717 Pennsylvania Avenue, Suite 800, Washington, DC 20006, 202–292–2799; 202–632–1604 fax.

SUPPLEMENTARY INFORMATION: The purpose of the Financial Crisis Inquiry Commission is to examine the causes, domestic and global, of the current financial and economic crisis in the United States, per the requirements of the Fraud Enforcement and Recovery Act of 2009 (FERA), Section 5, Public Law 111–21,123 Stat. 1617 (2009).

Public Participation: The meeting is open to the public. The Chairman of the Commission will lead the hearing for the orderly conduct of business.

Dated: March 26, 2010.

Gretchen Kinney Newsom,

Certifying Official and Special Assistant to the Chairman, Financial Crisis Inquiry Commission.

[FR Doc. 2010–7291 Filed 3–31–10; 8:45 am]

BILLING CODE 6820–RK–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest, California, Keddie Ridge Hazardous Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Plumas National Forest, Mt. Hough Ranger District will prepare and environmental impact statement (EIS) on the Keddie Ridge Hazardous Fuels Reduction Project proposal to modify fire behavior, improve forest and watershed health, protect and enhance habitat for Region 5 Forest Service sensitive plant and wildlife species (clustered lady's slipper, Constance's rock cress, and bald eagle), and reduce the spread and introduction of noxious weeds through: fuels treatments, group selections, road improvements, and herbicide and mechanical applications in the Indian Valley area.

DATES: Scoping comments concerning the scope of the analysis must be received within 14 days from date of publication in the **Federal Register**. The draft environmental impact statement is expected September 2010 and the final environmental impact statement is expected February 2011.

ADDRESSES: Send written comments to Katherine Carpenter, Interdisciplinary Team Leader, Mt. Hough Ranger District, 39696 Highway 70, Quincy, CA 95971. Comments may be: (1) Mailed; (2) hand delivered between the hours of 8 a.m. to 4:30 p.m. weekdays Pacific Time; (3) faxed to (530) 283–1821; or (4) electronically mailed to: comments-pacificsouthwest-plumas-rnthough(dfs.fed.us. Please indicate the name "Keddie Ridge Hazardous Fuels Reduction Project" on the subject line of your email. Comments submitted electronically must be in Rich Text Format (.rtf), plain text format (.txt.) or Word (.doc). It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the ETS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Katherine Carpenter, Interdisciplinary Team Leader, Mt. Hough Ranger District, 39696 Highway 70, Quincy, CA 95971. *Telephone:* (530) 283–7619 or *electronic address: kacarpenter@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The proposed action is designed to meet the standards and guidelines for land management activities described in the Plumas National Forest Land and Resource Management Plan (PNF LRMP) (USDA 1988) as amended by Herger-Feinstein Quincy Library Group (HFQLG) Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD) (USDA 1 999a, 1 999b, 2003b, 2003c), and the Sierra Nevada Forest Plan Amendment (SNFPA) FSEIS and ROD (USDA 2004a, 2004b). This project is being planned under authorization of the Healthy Forest Restoration Act (H.R. 1904; Pub. L. 108–148; 36 CFR 218—Predecisional Administrative Review Process).

The proposed project is located in Plumas County, California, within the Mt. Hough Ranger District of the Plumas National Forest. The proposed project is located west of Canyon Dam, east of Eisenheimer Peak, south of Keddie Peak, and north of the Greenville Wye. The Keddie Ridge Hazardous Fuels Reduction Project boundary encompasses all or portions of T. 25 N., R. 9 E., sec. 1–4, 8–11; T. 25 N., R. 10 F., sec. 1–6, 8–16, 22–24; T. 25 N., R.

11 E., sec. 5–9, 17–19; T. 26 N., R. 8 E., sec. 1, 2, 12; T.26 N., R. 9 F., sec. 1–17, 2029, 32–36, T. 26 N., R. 10 E., sec. 1–36; T. 26 N., R. 11 E., sec. 2–10, 15–21, 29–32; T. 27 N., R. 8 E., sec. 1, 12–15, 22–27, 34–36; T. 27N., R 9 E., sec. 9–11, 13–36; T. 27N., R. 10 E., sec. 2–5, 8–11, 14–36; T. 27 N., R. 11 F., sec. 27, 28, 31–34; T. 28 N., R. 10 F., 33–35, MDBM.

Purpose and Need for Action

This project is proposed to modify fire behavior, improve forest and watershed health, protect and enhance habitat for Region 5 Forest Service sensitive plant and wildlife species, and reduce noxious weed infestations in the project area. Fire behavior needs to be modified in specific stands in order to reduce high fuel loading and resulting increased risks to people, structures, and resources. Forest health needs to be improved because current high stand densities in the Keddie area are leading to mortality from drought, insects and fire. Region 5 Forest Service sensitive plant and wildlife species (clustered lady's-slipper orchid, Constance's rock cress, and bald eagle) habitat needs enhancement and protection from the risk of high severity, stand-replacing wildfire due to dense stands and high fuel loads. The location and number of poorly maintained roads in the project area are currently contributing to poor watershed health, and should be reduced. Noxious weeds, including Canada thistle, Scotch broom, medusa head, yellow star thistle, and hoary cress need to be controlled in order to lessen risk of weed introduction, establishment, and spread to adjacent areas.

Proposed Action

The USDA Forest Service, Plumas National Forest, Mt. Hough Ranger District will prepare and environmental impact statement (EIS) for the Keddie Ridge Hazardous Fuels Reduction Project. The proposed action would construct 5,456 acres of fuelbreaks known as Defensible Fuel Profile Zones (DFPZs). DFPZs would be constructed using a combination of mechanical harvest, mastication, hand thin, pile, and burn, and prescribed underburn. The proposed action would also include 741 acres of mechanized thinning (area thinning) outside of DFPZs. Group selection is proposed in mechanical thinning units within DFPZs and area thinning units (330 acres) using mechanical equipment. Group selection involves harvest of trees less than 30 inches in diameter in small (0.5 to 2 acres) patches. Hand thinning, piling, chipping and/or burning of conifers (3–10 inches dbh) is proposed within approximately 45 acres of the primary nesting zone of the Round Valley bald eagle territory. Hand thinning to a spacing of 20 feet, piling, and burning of saplings and small diameter trees (8 inches or less dbh), is proposed within the fourteen clustered lady's slipper sites and approximately 72 acres of Constance's rock cress.

Manipulation of surface fuels within clustered lady's slipper occurrences would also occur. If consistent with the Plumas National Forest Travel Management decision, improperly constructed or unmaintained roads that are causing resource damage would be decommissioned or closed by various methods, such as ripping and seeding, recontouring, or installing barriers. For more information about the travel management process, visit the Plumas National Forest Web site at: *http://bit.ly/bTJZER.* Treatments proposed to contain and control the known weed infestations within the project area include the following or a combination thereof: herbicide applications of chlorsulfuron, aminopyralid, or glyphosate; hand-pulling; late spring underburning and direct flaming with a back-pack propane torch; and revegetation in selected areas using native seed.

A decision is expected in April 2011 and implementation may begin as early as summer of 2011.

Possible Alternatives

In addition to the proposed action, a no action alternative will be analyzed. Additional alternatives may be developed and analyzed during the environmental analysis process.

Responsible Official

The Plumas National Forest Supervisor is the Responsible Official.

Nature of Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) meet the purpose and need for action through some other combination of activities; or, (3) take no action at this time.

Permits or Licenses Required

An Air Pollution Permit, Smoke Management Plan, and California Water Quality Board timber harvest waiver for waste discharge are required by local agencies.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement, The Keddie Ridge Hazardous Fuels Reduction Project will initiate and request comments at: An open house in Greenville, CA in June 2010, an official 45 day comment period once a Notice of Availability is published in the **Federal Register,** a 30 day objection period, and an objection resolution period.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: March 25, 2010.

Maria T. Garcia,

Deputy Forest Supervisor.

[FR Doc. 2010–7162 Filed 3–31–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on April 27, 2010 at the Washington State Parks and Recreation Commission office, 270 9th Street, NE., East Wenatchee, WA. During this meeting information will be shared about Okanogan-Wenatchee National Forest Restoration Strategy and provide an opportunity for the Provincial Advisory Committee to provide feedback. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Clint Kyhl, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, phone 509–664–9200.

Dated: March 23, 2010.

Clinton Kyhl,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. 2010–7351 Filed 3–31–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on June 30, 2010 at the Okanogan-Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA. During this meeting information will be shared about Okanogan-Wenatchee National Forest Travel Management Plan and provide an opportunity for the Provincial Advisory Committee to provide feedback. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Clint Kyhl, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, phone 509–664–9200.

Dated: March 23, 2010.

Clinton Kyhl,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. 2010–7354 Filed 3–31–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Census Coverage Measurement Final Housing Unit Followup and Final Housing Unit Followup Quality Control Operations

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 1, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gia F. Donnalley, U.S. Census Bureau, 4600 Silver Hill Road, Room 4K067, Washington, DC 20233, 301–763–4370 (or via the internet at *Gia.F.Donnalley@census.gov*)

SUPPLEMENTARY INFORMATION:

I. Abstract

The 2010 Census Coverage Measurement (CCM) Final Housing Unit Followup and Final Housing Unit Followup Quality Control Operations will be conducted in the U.S. (excluding remote Alaska) and in Puerto Rico in select CCM sampled areas. The primary sampling unit is a block cluster, which consists of one or more geographically contiguous census blocks. As in the past, the CCM operations and activities will be conducted independent of and not influence the 2010 Census operations.

CCM will be conducted to provide estimates of both net coverage error and components of census coverage, including omissions and erroneous enumerations for housing units and persons in housing units (see Definition of Terms) in order to gather information necessary to improve future censuses. The data collection and matching methodologies for previous coverage measurement programs were designed to measure only net coverage error, which measures the net difference between omissions and erroneous enumerations.

The 2010 CCM sample is a multi-phase probability sample of housing units comprising a number of distinct processes, ranging from forming block clusters, selecting the block clusters where the CCM survey will be conducted, to eventually selecting addresses for interviewing. Two samples will be selected to measure census coverage of housing units and household population: The population sample (P Sample) and the enumeration sample (E sample). These two samples have traditionally defined the samples for dual system estimation, a statistical technique for measuring net coverage error. The P Sample is a sample of housing units and persons obtained and independently enumerated from the census for a sample of block clusters, while the E Sample is the census of housing units and enumerations in the same block clusters as the P sample.

The independent list of housing units was obtained during the CCM Independent Listing Operation, the results of which are matched to census housing units in the sample block clusters and surrounding blocks. After the CCM Independent Listing and matching operations have taken place, some cases with discrepancies between the CCM Independent Listing and the Census have been identified to receive the CCM Initial Housing Unit Followup interview. The results of the housing unit matching operations will be used to determine which CCM and Census addresses will be eligible to go to the CCM Person Interview Operation. After data collected from the CCM Person Interview is matched to person data collected by the Census, some cases with discrepancies between the CCM Person Interview and Census will be sent for another CCM interview called the CCM Person Followup Operation. A final clerical matching operation of the final census housing unit list, which contains updates since Initial Housing Operations, will be conducted. Discrepancies between the CCM housing unit and final census housing unit lists will be identified and sent to CCM Final Housing Unit Followup. A separate Federal Register Notice has already been issued for the CCM Independent Listing, CCM Initial Housing Unit Followup, CCM Person Interview, and CCM Person Followup operations.

Cases identified for Final Housing Followup will generally be cases where additional information is needed to determine housing unit status (for example, clarify if the addresses refer to a housing unit) or resolve inconsistencies observed during the matching operations between the CCM and final census addresses in the block cluster. Using a paper questionnaire tailored for the type of followup required, interviewers will contact a member (or proxy, as a last resort) of each housing unit needing followup to answer questions that might allow a resolution of housing unit status or clarify discrepancies.

A quality control operation of the Final Housing Unit Followup called the Final Housing Unit Followup Quality Control of 15.9 percent of the Final Housing Unit Followup workload will be conducted to ensure that the work performed is of acceptable quality. If a block cluster fails the quality check, the entire block cluster will be reworked. The estimate of reworked housing units

is 40 percent of the Final Housing Unit Followup workload.

There will be two Final Housing Unit Followup forms, D–1340 and D–1340PR. The D–1340 is the English language version of the Final Housing Unit Followup form and will be used to collect data and to conduct Quality Control for addresses in CCM stateside sample areas. The D–1340PR is the Spanish language version of the Final Housing Unit Followup form, which will be used for the same purpose in the CCM sample areas of Puerto Rico.

II. Method of Collection

The CCM Final Housing Unit Followup and Final Housing Unit Followup Quality Control operations will be conducted through personal visits using a paper questionnaire. The CCM Final Housing Unit Followup and Final Housing Unit Followup Quality Control operations will occur starting May 5, 2011 through June 18, 2011.

Definition of Terms

Components of Census Coverage—The four components of census coverage are census omissions (missed persons or housing units), erroneous enumerations (persons or housing units), correct enumerations, and whole-person imputations (census person enumerations on which we did not collect sufficient information). Examples of erroneous enumerations are persons or housing units enumerated in the census that should not have been enumerated at all, persons or housing units enumerated in an incorrect location, and persons or housing units enumerated more than once (duplicates).

Net Coverage Error—Net Coverage Error is the difference between the estimate of the true population count and the actual census count. A positive net error indicates an undercount, while a negative net error indicates an overcount.

For more information about the Census 2010 Coverage Measurement Program, please visit the following page of the Census Bureau's Web site: *http://www.census.gov/cac/www/pdf/coverage-measurement-program.pdf*

III. Data

OMB Control Number: None.

Form Number: D–1340, D–1340 (PR).

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 24,496 housing units for Final Housing Unit Followup and 13,693 housing units for Final Housing Unit Followup Quality Control.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 1,910 hours.

Estimated Total Annual Cost: No cost to the respondents except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–7277 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO), in order to extend the public comment period due to a recalculation of the burden hour estimates for the collection and an updated time estimate for completion of the paper and electronic submissions of the questionnaires and customer surveys, is republishing the Comment Request originally published on February 1, 2010 (75 FR 5036). This notice announces the intent to submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Customer Input—Patent and Trademark Customer Surveys.

Form Number(s): None.

Agency Approval Number: 0651–0038.

Type of Request: Extension of a currently approved collection.

Burden: 356 hours.

Number of Respondents: 1,900 responses.

Avg. Hours per Response: The USPTO estimates that it takes the public approximately 15 minutes (0.25 hours) to complete a telephone survey and 10 minutes (0.17 hours) to complete both the paper and electronic submissions of the questionnaires and customer surveys. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO.

Needs and Uses: The public uses the telephone and customer surveys and the questionnaires to provide their opinions, suggestions, and comments about the USPTO's services, products, and customer service. Depending on the type of survey, the public can provide their comments on the spot to the interviewer, or complete the survey at their own pace and either mail their responses to the USPTO or submit their responses electronically via a web-based survey. The USPTO uses the data collected from these surveys for strategic planning, allocation of resources, the establishment of performance goals, and the verification and establishment of service standards. The USPTO also uses this data to assess customer satisfaction with USPTO products and services, to assess customer priorities in service characteristics, and to identify areas where service levels differ from customer expectations.

Affected Public: Individuals or households; businesses or other for profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publically available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0038 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before May 3, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: March 25, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–7256 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with section 351.213 of the Department of Commerce ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative review initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the **Federal Register** initiation notice.

Opportunity to Request a Review: Not later than the last day of April 2010,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period of review
Antidumping Duty Proceedings	
France: Sorbitol, A–427–001	4/1/09–3/31/10
India: 1-Hydroxyethylidene-1, 1–Diphosphonic Acid (HEDP) A–533–847	4/23/09–3/31/10
Norway: Fresh and Chilled Atlantic Salmon, A–403–801	4/1/09–3/31/10
The People's Republic of China:	
Activated Carbon, A–570–904	4/1/09–3/31/10
Certain Steel Threaded Rod, A–570–932	10/8/08–3/31/10
Frontseating Service Valves, A–570–933	10/22/08–3/31/10
1-Hydroxyethylidene-1, 1–Diphosphonic Acid (HEDP), A–570–934	4/23/09–3/31/10
Magnesium Metal, A–570–896	4/1/09–3/31/10
Non-Malleable Cast Iron Pipe Fittings, A–570–875	4/1/09–3/31/10
Russia: Magnesium Metal, A–821–819	4/1/09–3/31/10
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon, C–403–802	1/1/09–12/31/09

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy country and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

reasonable, pursuant to 19 CFR 351.303(f)(3)(ii) of the regulations.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the Department's regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2010. If the Department does not receive, by the last day of April 2010, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7398 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 9, 2010, the Court of International Trade (CIT or Court) sustained the final results of redetermination made by the Department of Commerce (the Department) regarding the 2005–2006 administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). *See Washington International Insurance Company v. United States*, Court No. 08–00156, Slip Op. 10–16 (February 9, 2010) (*Wash. Int'l Ins. Co. II*). Pursuant to the Court's remand order, in its redetermination the Department continued to apply to Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou) a total adverse facts available (AFA) rate, but changed this rate from the 223.01 percent applied in the contested administrative review to 188.52 percent. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is publishing this notice of the CIT's decision which is not in harmony with the Department's final results in the 2005–2006 antidumping duty administrative review of freshwater crawfish tail meat from the PRC.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Howard Smith at (202) 482–2769 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In the final results of the 2005–2006 antidumping duty administrative review of freshwater crawfish tail meat from the PRC, the Department found that Xuzhou failed to report all of its US sales of subject merchandise and assigned Xuzhou the highest rate in the proceeding as total AFA, *i.e.*, the PRC–wide rate of 223.01 percent. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Rescission of 2005–2006 New Shipper Reviews*, 73 FR 20249 (April 15, 2008).

The surety of certain U.S. imports of subject merchandise from Xuzhou during the 2005–2006 period of review, Washington International Insurance Company, moved for judgment upon the agency record. On July 29, 2009, the CIT remanded the case for the Department to reconsider whether circumstances warranted partial or total AFA and for determination of an AFA rate that more closely reflects Xuzhou's then–current market practices during the period of review. *See Washington International Insurance Company v. United States*, Court No. 08–00156, Slip Op. 09–78 (July 29, 2009).

On October 26, 2009, the Department issued its final results of redetermination, and again found that the extensiveness of the unreported subject merchandise sales necessitated the application of total AFA. The Department then calculated an AFA rate of 188.52 percent using a methodology similar to that employed in the final results of the 2005–2006 administrative review.

On February 9, 2010, the CIT held that substantial evidence supported the Department's application of total AFA. *See Wash. Int'l Ins. Co. II*. Further, the CIT sustained the remand AFA rate as rationally related to the record of Xuzhou's actual trading practices and based on the Department's reasonable interpretation of the record.

Notification

In its decision in *Timken*, 893 F.2d at 341, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with the Department's determination. The Court's decision in *Washington Int'l Ins. Co. II*, regarding the appropriate AFA rate to assign to Xuzhou, constitutes a final decision of that court that is not in harmony with the Department's decision to apply an AFA rate of 223.01 percent to Xuzhou in the 2005–2006 administrative review. Therefore, publication of this notice fulfills the Department's obligation

under section 516A(e) of the Act. This notice is effective as of February 19, 2010.

The Department will continue to suspend liquidation pending the expiration of the period to appeal the CIT's February 9, 2010 decision, or, if that decision is appealed, pending a "conclusive" decision by the Federal Circuit. Upon expiration of the period to appeal, or if the CIT's decision is appealed and the Federal Circuit's decision is not in harmony with the Department's determination in the 2005–2006 antidumping duty administrative review of freshwater crawfish tail meat from the PRC, the Department will publish in the **Federal Register** a notice of amended final results of the 2005–2006 administrative review.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: March 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7407 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV63

Endangered Species; File Nos. 15112 and 13307–02

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

ACTION: Notice; receipt of application and application for modification.

SUMMARY: Notice is hereby given that NMFS Northeast Fisheries Science Center, Woods Hole, MA, has applied in due form for a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research. Kristen Hart, Ph.D., USGS, Davie, FL has applied for a modification to scientific research Permit No. 13307–01 to take green sea turtles.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 3, 2010.

ADDRESSES: The applications and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 15112 or 13307–02 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on these applications should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. in the subject line of the comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on the application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit and modification are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

File No. 15112: The purpose of the research is to determine the size and composition of populations of sea turtles found in the commercial fishing areas of the Northwest Atlantic Ocean. The research would contribute to the understanding of the pelagic ecology of these species and allow more reliable assessments of commercial fishery impacts. Annually up to 130 loggerhead, 70 Kemp's ridley, 50 green, 10 hawksbill, and 50 leatherback sea turtles caught in commercial fisheries would be measured, flipper tagged, tissue sampled, and released. The permit would be issued for five years.

File No. 13307–02: Dr. Hart is authorized to capture up to 30 green, 20 hawksbill, and 20 loggerhead sea turtles annually. Turtles may be weighed, measured, flipper tagged, PIT tagged, blood sampled, tissue sampled, fecal sampled, and lavaged. A subset of turtles may be tagged with a satellite tag or acoustic transmitter or a combination of both. This research addresses fine-scale temporal and spatial patterns of sea turtle habitat use, ecology, and genetic origin within the Dry Tortugas National Park. Dr. Hart proposes to increase the number of green sea turtles that she captures to 80 per year due to the high rate of recent capture success. The modification would be valid until the permit expires on June 30, 2013.

Dated: March 29, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–7350 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–805]

Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) has determined that countervailable subsidies are being provided to producers and exporters of polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

DATES: *Effective Date:* April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–1396, respectively.

Case History

The following events have occurred since the announcement of the preliminary determination, which was published in the **Federal Register** on September 4, 2009. *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with*

Final Antidumping Duty Determination, 74 FR 45811 (September 4, 2009) (*Preliminary Determination*).

The Department issued a second supplemental questionnaire to the government of Vietnam (GOV), Advance Polybag Co., Ltd. (API), Chin Sheng Company, Ltd. (Chin Sheng), and Fotai Vietnam Enterprise Corporation and Fotai Enterprise Corporation (collectively, Fotai). The Department received responses to these questionnaires on October 7, 2009 from API, on October 14 from Chin Sheng and the GOV, and on October 16 from Fotai. A third supplemental questionnaire was subsequently issued to the GOV only. The GOV submitted a response on October 26. Public versions of the questionnaires and responses, as well as the various memoranda cited below, are available at the Department's Central Records Unit (Room 1117 in the HCHB Building) (hereafter referred to as "CRU"). Also on October 26, new factual information was submitted by Hilex Poly Co., LLC and Suberbag Corporation (collectively, Petitioners), the GOV, and Fotai. On October 21, 2009, the Department was informed by API that it was no longer participating in the investigation. *See* the October 21, 2009 Letter to the Secretary of Commerce, "Countervailing Duty Investigation Involving Polyethylene Retail Carrier Bags from Vietnam."

From November 2 through November 18, 2009, we conducted verification of the questionnaire responses submitted by the GOV, Chin Sheng and Fotai. We issued verification reports on January 4, 2010. *See* Memorandum to the File, "Verification of the Questionnaire Responses Submitted by the Government of Vietnam," and Memoranda to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, "Verification of the Questionnaire Responses Submitted by Chin Sheng Company, Ltd.," and "Verification of the Questionnaire Responses Submitted by Fotai Vietnam Enterprise Corporation." On January 11, 2010, we issued a report regarding discussions held with third party experts concerning banking in Vietnam. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Private Experts Meeting on Vietnam's Banking Sector."

We received case briefs from Petitioners, the GOV, Chin Sheng and Fotai on January 25, 2010, and rebuttal briefs from Petitioners, the GOV, and Fotai on February 1, 2010. On January 27, 2010, Petitioners withdrew their request for a hearing, submitted on October 5, 2009.

On February 12, 2010, the Department exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010." Based on this memorandum, the deadline for this final determination was changed from March 18, 2010 to March 25, 2010.

Scope of the Investigation

The scope of this investigation covers polyethylene retail carrier bags, which also may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because Vietnam is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from Vietnam materially injure, or threaten material injury to, a United States industry. On May 29, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Vietnam of subject merchandise. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations*, 74 FR 25771 (May 29, 2009); and *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam* (*Preliminary*), USITC Pub. 4080, Inv. Nos. 701–TA–462 and 731–TA–1156–1158 (May 2009).

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by Petitioners, the GOC, Chin Sheng and Fotai are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "*Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam*" (March 25, 2010) (hereafter referred to as the "*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find this public memorandum in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the internet at *http://ia.ita.doc.gov/ia–highlights-and–news.html* or *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Application of Adverse Facts Available

For purposes of this final determination, we relied on adverse facts available (AFA) in accordance with sections 776(a) and (b) of the Act to determine the total countervailable subsidy rate for API. We also relied on

AFA to determine the countervailable subsidy rate for Fotai for one of the programs under investigation. A full discussion of our decision to apply AFA is presented in the *Decision Memorandum* in the section "Application of Facts Otherwise Available and AFA to API and Fotai."

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for Chin Sheng and Fotai, and assigned an AFA rate to API. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act. Since API's rate is based entirely on AFA and since Chin Sheng's rate is *de minimis*, the all others rate is the rate calculated for Fotai.

Producer/Exporter	Net Subsidy Rate
Advance Polybag Co., Ltd. ...	52.56%
Chin Sheng Company, Ltd. ..	0.44% (*de minimis*)
Fotai Vietnam Enterprise Corp. And Fotai Enterprise Corporation	5.28%
All Others	5.28%

Although suspension of liquidation was required on the date of publication of the *Preliminary Determination*, we subsequently instructed U.S. Customs and Border Protection, pursuant to section 703(d) of the Act, to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after January 2, 2010, but to continue the suspension of liquidation of entries made on or after September 4, 2009 through January 1, 2010.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act. We will then require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above, except for Chin Sheng, which would be excluded from an order because it has a *de minimis* rate. This exclusion will apply only to subject merchandise both produced and exported by Chin Sheng. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: March 25, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

Issues and Decision Memorandum

I. Summary

II. Background

III. Applicability of the CVD Law to Vietnam

IV. Subsidies Valuation

A. Period of Investigation
B. Date of Applicability of CVD Law to Vietnam
C. Allocation Period
D. Loan Benchmark and Discount Rates
E. Attribution of Subsidies – Sales Denominator

V. Application of Facts Otherwise Available and AFA for API and Fotai

A. API
B. Fotai
C. Corroboration

VI. Analysis of Programs

A. Programs Determined To Be Countervailable
1. *Income Tax Preferences for Encouraged Industries*
2. *Income Tax Preferences for FIEs*
3. *Land Rent Reduction or Exemption for Exporters*
4. *Import Duty Exemptions for Imported Raw Materials for Exported Goods*
5. *Exemption of Import Duties on Imports of Spare Parts and Accessories for Industrial Zone Enterprises*

B. Programs Determined To Be Not Countervailable
VAT Exemptions for Equipment for FIEs

C. Programs Determined To Be Terminated
Export Bonus Program

D. Programs Determined To Have Been Not Used During the Period of Investigation
1. Government Provision of Water for LTAR in Industrial Zones
2. Preferential Lending for Exporters
3. Preferential Lending for the Plastics Industry
4. Export Promotion Program
5. New Product Development Program
6. Income Tax Preferences for Exporters
7. Income Tax Preferences for FIEs Operating in Encouraged Industries
8. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets
9. Exemption of Import Duties on Importation of Fixed Assets for Industrial Zone Enterprises
10. Import Tax Exemptions for FIEs Importing Raw Materials
11. Land Rent Exemption for Manufacturers of Plastic Products
12. Provision of Land Use Rights in Industrial Zones for LTAR
13. Land Rent Reduction or Exemption for FIEs
14. Exemption of Import Duties for Imported Raw Materials for Industrial Zone Enterprises
15. Accelerated Depreciation for Companies in Encouraged Industries and Industrial Zones
16. Losses Carried Forward for Companies in Encouraged Industries and Industrial Zones

VII. Analysis of Comments

Comment 1: Simultaneous Imposition of CVD and AD Duties on an NME
Comment 2: The Appropriate De Minimis Rate
Comment 3: Cutoff Date for Countervailing Duties

Comment 4: Preferential Lending for the Plastics Industry
Comment 5: Chin Sheng's Policy Lending Rate Should Be Recalculated Using the Data Collected at Verification
Comment 6: Fotai's Short–Term Loan Data Were Not Verified
Comment 7: Proper Benchmark for Preferential Lending
Comment 8: The Provision of Land at LTAR
Comment 9: The Proper Benchmark for the Provision of Land at LTAR
Comment 10: Duty Exemptions on Imports of Raw Materials Provided to Fotai
Comment 11: Chin Sheng's Sales Denominator
Comment 12: Income Tax Programs and Programs Not Used
Comment 13: Application of AFA to API

VIII. Recommendation

[FR Doc. 2010–7395 Filed 3–31–10; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–822]

Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that imports of polyethylene retail carrier bags (PRCBs) from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LFTV) as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Continuation of Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0410 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2009, the Department published *Polyethylene Retail Carrier Bags from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 56807 (November 3, 2009), as amended in *Polyethylene Retail Carrier Bags From Indonesia: Amended Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 63720 (December 4, 2009) (collectively, *Preliminary Determination*), in the *Federal Register.* We selected the following companies for individual examination: P.T. Super Exim Sari Ltd. and P.T. Super Makmur (collectively, SESSM);[1] P.T. Sido Bangun (SBI). *See Preliminary Determination,* 74 FR at 56808.

On November 16, 2009, SBI informed the Department that it would not participate in the verification of its information and withdrew from the investigation. *See* SBI's withdrawal letter to the Department dated November 16, 2009. SBI requested that the Department remove all of its submissions from the administrative record and certify the destruction of the submissions that are in the possession of interested parties to the investigation. *Id.* We have decided to retain all of SBI's submissions in the administrative record of this investigation because this information serves as the basis for SBI's margin. *See* Memorandum to Laurie Parkhill entitled "Polyethylene Retail Carrier Bags from Indonesia—PT Sido Bangun's Request That Its Submissions Be Removed from the Administrative Record" dated March 25, 2010, incorporated herein by reference.

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by SESSM. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by SESSM. *See* Memoranda to the File entitled "Polyethylene Retail Carrier Bags from Indonesia: Sales Verification of P.T. Super Exim Sari Ltd. and P.T. Super Makmur" and "Verification of the Cost Response of P.T. Super Exim Sari Ltd. and P.T. Super Makmur in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia" dated January 11, 2010, and January 12, 2010, respectively. All verification reports are on file and available in the Central Records Unit, Room 1117, of the main Department of Commerce building.

On December 29, 2009, SESSM submitted the sales and cost databases with revisions that reflect SESSM's minor corrections before the verifications and the Department's findings of SESSM's reporting errors during the verifications. *See* SESSM's December 29, 2009, submission of the sales and cost databases.

SESSM and the petitioners[2] filed their case briefs with the Department on January 22, 2010, and rebuttal briefs on January 27, 2010. At the petitioners' request, we held a hearing, including a closed session where parties discussed business-proprietary information, on January 29, 2010.

We used SESSM's December 29, 2009, sales and cost databases to calculate SESSM's antidumping duty margin. No parties have objected to the use of these databases.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, we have exercised our discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this investigation have been extended by seven days. The revised deadline for the final determination of this investigation is now March 25, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Period of Investigation

The period of investigation is January 1, 2008, through December 31, 2008. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2009. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise subject to this investigation is PRCBs, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

[1] Because these two companies function as one common corporate entity that share common sales and production facilities, we have treated SESSM as one company.

[2] The petitioners in this investigation are Hilex Poly Co. LLC and Superbag Corporation.

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty investigation are addressed in the "Issues and Decision Memorandum for the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia" (Decision Memorandum) from Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations John M. Andersen to Deputy Assistant Secretary for Import Administration Ronald K. Lorentzen dated March 25, 2010, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the Central Records Unit of the main Department of Commerce building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Targeted Dumping

In the *Preliminary Determination,* we followed the methodology we adopted in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008), and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008) (collectively, *Nails*), used most recently in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008). *See Preliminary Determination,* 74 FR at 56808–09. Based on the targeted-dumping test that we applied in the *Preliminary Determination,* we found a pattern of export prices for comparable merchandise that differ significantly among certain time periods. *Id.* As a result and following the methodology in *Nails,* in the *Preliminary Determination* we applied the average-to-transaction comparison methodology to SESSM's targeted sales and the average-to-average comparison methodology to SESSM's non-targeted sales. In calculating SESSM's weighted-average margin, we combined the margin we calculated for the targeted sales with the margin we calculated for the non-targeted sales and did not offset any margins found among the targeted sales. *See Preliminary Determination,* 74 FR at 56809.

In the *Preliminary Determination* we announced that, given the withdrawal of the regulations that guided our practice in *Nails,* we would consider various options regarding the specific group of sales to which we apply the average-to-transaction methodology (the withdrawn targeted-dumping regulation would have limited such application to just the targeted sales). *Id.* We requested comments on the following three options: (1) Apply the average-to-transaction methodology just to sales found to be targeted as the withdrawn regulation directed and, consistent with our average-to-transaction practice, not offset any margins found on these transactions; (2) apply the average-to-transaction methodology to all sales to the time period found to be targeted (not just those specific sales found to be targeted) and, consistent with our average-to transaction practice, not offset any margins found on these transactions; (3) apply the average-to-transaction methodology to all sales by SESSM and, consistent with our average-to-transaction practice, not offset any margins found on these transactions. *Id.*

For the final determination, we find that, in this investigation, the result using the standard average-to-average methodology is not substantially different from that using the alternative average-to-transaction methodology. Accordingly, for this final determination we have applied the standard average-to-average methodology to all U.S. sales that SESSM reported. For a complete discussion, *see* the Decision Memorandum at Comment 1.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculation for SESSM. For a discussion of these changes, *see* the Decision Memorandum and "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia—Analysis Memorandum for P.T. Super Exim Sari Ltd. and P.T. Super Makmur" dated March 25, 2010, and "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—P.T. Super Exim Sari, Ltd. and P.T. Super Makmur" dated March 25, 2010. For SBI, we applied adverse facts available in accordance with section 776(a)(2)(D) of the Act. *See* the "Use of Facts Otherwise Available" section below and the Decision Memorandum at Comment 6.

Cost of Production

As explained in the *Preliminary Determination,* we conducted an investigation concerning sales at prices below the cost of production in the home market. We found that, for certain specific products, more than 20 percent of SESSM's home-market sales were at prices less than the cost of production and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act. Based on this test, for this final determination we have disregarded below-cost sales by SESSM.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly

impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(a)(2)(D) of the Act requires the Department to use facts available when a party provides information but that information cannot be verified. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

As explained above, after the publication of the *Preliminary Determination,* SBI notified the Department that it would no longer participate in this antidumping investigation and that it would not participate in any verification. *See* letter from SBI dated November 16, 2009. Pursuant to section 776(a) of the Act, in reaching our final determination we have used total facts available for SBI because we could not verify SBI's data. Also, because SBI refused to participate in the verification of its responses, we find that SBI has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for SBI. We have assigned 85.17 percent as the margin. This was the highest control-number-specific margin we found for SBI for the *Preliminary Determination. See* page 54 of the margin program output attached to "Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia—Analysis Memorandum for PT Sido Bangun Indonesia" dated October 27, 2009. *See* the Decision Memorandum at Comment 6 for further discussion.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Indonesia entered, or withdrawn from warehouse, for consumption on or after November 3, 2009, the date of the publication of the *Preliminary Determination.* We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated below, as follows: (1) The rates for SESSM and SBI will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 69.64 percent as discussed in the "All-Others Rate" section below. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination

The final antidumping duty margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
P.T. Sido Bangun Indonesia	85.17
P.T. Super Exim Sari Ltd. and P.T. Super Makmur	69.64

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for producers and exporters individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. SESSM is the only respondent in this investigation for which we have calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for SESSM which is 69.64 percent. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia,* 72 FR 60636 (October 25, 2007)).

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury or threat of material injury to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. *See* 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: March 25, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Issues in the Issues and Decision Memorandum

1. Targeted Dumping.
2. Level of Trade.
3. Adverse Facts Available.
4. Home-Market Credit Expenses.
5. General and Administrative Expenses.

[FR Doc. 2010–7392 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–806]

Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

DATES: *Effective Date:* April 1, 2010.

SUMMARY: The Department of Commerce (the "Department") has determined that polyethylene retail carrier bags ("PRCBs") from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the *Final Determination Margins* section of this notice.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4114 and (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On November 3, 2009, the Department published in the **Federal Register** its preliminary determination that PRCBs from Vietnam are being, or are likely to be, sold in the United States at LTFV, as provided in the Act. *See Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 56813 (November 3, 2009) ("*Preliminary Determination*"). For the *Preliminary Determination,* the Department assigned a 76.11 percent dumping margin to the Vietnam-wide entity—including mandatory respondents Advance Polybag Co., Ltd. ("API") and Fotai Vietnam Enterprise Corp. ("Fotai Vietnam")—and a 52.30 percent dumping margin to 16 separate rate applicants. Because no interested party submitted case or rebuttal briefs, it was not necessary to prepare an accompanying Issues and Decision Memorandum. As a further consequence of no submissions, a hearing was not held.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final determination of this investigation is now March 25, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Period of Investigation

The period of investigation is July 1, 2008, through December 31, 2008. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed (*i.e.,* March 2009). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise subject to this investigation is polyethylene retail carrier bags, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States ("HTSUS"). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Changes Since the Preliminary Determination

Because no party submitted case briefs and there are no other circumstances which warrant the revision of the *Preliminary Determination,* the Department has not made changes to its analysis, or the dumping margins calculated, with respect to the *Preliminary Determination.* For further details of the issues addressed in this proceeding, see the *Preliminary Determination.*

Combination Rates

In the initiation notice, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 74 FR 19049 (April 27, 2009). This change in practice is described in *Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* 70 FR 17233 (April 5, 2005) which states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its {non-market economy} investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms

receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Final Determination Margins

The Department determines that the following dumping margins exist for the period July 1, 2008, through December 31, 2008: [1]

Manufacturer	Exporter	Antidumping duty percent margin
Alpha Plastics (Vietnam) Co., Ltd.^	Alpha Plastics (Vietnam) Co., Ltd.^	52.30
Alta Company °	Alta Company °	52.30
Ampac Packaging Vietnam Ltd.^	Ampac Packaging Vietnam Ltd.^	52.30
BITAHACO *	BITAHACO *	52.30
Chin Sheng Co., Ltd.*	Chin Sheng Co., Ltd.*	52.30
Chung Va (Vietnam) Plastic Packaging Co., Ltd.^	Chung Va Century Macao Commercial Offshore Limited ^	52.30
Hanoi 27–7 Packaging Company Limited, aka Hanoi 27–7 Packing Company Limited, aka HAPACK Co. Ltd, aka HAPACK °.	Hanoi 27–7 Packaging Company Limited, aka Hanoi 27–7 Packing Company Limited, aka HAPACK °.	52.30
Hoi Hung Company Limited ^	Kong Wai Polybag Printing Company ^	52.30
Kinsplastic Vietnam Ltd. Co.^	Kinsplastic Vietnam Ltd. Co.^	52.30
Loc Cuong Trading Producing Company Limited, aka Loc Cuong Trading Producing Company, aka Loc Cuong Trading Producing Co. Ltd.*.	Loc Cuong Trading Producing Company Limited, aka Loc Cuong Trading Producing Company, aka Loc Cuong Trading Producing Co. Ltd.*.	52.30
Ontrue Plastics Co., Ltd. (Vietnam) ^	Ontrue Plastics Co., Ltd. (Vietnam) ^	52.30
Richway Plastics Vietnam Co., Ltd.^	Richway Plastics Vietnam Co., Ltd.^	52.30
RKW Lotus Limited Co., Ltd., aka RKW Lotus Limited, aka RKW Lotus Ltd.^.	RKW Lotus Limited Co., Ltd., aka RKW Lotus Limited, aka RKW Lotus Ltd.^.	52.30
VINAPACKINK Co., Ltd.*	VINAPACKINK Co., Ltd.*	52.30
VN K's International Polybags Joint Stock Company *	K's International Polybags MFG Ltd *	52.30
VN Plastic Industries Co. Ltd ^	VN Plastic Industries Co. Ltd ^	52.30
Vietnam-Wide Entity [2]		76.11

Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of PRCBs from Vietnam, as described in the *Scope of the Investigation* section, entered, or withdrawn from warehouse, for consumption on or after November 3, 2009, the date of publication of the *Preliminary Determination* in the **Federal Register.** The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate the Department has determined in this final determination; (2) for all Vietnamese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the Vietnam-wide entity rate; and (3) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department notified the International Trade Commission ("ITC") of its final determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

[1] "^" designates companies as foreign-owned separate rate recipients, "*" designates companies as Vietnamese separate rate recipients, and "°" designates companies as state-owned separate rate recipients.

[2] API, Fotai Vietnam, Green Care Packaging Industrial (Vietnam) Co., Creative Pak Industrial Co., Ltd., An Phat Plastic and Packing Joint Stock Co., Genius Development Ltd., and J.K.C. Vina Co., Ltd. are all part of the Vietnam-wide entity.

Dated: March 25, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7410 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* April 1, 2010.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant the initiation of a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from India. Specifically, based on a request filed by Srikanth International, the Department is initiating a changed circumstances review to determine whether Srikanth International is the successor-in-interest to NGR Aqua International (NGR).

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6345.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from India. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*).

On February 3, 2010, Srikanth International informed the Department that it purchased the packing plant formerly owned and operated by NGR, and provided certain documentation related to this claim. Additionally, Srikanth International requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to confirm that Srikanth International is the successor-in-interest to NGR for purposes of determining antidumping duty cash deposits and liabilities.

Normally, the Department will initiate a changed circumstances review within 45 days of the date on which the request is filed. *See* 19 CFR 351.216(b). However, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for initiating this review is now March 29, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which

shows changed circumstances sufficient to warrant a review of the order. In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by Srikanth International includes evidence sufficient to warrant initiating a changed circumstances review. In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (Nov. 18, 2005); and *Notice of Final Results of Changed-Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (Jan. 2, 2002). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979 (Mar. 1, 1999). Thus, if the record evidence demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the predecessor company, the Department will accord the new company the same antidumping treatment as its predecessor. *Id.* at 9980.

Based on the information provided in its submission, Srikanth International has provided sufficient evidence to warrant a review to determine if it is the successor-in-interest to NGR. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review. However, although Srikanth International has provided information regarding the transfer of facilities from NGR to Srikanth International, we require additional time to solicit further information related to the four successor-in-interest factors listed above. Accordingly, we have determined that it would be inappropriate for the Department to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). As a result, the Department is not issuing preliminary results for this changed circumstances review at this time.

The Department expects to issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: March 26, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7397 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* April 1, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–351–828	731–TA–806	Brazil	Hot-Rolled Carbon, Steel Flat Products (2nd Review).	Dana Mermelstein, (202) 482–1391.
A–588–846	731–TA–807	Japan	Hot-Rolled Carbon, Steel Flat Products (2nd Review).	Dana Mermelstein, (202) 482–1391.
A–821–809	731–TA–808 (Suspension Agreement).	Russia	Hot-Rolled Carbon, Steel Flat Products (2nd Review).	Sally Gannon, (202) 482–0162.
C–351–829	701–TA–384	Brazil	Hot-Rolled Carbon, Steel Flat Products (2nd Review).	Dana Mermelstein (202) 482–1391.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. *See* 19 CFR 351.218(d)(1)(i). The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 26, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7413 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of the rescheduling of an Open Meeting.

SUMMARY: The U.S. Travel and Tourism Advisory Board (Board) will hold a meeting to discuss topics related to the travel and tourism industry. To provide additional information regarding a **Federal Register** notice published March 24, 2010, Volume 75, Number 56, regarding the United States Travel and Tourism Advisory Board ("Board") intent to hold a meeting on April 8, 2010. The meeting has been rescheduled, *please see* below.

DATES: April 12, 2010 at 1 p.m. (ET)

ADDRESSES: Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–4501, *e-mail: Marc.Chittum@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was re-chartered on September 3, 2009, to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

Topics to be considered: The agenda for the April 8, 2010, meeting is as follows:

1. Welcome & introduction of new members.

2. Discussion of topics related to the travel and tourism industry.

Public Participation: The meeting will be open to the public and the room is disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify J. Marc Chittum at the contact information above by 5 p.m. Eastern Time on April 5, 2010, in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Board's affairs at any time before and after the meeting. Comments may be submitted to J. Marc Chittum, Executive Secretary, at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Time on April 5, 2010, to ensure transmission to the Board prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: March 29, 2010.

J. Marc Chittum,

Executive Secretary.

[FR Doc. 2010–7393 Filed 3–30–10; 11:15 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2008, through December 31, 2008. We preliminarily find that the net subsidy rate for each company under review is *de minimis. See* the "Preliminary Results of Review" section of this notice, *infra.* Interested parties are invited to comment on these preliminary results. (*See* the "Public Comment" section, *infra.*)

DATES: *Effective Date:* April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4793 and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey. *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 7984 (March 7, 1986). On March 2, 2009, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 9077 (March 2, 2009). On March 31, 2009, we received a timely request from petitioner [1] to review the following companies: Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal), (collectively, Borusan); Yucel Boru Group, Cayirova Boru Sanayi ve Ticaret A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Yucel Boru ve Profil Endustrisi A.S. (collectively, Yucel); Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), (collectively, Toscelik); and Alexico Group Plc. On April 16, 2009, petitioner amended its request for an administrative review by withdrawing its request for a review of Alexico Group, Plc.

On April 27, 2009, the Department initiated an administrative review of the CVD order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2008, through December 31, 2008, covering Borusan, Yucel, and Toscelik. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation, In Part,* 74 FR 19042 (April 27, 2009).

On April 29, 2009, the Department issued the initial questionnaire to Borusan, Yucel, Toscelik, and the Government of the Republic of Turkey (GOT). On May 13, 2009, Yucel notified the Department that it had no sales, shipments, or entries, directly or indirectly, of subject merchandise to the United States during the review period (POR) of January 1, 2008, through December 31, 2008.[2] To confirm Yucel's no shipment claim, we conducted an internal customs data query on June 16, 2009. We also issued a "no shipments inquiry" message to U.S. Customs and Border Protection (CBP), which posted the message on June 19, 2009.[3] The customs data query indicated that Yucel had no sales, shipments, or entries of subject merchandise to the United States during the POR. We did not receive any information from CBP contrary to Yucel's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR. *See* Memorandum to the File through Melissa Skinner, Director, AD/CVD Operations, Office 3, titled "Customs Data Query," (July 7, 2009). On August 5, 2009, we published the notice of preliminary rescission of this CVD duty administrative review with respect to Yucel, and invited interested parties to comment. *See Welded Carbon Steel Standard Pipe and Tube from Turkey: Intent to Rescind Countervailing Duty Administrative Review, in Part,* 74 FR 39062 (August 5, 2009) (*Preliminary Rescission*). We received no comments in response to the *Preliminary Rescission.* Subsequently, on September 18, 2009, the Department rescinded the administrative review of Yucel. *See Welded Carbon Steel Standard Pipe and Tube from Turkey: Notice of Rescission of Countervailing Duty Administrative Review, In Part,* 74 FR 47921 (September 18, 2009).

On July 6, 2009, the Department received responses to the initial questionnaire from Borusan, Toscelik, and the GOT. We issued supplemental questionnaires to the GOT on August 21, 2009, and December 17, 2009, and received the government's responses on September 17, 2009, and January 4, 2010, respectively. On August 18, 2009, and October 26, 2009, we issued supplemental questionnaires to Toscelik and received the company's responses to these questionnaires on September 1, 2009, and November 9, 2009, respectively. On August 19, 2009, October 14, 2009, and October 30, 2009, we issued supplemental questionnaires to Borusan and received the company's responses on September 2, 2009, November 4, 2009, and November 10, 2009, respectively. On August 4, 2009, petitioner submitted a letter requesting that the Department conduct verification of the questionnaire responses submitted by Borusan, Toscelik, and the GOT in this review.

On July 27, 2009, petitioner filed new subsidies allegations with the Department arguing that Borusan and Toscelik received countervailable subsidies, including upstream subsidies, from the GOT.[4] Subsequently, on August 20, 2009, petitioner filed additional information in support of its new subsidies allegations.[5] On October 16, 2009, the Department declined to initiate on the new subsidies allegations presented by petitioner. *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Team concerning "New Subsidies Allegations" (October 16, 2009) (New Subsidies Memorandum).[6] On November 3, 2009, petitioner submitted comments regarding the Department's New Subsidies Memorandum.[7]

[1] Petitioner is Wheatland Tube Company.

[2] *See* Yucel's Notification of No Shipments letter to the Department (June 15, 2009). A copy of this public document is available on the public record in the Department's Central Records Unit (CRU), Room 1117 located in the main Commerce Department building.

[3] *See* Message number 9170203, available at *http://addcvd.cbp.gov.*

[4] *See* Upstream Subsidy Allegation and New Subsidy Allegation submission (New Subsidies Submission) (July 27, 2009). The public version of this document, as well as all other public versions of proprietary documents submitted to the Department, is available on the public file in the CRU.

[5] *See* Additional Information in Support of Petitioner's Upstream Subsidy Allegation and New Subsidy Allegation submission (Additional Submission) (August 20, 2009).

[6] A public version of this memorandum and all public Departmental memoranda are available on the public file in the CRU.

[7] A public document on file in the CRU.

Being issued concurrently with this notice of preliminary results is the Department's response to petitioner's November 3, 2009, comments regarding the Department's New Subsidies Memorandum. *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Team concerning "Response to Petitioner's Comments on New Subsidies Allegations Memorandum" (March 25, 2010). In the March 25, 2010, memorandum, the Department reiterates its decision to not initiate on the upstream subsidy allegation regarding income tax exemptions provided to OYAK, the Turkish military pension fund.

On November 20, 2009, the Department postponed the deadline for the preliminary results of this administrative review until March 31, 2010. *See Welded Carbon Steel Standard Pipe from Turkey: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 74 FR 60238 (November 20, 2009). In addition, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this administrative review is now April 7, 2010. *See* Memorandum to the Record from Ronald K. Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested and not rescinded. Therefore, the only companies subject to this review are Borusan and Toscelik. This review covers 14 programs.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period for which we are measuring subsidies is January 1, 2008, through December 31, 2008.

Company History

Toscelik Profil and its affiliated foreign trading company, Tosyali, are owned by Tosyali Holding, a Turkish holding company. Toscelik Profil, which produces subject merchandise for both the domestic and export markets, was established in 1992. Tosyali, founded in 1996, is the exporter of record with respect to Toscelik Profil's export sales and sells subject merchandise to unaffiliated customers in the United States. Consistent with 19 CFR 351.525(c), we are attributing any subsidies received by Tosyali to Toscelik Profil.

BMB and its affiliated foreign trading company, Istikbal, are both part of the Borusan Group. BMB produces subject merchandise for both the home and export markets and was acquired by the Borusan Group in 1998. During the POR, all subject merchandise exported to the United States was exported from Turkey by BMB. For sales of subject merchandise to other destinations, Istikbal was the exporter from Turkey. Consistent with 19 CFR 351.525(c), we are attributing any subsidies received by Istikbal to BMB.

Subsidies Valuation Information

Benchmark Interest Rates

To determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. *See* 19 CFR 351.505(a). Where no company-specific benchmark interest rates are available, as is the case in this review, the Department's regulations direct us to use a national average interest rate as the benchmark. *See* 19 CFR 351.505(a)(3)(ii). However, according to the GOT, there is no official national average short-term interest rate available in Turkey.[8] Therefore, consistent with our past practice in Turkey CVD proceedings,[9] we have calculated the 2008 benchmark interest rate for short-term Turkish Lira denominated loans based on short-term interest rate data as reported by *The Economist.* In the public version of its July 6, 2009, questionnaire response at Exhibit 25, Borusan submitted, for each month of the POR, a copy of the print edition of *The Economist* that contains interest rate data for Turkey. The short-term Turkish Lira interest rates sourced from *The Economist* do not include commissions or fees paid to commercial banks, *i.e.,* they are nominal rates. *See* Wire Rod Memorandum at 4.

To calculate the 2008 benchmark, we performed a simple average calculation of the monthly rates to compute an annual short-term interest rate for Turkey. *See* Memorandum to the File from Kristen Johnson regarding Short-Term Turkish Lira Benchmark (March 25, 2010). We then compared that interest rate with the interest rates that the company paid during the POR against export financing provided by the Export Credit Bank of Turkey (Export Bank). This methodology is consistent with the Department's practice. *See Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 72 FR 62837, 62838 (November 7, 2007) (*2006 Pipe Prelim*); *see also Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 71 FR 68550, 68551 (November 27, 2006) (*2005 Pipe Prelim*), unchanged in *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 72 FR 13479 (March 22, 2007); *Preliminary Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 72 FR 8348, 8349 (February 26, 2007) (*NSR Prelim*), unchanged in *Final Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 72 FR 24278 (May 2, 2007).

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Deduction From Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum

[8] *See* GOT's Initial Questionnaire Response at 19 (July 6, 2009).

[9] *See Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination,* 67 FR 55815 (August 30, 2002), and accompanying Issues and Decision Memorandum (Wire Rod Memorandum) at "Benchmark Interest Rates;" *see also Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 72 FR 62837, 62838 (November 7, 2007) (*2006 Pipe Prelim*), unchanged in *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 73 FR 12080 (March 6, 2008).

deduction from gross income, in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings. The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown as a separate account within the company's selling expenses in the chart of accounts to record the subtraction of relevant expenses from gross income.

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy. *See 2006 Pipe Prelim,* 72 FR at 62838; *see also NSR Prelim,* 72 FR at 8350. The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior finding of countervailability for this program.

During 2008, BMB, Istikbal, and Tosyali utilized the deduction for export earnings with respect to their 2007 income taxes.

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we calculated the tax savings realized by BMB, Istikbal, and Tosyali in 2008, as a result of the deduction for export earnings. For BMB and Istikbal, we divided their combined tax savings by Borusan's total export sales for 2008. For Tosyali, we divided the tax savings realized by Toscelik's total export sales for 2008.

On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.06 percent *ad valorem* for Borusan and to be 0.09 percent *ad valorem* for Toscelik.

B. Foreign Trade Companies Short-Term Export Credits

The Foreign Trade Company (FTC) loan program was established by the Turkish Export Bank to meet the working capital needs of exporters, manufacturer-exporters, and manufacturers supplying exporters. This program is specifically designed to benefit Foreign Trade Corporate Companies (FTCC) and Sectoral Foreign Trade Companies (SFTC).[10] An FTCC is a company whose export performance was at least US$100 million in the previous year.

To eligible companies, the Export Bank provides short-term export loans in Turkish Lira or foreign currency, based on their prior export performance and financial criteria, up to 100 percent of the free on board (FOB) export commitment. The loan interest rates are set by the Export Bank and the term is 120 to 180 days for Turkish Lira-denominated loans and 120 to 360 days for foreign currency denominated loans. To qualify for an FTC loan, along with the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount, because the financing is a direct credit from the Export Bank. Istikbal was the only Borusan company to pay interest against FTC credits during the POR. Toscelik did not use this program during the POR.

Consistent with previous determinations, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See, e.g., 2006 Pipe Prelim,* 72 FR at 62839. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that Istikbal made on its loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Further, the FTC loans are not tied to a particular export destination. Therefore, we have treated this program as an untied export loan program, which renders it countervailable regardless of whether the loans were used for exports to the United States. *See 2006 Pipe Final* (affirming preliminary results, 72 FR at 62839).

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that Istikbal made on its FTC loans during the POR and the payments the company would have made on comparable commercial loans.[11] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees that Istikbal paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export sales for 2008. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.02 percent *ad valorem* for Borusan.

C. Pre-Export Credits

The Pre-Export Credit program meets the working capital needs of exporters, manufacturers, and manufacturers supplying exporters, except for FTC and SFTC classified exporters, which are ineligible to receive credits under this program. Eligible applicants are companies that exported more than $200,000 of goods in the previous 12 months. Like FTC loans, the Export Bank directly extends pre-export loans to eligible companies. These loans are contingent upon an export commitment. The loans, whose interest rates are set by the Turkish Export Bank, are denominated in either Turkish Lira or foreign currency and have a maximum maturity of 360 and 540 days, respectively. To qualify for a pre-export loan, along with the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount. During the POR, BMB was the only Borusan company that paid interest against pre-export loans. Toscelik did not use this program during the POR.

Consistent with previous determinations, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See, e.g., 2006 Pipe Prelim,* 72 FR at 62839. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BMB made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Further, like the FTC loans, these loans are not tied to a particular export destination. Therefore, we have treated this program as an untied export loan

[10] To promote exports and diversity in products exported, the GOT encouraged small and medium scale enterprises to form SFTC, which comprise five to ten companies that operate together in a similar sector.

[11] *See* "Benchmark Interest Rates," *supra* (discussing the benchmark rates used in these preliminary results).

program rendering it countervailable regardless of whether the loans were used for exports to the United States. *See 2006 Pipe Prelim,* 72 FR at 62839.

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that BMB made on its pre-export loans during the POR and the payments the company would have made on comparable commercial loans. In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export value for 2008. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.02 percent *ad valorem* for Borusan.

D. Pre-Shipment Export Credits

Turkey's Export Bank provides short-term pre-shipment export loans through intermediary commercial banks to exporters, manufacturer-exporters, and manufacturers supplying exporters and SFTCs to assist the borrowers in meeting their export commitments. The commercial banks, which assume the default risks of the borrowers, are allocated credit lines by the Export Bank to make the loans. These loans cover up to 100 percent of the FOB export value, are denominated in either Turkish Lira or foreign currency, and have maximum terms of 360 and 540 days, respectively. The interest rates charged on these pre-shipment loans are set by the Export Bank. However, because these loans are provided through intermediary commercial banks, those banks can add a maximum one percent to the Turkish Lira loan interest rate and 0.5 percent to the foreign currency loan interest rate as their commissions.[12]

In previous determinations, the Department found this program to be countervailable because receipt of the loans is contingent upon export performance and a benefit was conferred to the extent that the interest rates paid on the government loan were less than the amount the recipient would pay on comparable commercial loans. *See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 71 FR 43111 (July 31, 2006) (*2004 Pipe Final*), and accompanying Issues and Decision Memorandum (2004 Pipe Memorandum) at "Pre-Shipment Export Credits" under "Programs Determined To Be Countervailable."

The Department also found that this program is an untied export loan program because the loans are not specifically tied to a particular destination at the time of approval and the borrower only has to show that the export commitment was satisfied (*i.e.,* exports amounting to the FOB value of the credit) to close the loan. *Id.* In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings for this program. During the POR, BMB was the only Borusan company that paid interest against pre-shipment export credit loans. Toscelik used pre-shipment export credit loans during the POR, but did not pay interest on (*i.e.,* realize a benefit from) those loans in 2008.

Consistent with the *2004 Pipe Final,* we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BMB made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that BMB made on its pre-shipment export loans during the POR and the payments the company would have made on comparable commercial loans. It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65362 (November 25, 1998) (*Preamble*). "Effective" interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges, or penalties paid in addition to the "nominal" interest rate.

The benchmark short-term Turkish Lira interest rates sourced from *The Economist,* however, do not include commissions or fees paid to commercial banks, *i.e.,* they are nominal rates. *See* "Benchmark Interest Rate," section *supra.* Therefore, for these preliminary results, we compared the benchmark Turkish Lira interest rate to the interest rate that BMB was charged on the pre-shipment export credit loans, exclusive of the intermediary bank commissions, to make the comparison on a nominal interest rate basis.

After computing the benefit amount, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. We then divided that amount by Borusan's total export value for 2008. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.02 percent *ad valorem* for Borusan.

II. Program Preliminary Determined To Be Not Countervailable

A. Law 4857, Article 30

Under Law 4857, which has been in effect since 2003, the GOT, through its Ministry of Labor and Social Security and Undersecretariat of Treasury, encourages companies to employ handicapped workers by exempting the employer's share of insurance premium paid to the Undersecretariat of Treasury (Treasury) for the handicapped workers. The GOT explained that Article 30 of Law 4857, most recently amended in May 2008, outlines the requirement to employ disabled persons and ex-convicts. Article 30 states that "employers in private businesses employing 50 or more employees are obliged to employ three percent handicapped and in public businesses four percent handicapped and two percent ex-convicts in jobs appropriate for their professions and physical and psychological status."[13]

Regarding employers with 50 or more employees, the GOT reported that for the handicapped workers within the three percent quota, 100 percent of the employer's share of insurance premium for the handicapped workers is paid by the Treasury. For handicapped workers exceeding the quota (*i.e.,* more than three percent), only 50 percent of the employer's share of insurance premium is paid by the Treasury for the handicapped workers. Employers that employ less than 50 employees are not obliged to employ handicapped workers, but should they, 50 percent of the employer's share of insurance premium for the handicapped workers is paid by the Treasury. The GOT also added that there are protected businesses for which 100 percent of the employer's share of insurance premium for handicapped workers is paid by the

[12] *See* GOT Initial Questionnaire Response at 13 (July 6, 2009).

[13] *See* GOT Supplemental Questionnaire Response at Exhibit 1 (January 4, 2010). For example, Article 30 indicates that handicapped workers cannot be employed in underground and underwater works.

Treasury. The GOT explained that protected businesses are businesses supported by the government for the purpose of creating jobs and providing professional rehabilitation for the handicapped who may not be employed in the normal labor market. The GOT stated that as of December 30, 2009, there were no longer protected businesses in Turkey. Toscelik provided to the Department Article 30 of Law 4857 in this review.[14]

Because Article 30 of Law 4857 does not limit access to the benefit, but indicates that an exemption of insurance premium is available to all employers who employ handicapped workers in jobs appropriate for their professions and physical and psychological status, we preliminarily determine that this program is not specific within the meaning of section 771(5A)(D) of the Act. This approach is consistent with the Department's decisions in other CVD proceedings. For example, in *Steel Plate from Korea,* the Department found the "Special Tax Credit for Boosting Employment" not to be countervailable because the tax credit was available to nearly all companies in Korea except for a small category of businesses, which the GOK deemed "harmful to juveniles, affecting public morals, certain private teaching institutes, and certain real estate businesses." *See Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,* 72 FR 38565 (July 13, 2007) (*Steel Plate from Korea*), and accompanying Issues and Decision Memorandum at "Special Tax Credit for Boosting Employment." Because we preliminarily find that this program is not specific, we need not address whether the program provides a financial contribution or benefit.

III. Programs Preliminary Determined To Not Confer Countervailable Benefits

A. Inward Processing Certificate Exemption

Under the Inward Processing Certificate (IPC)[15] program, companies are exempt from paying customs duties and value added taxes (VAT) on raw materials and intermediate unfinished goods imported to be used in the production of exported goods. Companies may choose whether to be exempted from the applicable duties and taxes upon importation (*i.e.,* the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (*i.e.,* the Drawback System). Under the Suspension System, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.

To participate in this program, a company must hold an IPC, which lists the amount of raw materials/intermediate unfinished goods to be imported and the amount of product to be exported. To obtain an IPC, an exporter must submit an application, which states the amount of imported raw material required to produce the finished products and a "letter of export commitment," which specifies that the importer of materials will use the materials to produce exported goods. Once an IPC is issued, the producer must show the certificate to Turkish customs each time it imports raw materials on a duty exempt basis. There are two types of IPCs: (1) D–1 certificate for imported raw materials or intermediate unfinished goods used in the production of exported goods, and (2) D–3 certificate for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market and defined as "domestic sales and deliveries considered as exports."[16] The GOT also reported that imports made with an acceptance credit, deferred payment letter of credit, or cash against goods payment in relation to an IPC are exempt from paying the three percent Resource Utilization Support Fund.[17] During the POR, Borusan and Toscelik used D–1 certificates of the importation of raw materials used in the production of exported carbon steel pipe and tube. Neither Borusan nor Toscelik used D–3 certificates during the POR.[18]

Concerning D–1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

In prior reviews, the Department has found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts are consumed in the production of the exported product, and that the system is reasonable for the purposes intended. *See, e.g.,* 2004 Pipe Memorandum at "Inward Processing Certificate Exemption" under "Programs Determined To Not Confer Countervailable Benefits." The Department has also found that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption. *See* Wire Rod Memorandum at "Inward Processing Certificate Exemptions" and Comment 8. No new information is on the record of this proceeding to warrant a reconsideration of the Department's earlier findings.

During the POR, under D–1 certificates, Borusan and Toscelik received duty and VAT exemptions on certain imported inputs used in the production of steel pipes and tubes. Consistent with the Department's findings in *2004 Pipe Final* and based on our review of the information supplied by Borusan and Toscelik regarding this program, we preliminarily determine there is no evidence on the record of this review that indicates the amount of exempted inputs imported under the program were excessive or that the firms used the imported inputs for any other product besides those exported.

Therefore, consistent with past cases,[19] we preliminarily determine that the tax and duty exemptions, which Borusan and Toscelik received on imported inputs under D–1 certificates of the IPC program, did not confer countervailable benefits as Borusan and Toscelik consumed the imported inputs in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits on Borusan or Toscelik because the exemption does not exceed the amount levied with respect to the production and

[14] *See* Toscelik's Supplemental Questionnaire Response at Exhibit 4, pages 13–14 (November 9, 2009).

[15] During the POR, the IPC was implemented under Resolution No. 2005/8391. A copy of this resolution was submitted by the GOT in its July 6, 2009, Initial Questionnaire Response at Exhibit 26.

[16] *See* GOT's Initial Questionnaire Response at 43 (July 6, 2009).

[17] *See* GOT's Supplemental Questionnaire Response at II–5 (September 17, 2009).

[18] For more information on D–3 certificates, *see* GOT's Initial Questionnaire Response at 42–45 (July 6, 2009).

[19] *See* 2004 Pipe Memorandum, *2005 Pipe Prelim, 2006 Pipe Prelim,* and *NSR Prelim.*

distribution of like products when sold for domestic consumption. Further, because Borusan and Toscelik did not import any goods under a D–3 certificate during the POR, we preliminarily determine that this aspect of the IPC program was not used.

B. Withholding of Income Tax on Wages and Salaries

Toscelik reported that during the POR the company received an exemption from the withholding of income tax on wages and salaries paid to employees at its Osmaniye facility.[20] Toscelik stated that the Osmaniye facility produces spiral-welded pipe and flat-rolled steel, products which are not subject merchandise.[21] As such, Toscelik stated that the Osmaniye plant is not involved in the production or sale of subject merchandise. Toscelik, therefore, argued that any tax exemption benefits relating to the Osmaniye facility are not relevant to this proceeding.

We preliminarily find that we need not address Toscelik's argument that the withholding tax exemption is unrelated to the production and sale of subject merchandise. Assuming that there was a financial contribution, by dividing the 2008 tax exemption benefit amount by Toscelik's total sales for 2008, we preliminarily determine that a subsidy rate under this program is less than 0.005 percent *ad valorem.*[22] Consistent with the Department's practice,[23] a subsidy rate of less than 0.005 percent *ad valorem* does not confer a measurable benefit and, therefore, we have not included it in the calculation of the net countervailable rate.

Consequently, we preliminarily determine that it is unnecessary for the Department to make a finding as to the countervailability of this program in this review. If a future administrative review of Toscelik is requested, we will further examine the withholding tax exemption at that time.

[20] *See* Toscelik's Supplemental Questionnaire Response at 11 (September 1, 2009).

[21] *See* Toscelik's Supplemental Questionnaire Response at 3 (November 9, 2009).

[22] *See* Preliminary Calculations Memorandum for Toscelik (March 31, 2010).

[23] *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 74 FR 46100, 46103, 46106 (September 8, 2009) at "Research and Development Grants Under the Industrial Development Act" and "R&D Grants Under the Act on the Promotion of the Development of Alternative Energy," unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 55192 (October 27, 2009).

IV. Programs Preliminarily Determined To Not Be Used

We examined the following programs and preliminarily determine that Borusan and Toscelik did not apply for or receive benefits under these programs during the POR:

A. Post-Shipment Export Loans.
B. Pre-Shipment Rediscount Loans.
C. Export Credit Bank of Turkey Buyer Credits.
D. Subsidized Turkish Lira Credit Facilities.
E. Subsidized Credit for Proportion of Fixed Expenditures.
F. Subsidized Credit in Foreign Currency.
G. Regional Subsidies.

Verification

The Department's regulations provide that factual information upon which the Secretary relies for the final results of an administrative review will be verified if a domestic party timely requests verification and the Secretary has not conducted verification during either of the two immediately preceding administrative reviews. *See* 19 CFR 351.307(b)(1)(v). As such, because the Department has not verified Borusan in either of the two immediately preceding administrative reviews of this order (*i.e.,* the 2005 and 2006 administrative reviews),[24] and petitioner requested that the Department conduct a verification in this review, the Department will be verifying the questionnaire responses submitted by Borusan after these preliminary results.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 2008, through December 31, 2008, we preliminarily determine the total net countervailable subsidy rate for Borusan is 0.12 percent *ad valorem* and for Toscelik is 0.09 percent *ad valorem;* both rates are *de minimis,* pursuant to 19 CFR 351.106(c)(1).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailing duties all shipments of subject merchandise produced by Borusan and Toscelik entered, or withdrawn from warehouse, for consumption from January 1, 2008, through December 31, 2008. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise produced by Borusan and Toscelik, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. Those rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case and rebuttal briefs will be due at the dates specified by the Department. The Department will notify interested parties of the case and rebuttal due dates once those dates are finalized. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of

[24] Borusan was last verified during the 2004 administrative review. Toscelik was last verified during the new shipper review that covered the period of January 1, 2005, through December 31, 2005.

proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: March 25, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7419 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Technical Information Service

Request for Nominations for Members to Serve on the National Technical Information Service Advisory Board

AGENCY: National Technical Information Service; Department of Commerce.

ACTION: Notice.

SUMMARY: The National Technical Information Service (NTIS) is seeking five (5) qualified candidates to serve as members of its Advisory Board, one of whom will also be designated as chairperson. The Board will meet at least semiannually to advise the Secretary of Commerce and the Director of NTIS on NTIS's mission, plans, general policies and fee structure. NTIS is seeking candidates who can provide guidance on trends in the information industry as the result of technological change and on how NTIS can best adapt to these changes in meeting the needs of its customers.

DATES: Requests to be considered as a nominee should be received by May 3, 2010. Please include a resume and a statement of why you wish to be considered and what you believe you can contribute as a member.

SUPPLEMENTARY INFORMATION: The Board was established pursuant to Section 3704b(c) of Title 15, United States Code. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. Members are considered Special Government Employees and will be subject to all applicable ethics rules. They will be required to submit a financial disclosure statement.

FOR FURTHER INFORMATION CONTACT: Mr. Steven D. Needle, Designated Federal Officer, at the mailing address indicated below, by telephone at (703) 605–6404, or via e-mail at *sneedle@ntis.gov*. If submitting an inquiry via e-mail, please state "NTIS Advisory Board" in the subject line.

ADDRESSES: Completed requests to be considered as a nominee or requests for information should be sent to Mr. Steven D. Needle, Office of the Director, National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312.

Dated: March 26, 2010.

Bruce Borzino,

Director.

[FR Doc. 2010–7414 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0034]

Defense Transportation Regulation, Part IV

AGENCY: United States Transportation Command (USTRANSCOM), DOD.

ACTION: Notice.

SUMMARY: DOD has issued Phase III Final-Draft Business Rules for the Defense Personal Property Program (DP3) in the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9R). The Phase III Business Rules encompass procedures for Non-temporary Storage (NTS), Domestic Small Shipments (dS2, formerly DPM), Domestic and International Local Moves (dLM and iLM) and International Intra-Country Moves (iCM). DP3 Phase III Business Rules will appear as DTR Part IV, Appendix V, and are available for review on the USTRANSCOM Web site at *http://www.transcom.mil/j5/pt/dtr_part_iv_phase_iii.cfm.*

DATES: Comments must be received on or before 1 June 2010.

ADDRESSES: Do not submit comments directly to the point of contact under **FOR FURTHER INFORMATION CONTACT** or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission. Request comments be submitted in the identified matrix-format posted with the business rules. You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Teague, United States Transportation Command, TCJ5/4–PI, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; (618) 229–1985.

SUPPLEMENTARY INFORMATION: In furtherance of DOD's goal to develop and implement an efficient personal property program to facilitate quality movements for our military members and civilian employees, Phase III Business Rules were developed in concert with the Military Services and SDDC. The following Phase III Business Rules are available for review and comment:

Attachment V.C—TSP Qualifications
Attachment V.D—Rate Filing
Attachment V.E—Customer Satisfaction Survey
Attachment V.F—Best Value Score
Attachment V.G—Electronic Bill Payment
Attachment V.H—TSP Ranking
Attachment V.J—Shipment Management
Attachment V.Q—Quality Assurance

Note: The associated operational NTS Tender of Service, dS2 Solicitation, and dLM/iLM/iCM Tender of Service are available on the Military Surface Deployment and Distribution Command (SDDC) Web site at: *http://www.sddc.army.mil/Public/Personal%20Property/Defense%20Personal%20Property%20Program/Phase%20III?summary=fullcontent.*

Any subsequent modification(s) to the business rules will be published in the **Federal Register** and incorporated into the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9R). These program requirements do not impose a legal requirement, obligation, sanction or penalty on the public sector, and will not have an economic impact of $100 million or more.

Additional Information

A complete version of the DTR is available via the Internet on the USTRANSCOM homepage at *http://*

www.transcom.mil/j5/pt/dtr_part_iv.cfm.

Dated: March 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–7339 Filed 3–31–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Overview Information; Migrant Education Program (MEP) Consortium Incentive Grants Program; Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.144F.

Dates:

Applications Available: April 1, 2010.

Deadline for Transmittal of Applications: May 7, 2010.

Deadline for Intergovernmental Review: July 9, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the MEP Consortium Incentive Grants program is to provide incentive grants to State educational agencies (SEAs) that participate in consortia with another SEA or other appropriate entity to improve the delivery of services to migrant children whose education is interrupted. Through this program, the Department provides financial incentives to SEAs to participate in consortia that provide high-quality project designs and services to improve the intrastate and interstate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

Priorities: These priorities are from the notice of final requirements for this program, published in the **Federal Register** on March 3, 2004 (69 FR 10110) and from the notice of final priority, published in the **Federal Register** on March 12, 2008 (73 FR 13217).

Absolute Priorities: For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these priorities. In order for an SEA to be considered for an incentive grant, an application from a proposed consortium in which an SEA would participate must address one or more of the following absolute priorities:

1. Services designed to improve the proper and timely identification and recruitment of eligible migratory children whose education is interrupted;

2. Services designed (based on a review of scientifically based research) to improve the school readiness of pre-school-aged migratory children whose education is interrupted;

3. Services designed (based on a review of scientifically based research) to improve the reading proficiency of migratory children whose education is interrupted;

4. Services designed (based on a review of scientifically based research) to improve the mathematics proficiency of migratory children whose education is interrupted;

5. Services designed (based on a review of scientifically based research) to decrease the dropout rate of migratory students whose education is interrupted and improve their high school completion rate;

6. Services designed (based on a review of scientifically based research) to strengthen the involvement of migratory parents in the education of migratory students whose education is interrupted;

7. Services designed (based on a review of scientifically based research) to expand access to innovative educational technologies intended to increase the academic achievement of migratory students whose education is interrupted; and

8. Services designed (based on review of scientifically based research) to improve the educational attainment of out-of-school migratory youth whose education is interrupted.

Program Authority: 20 U.S.C. 6398(d).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except 75.232), 76, 77, 79, 80 (except 80.40(b)), 82, 84, 85, and 99; (b) the notice of final requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110); and (c) the notice of final priority published in the **Federal Register** on March 12, 2008 (73 FR 13217).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Formula grants.

Estimated Available Funds: $3,000,000.

Estimated Range of Awards: $85,000–$175,000.

Estimated Average Size of Awards: $130,434.

Maximum Award: By statute, the maximum amount that we may award under this program is $250,000.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs receiving MEP Basic State Formula grants, in consortium with or SEAs or other appropriate entities.

2. *a. Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Pursuant to the notice of final requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110), the supplement-not-supplant provisions in sections 1120A(b) and 1304(c)(2) of the Elementary and Secondary Education Act of 1965, as amended, are applicable to this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* Michelle Moreno, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E257, LBJ, Washington, DC 20202–6135. *Telephone:* (202) 401–2928 or by *e-mail: michelle.moreno@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 this program.

Page Limit: The application narrative (Part IV of the application) is where you, the applicant, describe the proposed consortium, including how the consortium's proposed project addresses (1) the Application Requirements listed in the notice of final requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110), (2) one or more of the eight absolute priorities, and (3) the selection criteria that reviewers use to evaluate your application. You must limit Part IV to no more than 30 double-spaced pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

• For charts, tables, and graphs, use a font that is either 12-point or larger or no smaller than 10 pitch.

The page limit applies only to Part IV of the application. It does not apply to Parts I through III or Parts V through VII, or to any appendices, resumes, bibliography, or letters of support. However, an applicant must include all of the application narrative in Part IV.

Our reviewers will not read any pages of the Part IV narrative that exceed the page limit.

3. *Submission Date and Times:*

Applications Available: April 1, 2010.

Deadline for Transmittal of Applications: May 7, 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. 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: July 9, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

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 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 Number 84.144F), 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 Number 84.144F), 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 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 notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR part 75.210 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:* Grant recipients under this program must submit the annual and final performance and financial reports specified in the notice of final requirements for this grant program published in the **Federal Register** on March 3, 2004 (69 FR 10110).

4. *Performance Measures:* Consortium grantees are required to report on their project's effectiveness based on the project objectives, performance measures, and scheduled activities outlined in the consortium's application.

In addition, all grantees are required, under 34 CFR 80.40(b), to report on the Government Performance and Results Act (GPRA) indicators as part of their Consolidated State Performance Report. The GPRA indicators established by the Department for the Migrant Education Program, of which the Consortium Incentive Grants are a component, are:

a. The percentage of migrant students at the elementary school level who meet or exceed the proficient level on State assessments in reading.

b. The percentage of migrant students at the middle school level who meet or exceed the proficient level on State assessments in reading.

c. The percentage of migrant students at the elementary school level who meet or exceed the proficient level on State assessments in mathematics.

d. The percentage of migrant students at the middle school level who meet or exceed the proficient level on State assessments in mathematics.

e. The percentage of migrant students who drop out from secondary school (grades 7–12).

f. The percentage of migrant students who graduate from high school.

VII. Agency Contact

For Further Information Contact: Michelle Moreno, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E257, LBJ, Washington, DC 20202–6135. *Telephone:* (202) 401–2928 or by *e-mail: michelle.moreno@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.

You may also view this document in text at the following site: *http://www.ed.gov/about/offices/list/oese/ome/index.html*

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: March 29, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–7372 Filed 3–31–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12737–002]

Jordan Limited Partnership; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 25, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* P–12737–002.

c. *Date Filed:* April 16, 2009.

d. *Applicant:* Jordan Limited Partnership.

e. *Name of Project:* Gathright Hydroelectric Project.

f. *Location:* On the Jackson River in Alleghany County, Virginia at the existing U.S. Army Corps of Engineers Gathright Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, Tennessee 37738 (865) 436–0402.

i. *FERC Contact:* Jeffrey Browning, (202) 502–8677 or *jeffrey.browning@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed Gathright Project would be located at the existing U.S. Army Corps of Engineers (Corps) Gathright Dam. The existing Corps facilities consist of: (1) The 257-foot-high, 1,172-foot-long rock-fill Gathright Dam with an impervious core with a 32-foot-wide top; (2) the 2,530-acre Lake Moomaw at a normal conservation pool water surface elevation of 1,582.0 feet National Geodetic Vertical Datum; (3) an outlet works comprised of an intake tower with 10 water quality intake gates, two intake tunnel passageways (north and south), an outlet tunnel, a stilling basin and outlet channel; and (4) an emergency spillway located 2.4-miles south of the dam comprised of an ungated and unpaved 2,680-foot-long, 100-foot-wide trapezoidal channel.

The proposed project would utilize the head created by the existing Corps dam and consist of: (1) A new 155-foot-high, 16-foot-wide, 10-foot-deep intake module attached to the existing intake tower upstream of the south tunnel passageway trashrack; (2) one new 3.7-megawatt generating unit attached to the top of the intake module; (3) one new Francis turbine and draft tube at the bottom of the intake module; (4) a new 0.94-mile-long, 46-kilovolt transmission line; and (5) appurtenant facilities.

The project would be operated in run-of-river mode in that it would have no storage and only use flows released by the Corps in accordance with its present operations.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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 Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address,

and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intents to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Notice of the availability of the EA, November 2010.

p. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7299 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–52–000]

Central Transmission, LLC v. PJM Interconnection L.L.C.; Notice of Complaint

March 26, 2010.

Take notice that on March 25, 2010, Central Transmission, LLC (Central Transmission) filed a complaint against the PJM Interconnection L.L.C. (PJM) pursuant to section 206 of the Federal Power Act (FPA), alleging that Schedule 6 of the PJM Operating Agreement and Schedule 12 of the PJM Open Access Transmission Tariff are unjust and unreasonable and unduly discriminatory in violation of FPA section 206 insofar as the provisions (i) could prevent PJM from designating Central Transmission to construct and own a transmission project; (ii) under the same cost recovery provisions in Schedule 12 of the PJM Tariff on the same terms and conditions that are available to those entities that currently own transmission facilities that comprise the PJM transmission system.

Central Transmission certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 April 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7302 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–10–000]

Dodge Mill Reality LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

March 25, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–10–000.

c. *Date Filed:* March 8, 2010.

d. *Applicant:* Dodge Mill Reality LLC.

e. *Name of Project:* Dodgeville Dam Hydroelectric Project.

f. *Location:* The proposed Dodgeville Dam Hydroelectric Project will be located on Ten Mile River, in the town of Attleboro, Bristol County, Massachusetts.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Chad W. Cox, P.E., GZA GeoEnvironmental, Inc., One Edgewater Drive, Norwood, MA 02446; *telephone:* (781) 278–5787; *Fax:* (781) 278–5701*; e-mail: www.chad.cox@gza.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *E-mail address: henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* April 26, 2010.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. If unable to be filed

electronically, documents may be paper-filed. To paper-file, an original and eight copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site at *http://www.ferc.gov.filing-comments.asp*

Please include the docket number (DI10–10–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Dodgeville Dam Hydroelectric Project will consist of: (1) An existing 275-acre-foot mill pond; (2) an existing 20-foot-high, 400-foot-long earthen mill pond dam, with a 40-foot-long timber spillway, with provisions for 3-foot-high stoplogs; (3) a proposed 100-foot-long, 6-foot-diameter penstock; (4) a proposed powerhouse containing 60-kW generators and electrical equipment; (5) a short tailrace connected to Ten Mile River; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7294 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–14–000]

Kern River Gas Transmission Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Apex Expansion Project

March 26, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Apex Expansion Project proposed by Kern River Gas Transmission Company (Kern River) in the above-referenced docket. Kern River requests authorization to expand its natural gas pipeline system in Wyoming, Utah, and Nevada, to transport an additional 266 million cubic feet per day of natural gas from existing receipt points in southwestern Wyoming, to existing delivery connections in southern Nevada.

The draft EIS assesses the potential environmental effects of the construction and operation of the Apex Expansion Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project would have some adverse environmental impact; however, these impacts would be reduced to less-than-significant levels with the implementation of Kern River's proposed mitigation and the additional measures we recommend in the draft EIS.

The Bureau of Land Management (BLM), the Forest Service (USFS), and the Bureau of Reclamation (Reclamation) participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The cooperating agencies will adopt and use the EIS to consider the issuance of right-of-way grants on federally administered lands. While the conclusions and recommendations presented in the draft EIS were developed with input from the cooperating agencies, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Approximately 28 miles of 36-inch-diameter natural gas pipeline loop [1] extending southwest in Utah from Morgan County, through Davis to Salt Lake County;
- One new 30,000 horsepower compressor station (known as the Milford Compressor Station) in Beaver County, Utah;
- Modifications to four existing compressor stations to add additional compression: The Coyote Creek Compressor Station located in Uinta County, Wyoming; the Elberta Compressor Station located in Utah County, Utah; the Fillmore Compressor Station located in Millard County, Utah;

[1] A loop is a segment of pipe that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

and the Dry Lake Compressor Station located in Clark County, Nevada;

- Six mainline valves; and
- Three pig [2] launcher and two pig receiver facilities.

The draft EIS 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*. A limited number of copies 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 draft EIS have been mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; local newspapers and libraries in the project area; intervenors to the FERC's proceeding; and potentially affected landowners and other interested individuals and groups. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version.

Route Variations Recommended by FERC in the Draft EIS

Some landowners are receiving the draft EIS because their property has been identified as potentially being affected by the Mueller Park or Salt Lake III Route Variations recommended by FERC staff to avoid or lessen environmental impacts along Kern River's proposed pipeline route. Refer to sections 3.5.6 and 3.5.7 of the draft EIS for discussions of the Mueller Park and Salt Lake III Route Variations, respectively. The Commission staff wants to ensure that all potentially affected landowners have the opportunity to participate in the environmental review process. Therefore, staff is soliciting comments to assist with the environmental analysis of these route variations, which will be presented in the final EIS.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments before May 17, 2010.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP10–14–000) 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*. Please carefully follow these instructions so that your comments are properly recorded.

(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;"

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings its staff will conduct in the project area to receive comments on the draft EIS. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared. All meetings will begin at 7 p.m., and are scheduled as follows:

Date	Location
Tuesday, April 27, 2010.	Millcreek Junior High School, 245 East 1000 South, Bountiful, UT 84010 801–402–6200
Wednesday, April 28, 2010.	Morgan County Courthouse Auditorium, 48 West Young Street, Morgan, UT 84050, 801–845–4027

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214).[3] 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.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP10–14–000). 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; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that 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. 2010–7301 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[3] 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. ER10–913–000]

Nasdaq OMX Commodities Clearing—Delivery, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 25, 2010.

This is a supplemental notice in the above-referenced proceeding of Nasdaq OMX Commodities Clearing—Delivery, LLC'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 April 14, 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7297 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–899–000]

Consulting Gasca & Associates, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 25, 2010.

This is a supplemental notice in the above-referenced proceeding of Consulting Gasca & Associates, LLC'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 April 14, 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 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. 2010–7298 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–912–000]

Nasdaq OMX Commodities Clearing—Contract Merchant, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 25, 2010.

This is a supplemental notice in the above-referenced proceeding of Nasdaq OMX Commodities Clearing—Contract Merchant, LLC'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 April 14, 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 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. 2010–7296 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–914–000]

Nasdaq OMX Commodities Clearing—Finance, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 25, 2010.

This is a supplemental notice in the above-referenced proceeding of Nasdaq OMX Commodities Clearing—Finance, LLC'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 April 14, 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 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. 2010–7295 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. DI10–9–000

Domtar Maine LLC; Notice of Petition for Declaratory Order and Soliciting Comments, Protests, and/or Motions To Intervene

March 25, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No.:* DI10–9–000.

c. *Date Filed:* March 5, 2010.

d. *Applicant:* Domtar Maine LLC.

e. *Name of Project:* Forest City (FERC No. 2660), Vanceboro (FERC No. 2492), and West Branch (FERC No. 2618).

f. *Location:* East Branch of the St. Croix River, in Washington and Aroostook Counties, Maine; at the outlet of Spednick Lake near Vanceboro, Maine; and West Branch of St. Croix River in Washington, Hancock, and Penobscot Counties, Maine, respectively.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Matthew D. Manahan, One Monument Square, Portland, ME 04101; e-mail: *mmanahan@pierceatwood.com*; telephone: (207) 791–1189; Fax: (207) 791–1350.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* April 26, 2010.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI10–9–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The existing Forest City Project (P–2660) consists of all United States portions of the following project works: (1) Forest City Dam, a 16-foot-high, 500-foot-long earth embankment dam, containing a gated timber spillway structure 65 feet wide, with 3 gates and a fish passage facility; (2) a reservoir (East Grand Lake) with a surface area of 16,070 acres at elevation 434.94 feet m.s.l., and storage capacity of 205,300 acre-feet; and (3) other appurtenances.

The existing Vanceboro Project (P–2492) consists of: (1) A concrete section approximately 69 feet long, including a spillway section with two tainter gates (each about 22.5 feet long), and a

fishway about 8 feet wide; (2) earth embankment at each end (total length approximately 400 feet); (3) a reservoir (the portion of Spednick Lake within the United States); and (4) appurtenant facilities.

The existing West Branch Project (P–2618) consists of:

(A) West Grand Lake development: (1) West Grand Lake Dam, earth embankment and gravel-filled timber crib structure, 485 feet long and 13 feet high, containing a gated spillway structure, 77 feet wide with 5 gates and a fish passage facility 24 feet wide; (2) a reservoir with surface area of 23.825 acres at elevation 301.43 feet m.s.l. and storage capacity of 160,000 acre-feet; and (3) other appurtenances; and

(B) Sysladobsis Lake development: (1) Sysladobsis Lake Dam, an earth embankment structure, 250 feet long and 5.5 feet high, with a concrete cut-off wall and rock masonry downstream face, containing a gated spillway structure 23 feet wide with 2 gates, and a fish passage facility 7 feet wide; (2) a reservoir with surface area of 5,400 acres at elevation 305.62 feet m.s.l., and storage capacity of 25,000 acre-feet; and (3) other appurtenances.

The above-referenced reservoirs supply water to three downstream generating facilities: Grand Falls, Woodland, and Milltown. These three generating facilities do not require licensing by the Commission because they were authorized by a 1916 Act of Congress that predated the 1920 enactment of what is now part I of the Federal Power Act. The issue raised by Domtar Maine LLC's petition is whether the above-referenced storage reservoirs are required to be licensed under section 23(b)(1) of the Federal Power Act. Domtar Maine LLC states that the projects are not required to be licensed because they contribute only a *de minimis* amount to power generated at the downstream generating projects, and they are not connected to a FERC-licensed project.

When a Petition for Declaratory Order is filed with the Commission, requesting a jurisdictional determination for an existing project, a review is begun to determine if the interests of interstate or foreign commerce are affected by the project. The Commission also determines whether or not the project: (1) Is located on a navigable waterway; (2) is occupying or affecting public lands or reservations of the United States; (3) is utilizing surplus water or water power from a government dam; or (4) if applicable, has undertaken any construction subsequent to 1935 that may have increased the project's head or generating capacity, or has otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7293 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–11–000]

ECOP Gas Company, LLC; Notice of Petition for Rate Approval

March 25, 2010.

Take notice that on March 18, 2010, ECOP Gas Company, LLC (ECOP) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations, and its initial Statement of Operating Conditions. ECOP states that it is an intrastate pipeline, within the meaning of sections 2(16) and 311(a)(2) of the Natural Gas Policy Act of 1978. ECOP's proposed interruptible interstate transportation rate is $0.0772 per Dth.

Any person desiring to participate in this rate proceeding must file a motion 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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 Friday, April 9, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7300 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

March 26, 2010.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP09–35–000	3–22–10	Leslie and Dick Marchant.
2. CP09–54–000	3–22–10	James J. Cleary.
3. CP09–54–000	3–22–10	Marjorie Sill.
Exempt:		
1. CP09–54–000	3–4–10	Hon. Michael B. Enzi.
2. P–739–022	3–12–10	Brenda Winn.
3. P–2677–019	3–24–10	Nicholas J. Utrup.
4. P–13266–000, *et al.*	3–22–10	Philip T. Feir.
5. P–13641–000	3–10–10	Joe Nungaray.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7305 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR10–8–000]

Whiting Oil and Gas Corporation; Notice of Request for Temporary Waiver of Tariff Filing and Reporting Requirements

March 26, 2010.

Take notice that on February 23, 2010, Whiting Oil and Gas Corporation (Whiting) tendered for filing an application for temporary waiver of the filing and reporting requirements of section 6 and section 20 of the Interstate Commerce Act.

Whiting states that its pipeline is a small crude oil gathering line connecting wells in the Sanish Field in North Dakota to a delivery point to Nexen Pipeline USA, Inc. at the Robinson Lake Plant in Montrail County, North Dakota. Whiting further states that it owns 100 percent of the throughput gathered on the pipeline. Whiting also states that there are no intermediate points on the pipeline and that no third party has requested the construction of any such intermediate point or otherwise expressed interest in becoming a shipper on the pipeline.

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.

Comment Date: 5 p.m. Eastern Time Monday, April 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7303 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12783–003]

Inglis Hydropower, LLC; Notice Soliciting Scoping Comments

March 26, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12783–003.

c. *Date filed:* July 22, 2009.

d. *Applicant:* Inglis Hydropower, LLC.

e. *Name of Project:* Inglis Hydropower Project.

f. *Location:* The proposed project would be located at the existing Inglis Bypass Channel and Spillway on the Withlacoochee River, west of Lake Rousseau and the existing Inglis Dam, within the town of Inglis, in Levy, Citrus, and Marion counties, Florida. No federal lands would be occupied by the proposed project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Dean Edwards, P.O. Box 1565, Dover, FL 33527, (813) 659–3014; and Mr. Kevin Edwards, P.O. Box 143, Mayodan, NC 27027, (336) 589–6138.

i. *FERC Contact:* Jennifer Adams at (202) 502–8087, or *jennifer.adams@ferc.gov*.

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice, or April 25, 2010.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed 2.0-megawatt project would consist of: (1) A 45-foot-long by 100-foot-wide intake conveying water from the Bypass Channel; (2) a 130-foot-long penstock consisting of two 14-foot by 14-foot reinforced concrete conduits; (3) a 60-foot-long by 80-foot-wide by 30-foot-high concrete powerhouse containing two 0.8 megawatt (MW) and one 0.4 MW vertical shaft turbines; (4) a 100-foot-long concrete discharge channel carrying the water from the powerhouse back into the Bypass Channel below the spillway; (5) a new substation adjacent to the powerhouse; (6) a 120-foot long, 24-kilovolt transmission line connecting the project substation to the local utility; and (7) appurtenant facilities. The Inglis Project would generate approximately 12,300 Megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's website 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 Online Support. A copy is available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:*

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Inglis Hydropower Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information on the Scoping Document (SD) issued on March 26, 2010.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may 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, call 1–866–208–3676 or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–7304 Filed 3–31–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–OAR–2008–0932; FRL–9132–9]

Adequacy Status of the Beaumont-Port Arthur, TX Maintenance Plan; 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: EPA is notifying the public that it has found that the motor vehicle emissions budgets (MVEB) in the Beaumont-Port Arthur, Texas (BPA) Redesignation Request/Maintenance Plan State Implementation Plan (SIP) revision, submitted on December 16, 2008, by the Texas Commission on Environmental Quality (TCEQ) are adequate for transportation conformity purposes. As a result of EPA's finding, the BPA area must use these budgets for future conformity determinations for the 1997 8-hour ozone standard.

DATES: These budgets are effective April 16, 2010.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* You may also contact Mr. Jeffrey Riley, Air Planning Section (6PD–L), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8542, E-mail address: *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refers to EPA. The word "budget(s)" refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X).

On December 16, 2008, we received a State Implementation Plan (SIP) revision from the Texas Commission on Environmental Quality (TCEQ). This revision consisted of a Redesignation Request/Maintenance Plan SIP for the Beaumont-Port Arthur (BPA) ozone nonattainment area. This submission established the motor vehicle emissions budgets (MVEB) for the BPA area for the year 2021. The MVEB is the amount of emissions allowed in the state implementation plan for on-road motor vehicles; it establishes an emissions ceiling for the regional transportation network. The MVEB is provided in Table 1:

TABLE 1—BEAUMONT/PORT ARTHUR NO_X AND VOC MVEB

[Summer season tons per day]

	2021
NO_X	*7.24
VOC	4.77

** Includes an allocation of 1 tpd from the available NO_X safety margin.

On April 15, 2009, EPA posted the availability of the BPA area budget on EPA's Web site, as part of the adequacy process, for the purpose of soliciting public comments. The comment period closed on May 15, 2009, and we received no comments.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 6 sent a letter to TCEQ on March 4, 2010, finding that the MVEB in the BPA Redesignation Request/Maintenance Plan SIP, submitted on December 16, 2008, is adequate and must be used for transportation conformity determinations in the BPA area. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 Code of Federal Regulations (CFR) part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, "Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the BPA Redesignation Request/Maintenance Plan SIP revision submittal. Even if EPA finds a budget adequate, the Redesignation Request/Maintenance Plan SIP revision submittal could later be disapproved.

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEB if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). *See,* 73 FR 4419 (January 24, 2008).

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

Dated: March 24, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–7314 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0530; FRL–9132–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Wool Fiberglass Insulation Manufacturing Plants and NESHAP for Wool Fiberglass Manufacturing (Renewal), EPA ICR Number 1160.09, OMB Control Number 2060–0114

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 3, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0530, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 *FR* 38005), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0530, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Wool Fiberglass Insulation Manufacturing Plants and NESHAP for Wool Fiberglass Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 1160.09, OMB Control Number 2060–0114.

ICR Status: This ICR is scheduled to expire on May 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The NSPS for Wool Fiberglass Insulation Manufacturing Plants, published at 40 CFR part 60, subpart PPP, were proposed on February 7, 1984 and promulgated on February 25, 1985, and the NESHAP for Wool Fiberglass Manufacturing, published at 40 CFR part 63, subpart NNN, were proposed on March 31, 1997 and promulgated on June 14, 1999.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 103 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Wool fiberglass insulation manufacturing plants.

Estimated Number of Respondents: 61.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 18,599.

Estimated Total Annual Cost: $2,233,940, which includes $1,745,440 in labor costs, no capital/startup costs, and $488,500 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a small increase in the total labor hours for this ICR, due to an adjustment. The previous ICR did not include managerial and clerical hours for 40 CFR part 60, subpart PPP. This adjustment also results in a slight increase in the per respondent labor hours, from 101 to 103 hours per response.

Although these adjustments resulted in an increase in calculated burden hours, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Additionally, the growth rate for the respondents is very low, negative or non-existent.

There is an increase in both respondent and Agency costs resulting from labor rate increases. This ICR has been updated to present the most recent available labor rates.

Dated: March 26, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–7315 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0402; FRL–9132–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Plastic Parts and Products Surface Coating (Renewal), EPA ICR Number 2044.04, OMB Control Number 2060–0537

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 3, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0402, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0402, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Plastic Parts and Products Surface Coating (Renewal).

ICR Numbers: EPA ICR Number 2044.04, OMB Control Number 2060–0537.

ICR Status: This ICR is scheduled to expire on April 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Entities potentially affected by this action are the owners or operators of plastic parts and products surface coating facilities. The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart PPPP. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Plastic parts and products surface coating facilities.

Estimated Number of Respondents: 828.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 320,917.

Estimated Total Annual Cost: $27,444,633, which includes $27,180,233 in labor costs, $16,000 in capital/startup costs, and $248,400 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a small decrease in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This change in burden from the most recently approved ICR is due to an adjustment. Minor calculation errors in the previous ICR were corrected.

Dated: March 22, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–7316 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0492; FRL–9132–8]

Draft Document Related to the Review of the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Comment Period.

SUMMARY: The EPA is announcing an extension of the public comment period for a draft assessment document titled, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—First External Review Draft* (75 FR 4067; January 26, 2010). The EPA is extending the comment period that originally was scheduled to end on April 12, 2010. The extended comment period will close on April 26, 2010. The EPA recognizes that this document was released for public comment nine days later than originally anticipated. As a result, the Agency is extending the comment period by two weeks to provide stakeholders and the public with adequate time to conduct appropriate analysis and prepare meaningful comments.

DATES: Comments on the above report must be received on or before April 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0492, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–0492.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0492. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For questions related to the *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—First External Review Draft* (March 2010), please contact Ms. Beth Hassett-Sipple, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: hassett-sipple.beth@epa.gov; telephone:* 919–541–4605; *fax:* 919–541–0237.

General Information

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and, if appropriate, revise the NAAQS based on the revised air quality criteria.

As part of the ongoing review of the NAAQS for particulate matter (PM), EPA released a draft document titled *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—First External Review Draft* (March 2010, EPA 452/P–10–003) for review by the Clean Air Scientific Advisory Committee (CASAC) and public comment (75 FR 4067; January 26, 2010). The first draft Policy

Assessment builds upon information presented in the *Integrated Science Assessment for Particulate Matter* (Final Report)[1] and two draft assessment documents, *Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft*[2] and *Particulate Matter Urban-Focused Visibility Assessment—Second External Review Draft.*[3] The first draft Policy Assessment may be accessed online through EPA's TTN Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pa.html.* The EPA is soliciting advice and recommendations from the CASAC by means of a review of the first draft Policy Assessment at an upcoming public teleconference of the CASAC that will be held on April 8–9, 2010 (75 FR 8062; February 23, 2010). The EPA will consider comments received from the CASAC and the public in preparing revisions to this document. A second draft Policy Assessment document will be issued later this spring for CASAC and public review. The EPA will consider CASAC and public comments on the second draft Policy Assessment in preparing a final Policy Assessment. The final Policy Assessment will serve to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the current PM NAAQS.

The first draft Policy Assessment does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising this document.

Dated: March 25, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–7307 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA/600/R–08/139F; December 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html.*

[2] EPA 452/P–10–001; February 2010; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.*

[3] EPA 452/P–10–002; January 2010; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.*

ENVIRONMENTAL PROTECTION AGENCY

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in May 2010. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html.* MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, send a blank e-mail to *lists-mstrs@lists.epa.gov.*

DATES: Tuesday May 4, 2010 from 9 a.m. to 4 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at the Doubletree Hotel Crystal City-National Airport, 300 Army Navy Drive, Arlington, VA 22202–2891. Phone 703–416–4100. The hotel is located three blocks from the Pentagon City Metro station, and shuttle buses are available to and from both the Metro station and Washington Reagan National Airport.

FOR FURTHER INFORMATION CONTACT: For technical information: John Guy, Designated Federal Officer, Transportation and Regional Programs Division, Mailcode 6403J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Ph: 202–343–9276; *e-mail: guy.john@epa.gov.* For logistical and administrative information: Ms. Cheryl Jackson, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; 202–343–9653; *e-mail: jackson.cheryl@epa.gov.*

Background on the work of the Subcommittee is available at: *http://www.epa.gov/air/caaac/mobile_sources.html.* Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. Guy at the address above by April 27, 2010. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Mr. Guy or Ms. Jackson (see above). To request accommodation of a disability, please contact Mr. Guy or Ms. Jackson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 25, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–7200 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9133–3]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a consolidated petition for review filed by the New Jersey Department of Environmental Protection ("NJDEP") in the United States Court of Appeals for the Third Circuit: *NJDEP* v. *Johnson,* Nos. 07–0612 and 08–4818 (3rd Cir.). On July 21, 2006, NJDEP filed an administrative petition seeking an objection to a permit proposed to be issued under title V of the Act, 42 U.S.C. 7661 *et seq.,* to RRI Energy Mid-Atlantic's Portland Generating Station in Northampton County, Pennsylvania.[1] Following denial of the petition, on September 14, 2007, NJDEP filed a petition for review of that denial (No. 07–0612) and submitted an administrative petition for reconsideration of the denial. Following denial of the petition for reconsideration, NJDEP filed a petition for review of that denial (No. 08–4818) and the two petitions were consolidated into one action. On July 23, 2009, NJDEP filed an administrative petition asking the Administrator to reopen the title V permit for the RRI Energy Portland plant pursuant to 40 CFR 70.7(f)(iii) & (iv). Under the terms of the proposed settlement agreement, NJDEP

[1] At the time of the petition, the name of the company was "Reliant Energy," but the company subsequently changed its name. To avoid confusion this notice uses the company's current name.

has agreed to dismiss its pending consolidated petition for review, and EPA has agreed to respond to NJDEP's petition to reopen the permit within one year after the date when this Agreement becomes final.

DATES: Written comments on the proposed consent decree must be received by *May 3, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0987, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–1222; *fax number* (202) 564–5603; *e-mail address: orlin.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This settlement agreement would resolve pending challenges to EPA's denial of the title V petition and petition for reconsideration filed by NJDEP that seek an objection to a permit proposed to be issued by Pennsylvania Department of Environmental Protection to RRI Energy Mid-Atlantic Power Holdings LLC for its Portland Generating Station in Pennsylvania. Under the terms of the proposed settlement agreement, EPA shall make a determination on the petition to reopen the title V permit filed by NJDEP on July 23, 2009 no later than one year after the date when this Agreement becomes final. Within 10 days after this Agreement is finalized, NJDEP and EPA shall file a joint motion for voluntary dismissal with prejudice of the pending litigation.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the settlement agreement should be withdrawn, the terms of the settlement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get a Copy of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0987) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 25, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–7318 Filed 3–31–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–04]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2008–09 eighth round review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before May 17, 2010.

ADDRESSES: Bank members selected for the 2008–09 eighth round review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at *hmgcommunitysupportprogram@fhfa.gov*.

FOR FURTHER INFORMATION CONTACT: Rona Richardson, Office Assistant, Housing Mission and Goals, Federal Housing Finance Agency, by telephone at 202–408–2945, by electronic mail at *Rona.Richardson@FHFA.gov*, or by hard-copy mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the May 17, 2010 deadline prescribed in this notice. 12 CFR 1290.2(b)(1)(ii) and (c). On or before April 15, 2010, each Bank will notify the members in its district that have been selected for the 2008–09 eighth round community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2008–09 eighth round community support review cycle:

Federal Home Loan Bank of Boston—District 1

First Bristol Federal Credit Union	Bristol	Connecticut.
Savings Bank of Danbury	Danbury	Connecticut.
American Eagle Federal Credit Union	East Hartford	Connecticut.
First Bank of Greenwich (The)	Greenwich	Connecticut.
Seasons Federal Credit Union	Middletown	Connecticut.
Dime Bank	Norwich	Connecticut.
Darien Rowayton Bank	Rowayton	Connecticut.
Western Connecticut Federal Credit Union	Sandy Hook	Connecticut.
Stafford Savings Bank	Stafford Springs	Connecticut.
Stamford Federal Credit Union	Stamford	Connecticut.
Sikorsky Financial Credit Union	Stratford	Connecticut.
Torrington Savings Bank	Torrington	Connecticut.
Constitution Corporate Federal Credit Union	Wallingford	Connecticut.
Waterbury Connecticut Teachers Federal Credit Union	Waterbury	Connecticut.
Webster Bank, NA	Waterbury	Connecticut.
Mutual Security Credit Union	Wilton	Connecticut.
Maine State Credit Union	Augusta	Maine.
Biddeford Savings Bank	Biddeford	Maine.
Atlantic Regional Federal Credit Union	Brunswick	Maine.
Franklin-Somerset Federal Credit Union	Farmington	Maine.
Central Maine Federal Credit Union	Lewiston	Maine.
Rainbow Federal Credit Union	Lewiston	Maine.
TruChoice Federal Credit Union	Portland	Maine.
Evergreen Credit Union	Westbrook	Maine.
The Provident Bank	Amesbury	Massachusetts.
Athol-Clinton Co-Operative Bank	Athol	Massachusetts.

First Priority Credit Union	Boston	Massachusetts.
Massachusetts State Employees Credit Union	Boston	Massachusetts.
Members Plus Credit Union	Boston	Massachusetts.
Bridgewater Savings Bank	Bridgewater	Massachusetts.
Brookline Municipal Credit Union	Brookline	Massachusetts.
Harvard University Employees Credit Union	Cambridge	Massachusetts.
Metropolitan Credit Union	Chelsea	Massachusetts.
Pilgrim Bank	Cohasset	Massachusetts.
Delta-Wye Federal Credit Union	Dorchester	Massachusetts.
Everett Co-Operative Bank	Everett	Massachusetts.
St. Anne's Credit Union of Fall River	Fall River	Massachusetts.
I–C Federal Credit Union	Fitchburg	Massachusetts.
Holyoke Credit Union	Holyoke	Massachusetts.
Bank of Cape Cod	Hyannis	Massachusetts.
Jeanne D'Arc Credit Union	Lowell	Massachusetts.
St. Mary's Credit Union	Marlborough	Massachusetts.
Charles River Bank	Medway	Massachusetts.
Merrimac Savings Bank	Merrimac	Massachusetts.
Methuen Co-Operative Bank	Methuen	Massachusetts.
Millbury National Bank	Millbury	Massachusetts.
Village Bank (The)	Newton	Massachusetts.
Greylock Federal Credit Union	Pittsfield	Massachusetts.
Legacy Banks	Pittsfield	Massachusetts.
Central One Federal Credit Union	Shrewsbury	Massachusetts.
Winter Hill Bank, FSB	Somerville	Massachusetts.
Mass Bay Credit Union	South Boston	Massachusetts.
Freedom Credit Union	Springfield	Massachusetts.
Greater Springfield Credit Union	Springfield	Massachusetts.
Wakefield Co-Operative Bank	Wakefield	Massachusetts.
Webster Five Cents Savings Bank	Webster	Massachusetts.
Mutual Federal Savings Bank of Plymouth County	Whitman	Massachusetts.
Winchester Savings Bank	Winchester	Massachusetts.
Patriot Community Bank	Woburn	Massachusetts.
Hampshire First Bank	Manchester	New Hampshire.
Nashua Bank (The)	Nashua	New Hampshire.
Monadnock Community Bank	Peterborough	New Hampshire.
Northeast Credit Union	Portsmouth	New Hampshire.
Optima Bank & Trust Company	Portsmouth	New Hampshire.
Woodsville Guaranty Savings Bank	Woodsville	New Hampshire.
Dexter Credit Union	Central Falls	Rhode Island.
Peoples Credit Union	Middletown	Rhode Island.
Pawtucket Credit Union	Pawtucket	Rhode Island.
Coastway Community Bank	Providence	Rhode Island.
River Valley Credit Union	Brattleboro	Vermont.
Opportunities Credit Union	Burlington	Vermont.
Community National Bank	Derby	Vermont.
Vermont State Employees Credit Union	Montpelier	Vermont.
Ledyard National Bank	Norwich	Vermont.
First National Bank of Orwell	Orwell	Vermont.
Peoples Trust Company of St. Albans	Saint Albans	Vermont.
Wells River Savings Bank	Wells River	Vermont.

Federal Home Loan Bank of New York—District 2

The First National Bank of Absecon	Absecon	New Jersey.
Aspire Federal Credit Union	Clark	New Jersey.
1st Colonial National Bank	Collingswood	New Jersey.
First State Bank	Cranford	New Jersey.
North Jersey Community Bank	Englewood Cliffs	New Jersey.
Credit Union of New Jersey	Ewing	New Jersey.
Bank of New Jersey	Fort Lee	New Jersey.
Indus American Bank	Iselin	New Jersey.
First Choice Bank	Lawrenceville	New Jersey.
Sun National Bank	Medford	New Jersey.
Sterling Bank	Mount Laurel	New Jersey.
BankAsiana	Palisades Park	New Jersey.
Valley National Bank	Passaic	New Jersey.
Bank of Princeton (The)	Princeton	New Jersey.
Roselle Savings Bank	Roselle	New Jersey.
Saddle River Valley Bank	Saddle River	New Jersey.
HillTop Community Bank	Summit	New Jersey.
Shore Community Bank	Toms River	New Jersey.
Paragon Federal Credit Union	Township of Washington	New Jersey.
Highlands State Bank	Vernon	New Jersey.
Capital Bank of New Jersey	Vineland	New Jersey.
Alma Bank	Astoria	New York.

Marathon National Bank of New York	Astoria	New York.
Seneca FS & LA	Baldwinsville	New York.
Ballston Spa National Bank	Ballston Spa	New York.
CheckSpring Bank	Bronx	New York.
Esquire Bank	Brooklyn	New York.
The Dime Savings Bank of Williamsburg	Brooklyn	New York.
Patriot Federal Bank	Canajoharie	New York.
Carthage FS & LA	Carthage	New York.
Community Bank, NA	Dewitt	New York.
Lake Shore Savings Bank	Dunkirk	New York.
Teachers Federal Credit Union	Farmingville	New York.
NewBank	Flushing	New York.
United International Bank	Flushing	New York.
Community National Bank	Great Neck	New York.
Empire National Bank	Islandia	New York.
Gold Coast Bank	Islandia	New York.
Madison National Bank	Merrick	New York.
Orange County Trust Company	Middletown	New York.
Global Bank	New York	New York.
Guardian Trust Company, FSB	New York	New York.
Interaudi Bank	New York	New York.
Self Reliance (N.Y.) Federal Credit Union	New York	New York.
Empire State Bank	Newburgh	New York.
Flushing Commercial Bank	North Hyde Park	New York.
The North Country Savings Bank	Ogdensburg	New York.
Alliance Bank NA	Oneida	New York.
Stissing National Bank of Pine Plains (The)	Pine Plains	New York.
Ridgewood Savings Bank	Ridgewood	New York.
Advantage Federal Credit Union	Rochester	New York.
Genesee Regional Bank	Rochester	New York.
AmeriCU Credit Union	Rome	New York.
First National Bank of Scotia	Scotia	New York.
Seneca Falls Savings Bank (The)	Seneca Falls	New York.
Geddes FS & LA	Syracuse	New York.
National Bank of Delaware County	Walton	New York.
Eurobank	Hato Rey	Puerto Rico.
R–G Premier Bank of Puerto Rico	Hato Rey	Puerto Rico.
Merchants Commercial Bank	St. Thomas	Virgin Islands.

Federal Home Loan Bank of Pittsburgh—District 3

Chase Bank USA, National Association	Newark	Delaware.
Citicorp Trust Bank, FSB	Newark	Delaware.
First Bank of Delaware	Wilmington	Delaware.
MidCoast Community Bank	Wilmington	Delaware.
TD Bank, National Association	Wilmington	Delaware.
Community National Bank of Northwestern Pennsylvania	Albion	Pennsylvania.
Allegiance Bank of North America	Bala Cynwyd	Pennsylvania.
Hometown Bank of Pennsylvania	Bedford	Pennsylvania.
First Keystone National Bank	Berwick	Pennsylvania.
Team Capital Bank	Bethlehem	Pennsylvania.
American Eagle Savings Bank, PASA	Boothwyn	Pennsylvania.
Clarion Onized Federal Credit Union	Clarion	Pennsylvania.
Croydon Savings Bank	Croydon	Pennsylvania.
FNB Bank, National Association	Danville	Pennsylvania.
MileStone Bank	Doylestown	Pennsylvania.
Monument Bank	Doylestown	Pennsylvania.
Marquette Savings Bank	Erie	Pennsylvania.
Vantage Point Bank	Fort Washington	Pennsylvania.
First United National Bank	Fryburg	Pennsylvania.
Adams County National Bank	Gettysburg	Pennsylvania.
Metro Bank	Harrisburg	Pennsylvania.
Colonial American Bank	Horsham	Pennsylvania.
Huntingdon Savings Bank	Huntingdon	Pennsylvania.
Huntingdon Valley Bank	Huntingdon Valley	Pennsylvania.
First Commonwealth Bank	Indiana	Pennsylvania.
Abington Bank	Jenkintown	Pennsylvania.
Farmers & Merchants Bank of Western Pennsylvania, National Association	Kittanning	Pennsylvania.
Fulton Bank	Lancaster	Pennsylvania.
The First National Bank of Lilly	Lilly	Pennsylvania.
Victory Bank (The)	Limerick	Pennsylvania.
First Priority Bank	Malvern	Pennsylvania.
Citizens National Bank	Meyersdale	Pennsylvania.
Milton Savings Bank	Milton	Pennsylvania.
Northumberland National Bank	Northumberland	Pennsylvania.
First National Bank of Palmerton	Palmerton	Pennsylvania.

Hyperion Bank	Philadelphia	Pennsylvania.
MoreBank	Philadelphia	Pennsylvania.
Tioga-Franklin Savings Bank	Philadelphia	Pennsylvania.
United Savings Bank	Philadelphia	Pennsylvania.
Valley Green Bank	Philadelphia	Pennsylvania.
Allegent Community Federal Credit Union	Pittsburgh	Pennsylvania.
Fidelity Savings Bank, PASA	Pittsburgh	Pennsylvania.
TriState Capital Bank	Pittsburgh	Pennsylvania.
Landmark Community Bank	Pittston	Pennsylvania.
West Milton State Bank	West Milton	Pennsylvania.
Utilities Employees Credit Union	Wyomissing	Pennsylvania.
CNB Bank, Inc	Berkeley Springs	West Virginia.
Bank of Charles Town	Charles Town	West Virginia.
Davis Trust Company	Elkins	West Virginia.
Pendleton Community Bank, Inc	Franklin	West Virginia.
Logan Bank & Trust Company	Logan	West Virginia.
Capon Valley Bank	Wardensville	West Virginia.
Cornerstone Bank, Inc	West Union	West Virginia.
The Citizens Bank of Weston, Inc	Weston	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Vantage Bank of Alabama	Albertville	Alabama.
Fnb of Central Alabama	Aliceville	Alabama.
NobleBank & Trust, NA	Anniston	Alabama.
Southern States Bank	Anniston	Alabama.
Reliance Bank	Athens	Alabama.
The First National Bank of Atmore	Atmore	Alabama.
Keystone Bank	Auburn	Alabama.
Regions Bank	Birmingham	Alabama.
First Community Bank	Chatom	Alabama.
Generations Bank	Cullman	Alabama.
Trinity Bank	Dothan	Alabama.
Merchants & Farmers Bank of Greene County Alabama	Eutaw	Alabama.
First Lowndes Bank	Fort Deposit	Alabama.
Progress Bank and Trust	Huntsville	Alabama.
First Metro Bank	Muscle Shoals	Alabama.
Southern Independent Bank	Opp	Alabama.
Farmers and Merchants Bank	Piedmont	Alabama.
River Bank & Trust	Prattville	Alabama.
West Alabama Bank & Trust	Reform	Alabama.
Samson Banking Company, Inc. (The)	Samson	Alabama.
First Cahawba Bank	Selma	Alabama.
Bank Independent	Sheffield	Alabama.
First Southern State Bank	Stevenson	Alabama.
Bryant Bank	Tuscaloosa	Alabama.
Tuscaloosa Credit Union	Tuscaloosa	Alabama.
SouthCity Bank	Vestavia Hills	Alabama.
Wright Patman Congressional	Washington	District of Columbia.
Turnberry Bank	Aventura	Florida.
EuroBank	Boca Raton	Florida.
Legacy Bank of Florida	Boca Raton	Florida.
CNLBank, Southwest Florida	Bonita Springs	Florida.
Horizon Bank	Bradenton	Florida.
Cortez Community Bank	Brooksville	Florida.
Gulf State Community Bank	Carrabelle	Florida.
Flagship Community Bank	Clearwater	Florida.
Bank of Coral Gables, LLC	Coral Gables	Florida.
BBU Bank	Coral Gables	Florida.
First Bank of Miami	Coral Gables	Florida.
Premier Community Bank of the Emerald Coast	Crestview	Florida.
Florida Traditions Bank	Dade City	Florida.
Gateway Bank of Florida	Daytona Beach	Florida.
Destin First Bank	Destin	Florida.
GulfSouth Private Bank	Destin	Florida.
Englewood Bank	Englewood	Florida.
CBC National Bank	Fernandina Beach	Florida.
Stonegate Bank	Fort Lauderdale	Florida.
Southwest Capital Bank, NA	Fort Meyers	Florida.
Commerce Bank of Southwest Florida	Fort Myers	Florida.
First Community Bank of Southwest Florida	Fort Myers	Florida.
Campus USA Credit Union	Gainesville	Florida.
First Bank and Trust Company of Indiantown	Indiantown	Florida.
FirstAtlantic Bank	Jacksonville	Florida.
Jacksonville Firemen's Credit Union	Jacksonville	Florida.
Jax Metro Credit Union	Jacksonville	Florida.

The Jacksonville Bank	Jacksonville	Florida.
TIB Bank of the Keys	Key Largo	Florida.
Key West Bank	Key West	Florida.
CenterState Bank Central Florida, National Association	Kissimmee	Florida.
Community National Bank of the South	Lake Mary	Florida.
Bank of Central Florida	Lakeland	Florida.
Community Southern Bank	Lakeland	Florida.
USAmeriBank	Largo	Florida.
Heritage Bank of Florida	Lutz	Florida.
Marco Community Bank	Marco Island	Florida.
First Capital Bank	Marianna	Florida.
Community Bank of the South	Merritt Island	Florida.
BAC Florida Bank	Miami	Florida.
Executive National Bank	Miami	Florida.
TransAtlantic Bank	Miami	Florida.
Liberty Bank	Naples	Florida.
Marquis Bank	North Miami Beach	Florida.
FirstCity Bank of Commerce	North Palm Beach	Florida.
First Avenue National Bank	Ocala	Florida.
Gateway Bank of Central Florida	Ocala	Florida.
Florida Bank of Commerce	Orlando	Florida.
McCoy Federal Credit Union	Orlando	Florida.
Seaside National Bank & Trust	Orlando	Florida.
The Citizens Bank of Oviedo	Oviedo	Florida.
Anderen Bank of Tampa Bay	Palm Harbor	Florida.
1st Manatee Bank	Parrish	Florida.
Sunshine State FS & LA	Plant City	Florida.
National Bank of Southwest Florida	Port Charlotte	Florida.
Republic Bank	Port Richey	Florida.
Calusa National Bank	Punta Gorda	Florida.
Haven Trust Bank Florida	Saint Augustine	Florida.
Insignia Bank	Sarasota	Florida.
ProBank	Tallahassee	Florida.
Southeast Corporate Federal Credit Union	Tallahassee	Florida.
Tallahassee State Bank	Tallahassee	Florida.
First East Side Savings Bank	Tamarac	Florida.
American Momentum Bank	Tampa	Florida.
Central Bank	Tampa	Florida.
Gte Federal Credit Union	Tampa	Florida.
GulfShore Bank	Tampa	Florida.
NorthStar Bank	Tampa	Florida.
Florida Shores Bank—Southwest	Venice	Florida.
First Bank of the Palm Beaches	West Palm Beach	Florida.
Enterprise Banking Company	Abbeville	Georgia.
Northside Bank	Adairsville	Georgia.
Wheeler County State Bank	Alamo	Georgia.
Four County Bank (The)	Allentown	Georgia.
Providence Bank	Alpharetta	Georgia.
Security Bank of North Fulton	Alpharetta	Georgia.
The National Bank of Georgia	Athens	Georgia.
Atlantic Capital Bank	Atlanta	Georgia.
Brookhaven Bank	Atlanta	Georgia.
Capitol City Bank & Trust Company	Atlanta	Georgia.
Global Commerce Bank	Atlanta	Georgia.
Midtown Bank & Trust Company	Atlanta	Georgia.
One Georgia Bank	Atlanta	Georgia.
Private Bank of Buckhead	Atlanta	Georgia.
RockBridge Commercial Bank	Atlanta	Georgia.
Sunrise Bank of Atlanta	Atlanta	Georgia.
Savannah River Banking Company	Augusta	Georgia.
The First National Bank of Barnesville	Barnesville	Georgia.
PrimeSouth Bank	Blackshear	Georgia.
Atlantic National Bank	Brunswick	Georgia.
Peoples Bank & Trust	Buford	Georgia.
United National Bank	Cairo	Georgia.
Bartow County Bank	Cartersville	Georgia.
PeoplesSouth Bank	Colquitt	Georgia.
Columbus Bank and Trust	Columbus	Georgia.
Columbus Community Bank	Columbus	Georgia.
The Commercial Bank	Crawford	Georgia.
First Choice Community Bank	Dallas	Georgia.
Georgia Heritage Bank	Dallas	Georgia.
Bank of Dawson	Dawson	Georgia.
Bank of Terrell	Dawson	Georgia.
First Citizens Bank of Georgia	Dawsonville	Georgia.
Metro City Bank	Doraville	Georgia.

Farmers State Bank	Dublin	Georgia.
The Morris State Bank	Dublin	Georgia.
Century Security Bank	Duluth	Georgia.
Signature Bank of Georgia	Dunwoody	Georgia.
State Bank of Georgia	Fayetteville	Georgia.
Peach State Bank & Trust	Gainesville	Georgia.
WestSide Bank	Hiram	Georgia.
KeyWorth Bank	Johns Creek	Georgia.
Heritage Bank	Jonesboro	Georgia.
Citizens State Bank	Kingsland	Georgia.
LaGrange Banking Company	La Grange	Georgia.
American United Bank	Lawrenceville	Georgia.
Bank of Lenox	Lenox	Georgia.
American Pride Bank	Macon	Georgia.
First Landmark Bank	Marietta	Georgia.
Liberty First Bank	Monroe	Georgia.
Touchmark National Bank	Norcross	Georgia.
State Bank and Trust Company	Pinehurst	Georgia.
Covenant Bank & Trust	Rock Spring	Georgia.
River City Bank	Rome	Georgia.
Satilla Community Bank	Saint Marys	Georgia.
Vinings Bank	Smyrna	Georgia.
First National Bank of Chattooga County	Summerville	Georgia.
Patriot Bank of Georgia	Suwanee	Georgia.
Tifton Banking Company	Tifton	Georgia.
Bank of Valdosta	Valdosta	Georgia.
Guardian Bank	Valdosta	Georgia.
Waycross Bank & Trust	Waycross	Georgia.
CharterBank	West Point	Georgia.
CreekSide Bank	Woodstock	Georgia.
First Covenant Bank	Woodstock	Georgia.
UnitedBank	Zebulon	Georgia.
The Harbor Bank of Maryland	Baltimore	Maryland.
Monument Bank	Bethesda	Maryland.
County First Bank	La Plata	Maryland.
APL Federal Credit Union	Laurel	Maryland.
Bank of Ocean City	Ocean City	Maryland.
NRL Federal Credit Union	Oxon Hill	Maryland.
NASA Federal Credit Union	Upper Marlboro	Maryland.
Farmers and Merchants Bank	Upperco	Maryland.
Old Line National Bank	Waldorf	Maryland.
Forest Commercial Bank	Asheville	North Carolina.
Bank of America, National Association	Charlotte	North Carolina.
Carolina Premier Bank	Charlotte	North Carolina.
NewDominion Bank	Charlotte	North Carolina.
Park Sterling Bank	Charlotte	North Carolina.
Wachovia Bank, National Association	Charlotte	North Carolina.
Aquesta Bank	Cornelius	North Carolina.
New Century Bank	Dunn	North Carolina.
KeySource Commercial Bank	Durham	North Carolina.
Square 1 Bank	Durham	North Carolina.
Four Oaks Bank & Trust Company	Four Oaks	North Carolina.
Patriot State Bank	Fuquay Varina	North Carolina.
Mountain 1st Bank & Trust Company	Hendersonville	North Carolina.
KS Bank	Kenly	North Carolina.
Bank of Carolinas	Mocksville	North Carolina.
The Bank of Currituck	Moyock	North Carolina.
Union Bank & Trust Company	Oxford	North Carolina.
First-Citizens Bank & Trust Company	Raleigh	North Carolina.
Nuestro Banco	Raleigh	North Carolina.
Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	North Carolina.
Community Bank of Rowan	Salisbury	North Carolina.
Jackson Savings Bank, SSB	Sylva	North Carolina.
Tarboro Savings Bank, SSB	Tarboro	North Carolina.
OldTown Bank	Waynesville	North Carolina.
Great State Bank	Wilkesboro	North Carolina.
Security Federal Bank	Aiken	South Carolina.
Southern Bank & Trust	Aiken	South Carolina.
VistaBank	Aiken	South Carolina.
Bank of Anderson, NA	Anderson	South Carolina.
Atlantic Community Bank	Bluffton	South Carolina.
Harbor National Bank	Charleston	South Carolina.
South Carolina State Credit Union	Columbia	South Carolina.
BankGreenville	Greenville	South Carolina.
Community 1 Federal Credit Union	Greenville	South Carolina.
Pinnacle Bank of South Carolina	Greenville	South Carolina.

CapitalBank	Greenwood	South Carolina.
Palmetto State Bank	Hampton	South Carolina.
Beach First National Bank	Myrtle Beach	South Carolina.
South Atlantic Bank	Myrtle Beach	South Carolina.
Carolina Alliance Bank	Spartanburg	South Carolina.
First National Bank of the South	Spartanburg	South Carolina.
Congaree State Bank	West Columbia	South Carolina.
Highlands Union Bank	Abingdon	Virginia.
Countrywide Bank, FSB	Alexandria	Virginia.
State Department Federal Credit Union	Alexandria	Virginia.
Bank of Clarke County	Berryville	Virginia.
The National Bank of Blacksburg	Blacksburg	Virginia.
Bank of Botetourt	Buchanan	Virginia.
ABNB Federal Credit Union	Chesapeake	Virginia.
First Virginia Community Bank	Fairfax	Virginia.
Virginia Heritage Bank	Fairfax	Virginia.
Bank of Floyd	Floyd	Virginia.
Bronco Federal Credit Union	Franklin	Virginia.
Virginia Partners Bank	Fredericksburg	Virginia.
Capital One Bank (USA), National Association	Glen Allen	Virginia.
Colonial Virginia Bank	Gloucester	Virginia.
Trupoint Bank	Grundy	Virginia.
Benchmark Community Bank	Kenbridge	Virginia.
The First Bank and Trust Company	Lebanon	Virginia.
The Bank of Marion	Marion	Virginia.
Chain Bridge Bank, National Association	McLean	Virginia.
Peoples Community Bank	Montross	Virginia.
Old Dominion National Bank	North Garden	Virginia.
Consolidated Bank and Trust Company	Richmond	Virginia.
Virginia Business Bank	Richmond	Virginia.
Citizens Community Bank	South Hill	Virginia.
Bank of Essex	Tappahannock	Virginia.
The Fauquier Bank	Warrenton	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

Peoples Bank and Trust Company of Clinton County	Albany	Kentucky.
Members Choice Credit Union	Ashland	Kentucky.
Town Square Bank, Inc	Ashland	Kentucky.
Auburn Banking Co	Auburn	Kentucky.
Appalachian Federal Credit Union	Berea	Kentucky.
Farmers State Bank	Booneville	Kentucky.
American Bank & Trust Company, Inc	Bowling Green	Kentucky.
Citizens First Bank, Inc	Bowling Green	Kentucky.
The First National Bank of Brooksville	Brooksville	Kentucky.
Bank of Buffalo	Buffalo	Kentucky.
Citizens Bank of Cumberland County	Burkesville	Kentucky.
Heritage Bank	Burlington	Kentucky.
Bank of Caneyville	Caneyville	Kentucky.
Hometown Bank of Corbin, Inc	Corbin	Kentucky.
Bank of Kentucky, Inc	Crestview Hills	Kentucky.
Elkton Bank & Trust Co	Elkton	Kentucky.
Farmers Deposit Bank	Eminence	Kentucky.
First Federal Savings Bank of Frankfort	Frankfort	Kentucky.
Commercial Bank of Grayson	Grayson	Kentucky.
The First National Bank of Grayson	Grayson	Kentucky.
Ohio. Valley Financial Group	Henderson	Kentucky.
Hyden Citizens Bank	Hyden	Kentucky.
Citizens Guaranty Bank	Irvine	Kentucky.
Citizens Bank & Trust Co	Jackson	Kentucky.
The First National Bank of Jackson	Jackson	Kentucky.
Lewisburg Banking Co	Lewisburg	Kentucky.
Bank of Lexington	Lexington	Kentucky.
University of Kentucky Federal C.U	Lexington	Kentucky.
First National Bank & Trust	London	Kentucky.
Louisa Community Bank	Louisa	Kentucky.
Autotruck Federal Credit Union	Louisville	Kentucky.
Beacon Community Credit Union	Louisville	Kentucky.
Eclipse Bank, Inc	Louisville	Kentucky.
Stock Yards Bank & Trust Co	Louisville	Kentucky.
First United Bank and Trust Company	Madisonville	Kentucky.
The Peoples Bank	Marion	Kentucky.
Security Bank & Trust Co	Maysville	Kentucky.
Citizens Bank	Morehead	Kentucky.
Citizens Bank of Northern Kentucky	Newport	Kentucky.
First Farmers Bank & Trust	Owenton	Kentucky.

Paducah Bank & Trust Co	Paducah	Kentucky.
Kentucky Bank	Paris	Kentucky.
PBK Bank Inc	Richmond	Kentucky.
The Sacramento Deposit Bank	Sacramento	Kentucky.
Salyersville National Bank	Salyersville	Kentucky.
Citizens Union Bank of Shelby	Shelbyville	Kentucky.
Peoples Exchange Bank	Stanton	Kentucky.
Bank of The Mountains Inc	West Liberty	Kentucky.
East Kentucky Employees Federal Credit Union	Winchester	Kentucky.
Winchester Federal Bank	Winchester	Kentucky.
North Akron Savings Bank	Akron	Ohio.
The Andover Bank	Andover	Ohio.
Sutton Bank	Attica	Ohio.
The First National Bank of Blanchester	Blanchester	Ohio.
Farmers and Merchants Bank (The)	Caldwell	Ohio.
Farmers National Bank of Canfield	Canfield	Ohio.
CBank	Cincinnati	Ohio.
Foundation Bank	Cincinnati	Ohio.
The Cincinnatus Savings & Loan Co	Cincinnati	Ohio.
Insight Bank	Columbus	Ohio.
The Union Bank Co	Columbus Grove	Ohio.
Heartland Federal Credit Union	Dayton	Ohio.
Universal 1Credit Union, Inc	Dayton	Ohio.
The State Bank & Trust Co	Defiance	Ohio.
Cooper State Bank	Dublin	Ohio.
Fremont Federal Credit Union	Fremont	Ohio.
Benchmark Bank	Gahanna	Ohio.
The Ohio Valley Bank	Gallipolis	Ohio.
First Financial Bank, NA	Hamilton	Ohio.
The Harrison B & LA	Harrison	Ohio.
Credit Union of Ohio	Hilliard	Ohio.
LCNB National Bank	Lebanon	Ohio.
Buckeye Community Bank	Lorain	Ohio.
The Lorain National Bank	Lorain	Ohio.
Ohio State Bank (The)	Marion	Ohio.
Miami Savings Bank	Miamitown	Ohio.
Minster Bank	Minster	Ohio.
The Mount Victory State Bank	Mount Victory	Ohio.
First National Bank in New Bremen	New Bremen	Ohio.
Farmers State Bank & Trust	New Madison	Ohio.
Great Lakes Credit Union, Inc	Perrysburg	Ohio.
Portage Community Bank	Ravenna	Ohio.
The Richwood Banking Company	Richwood	Ohio.
The First Central National Bank of St. Paris	St. Paris	Ohio.
The First National Bank of Sycamore	Sycamore	Ohio.
First Bank of Ohio	Tiffin	Ohio.
Glass City Federal Credit Union	Toledo	Ohio.
MainSource Bank—Ohio	Troy	Ohio.
Abbey Credit Union, Inc	Vandalia	Ohio.
Milton Banking Company (The)	Wellston	Ohio.
The National Bank And Trust Company	Wilmington	Ohio.
Woodsfield Savings Bank	Woodsfield	Ohio.
Columbus First Bank	Worthington	Ohio.
Community Bank & Trust	Ashland City	Tennessee.
Citizens Bank & Trust Company	Atwood	Tennessee.
Reliant Bank	Brentwood	Tennessee.
CapitalMark Bank & Trust	Chattanooga	Tennessee.
Southern Heritage Bank	Cleveland	Tennessee.
The Community Bank of East Tennessee	Clinton	Tennessee.
Heritage Bank & Trust	Columbia	Tennessee.
First Alliance Bank	Cordova	Tennessee.
Cumberland County Bank	Crossville	Tennessee.
Tristar Bank	Dickson	Tennessee.
Traditions First Bank	Erin	Tennessee.
Bank of Frankewing	Frankewing	Tennessee.
Franklin Synergy Bank	Franklin	Tennessee.
Tennessee Commerce Bank	Franklin	Tennessee.
Cornerstone Community Bank	Hixson	Tennessee.
DuPont Community Credit Union	Hixson	Tennessee.
First South Bank	Jackson	Tennessee.
TriSummit Bank	Kingsport	Tennessee.
First National Bank of LaFollette (The)	LaFollette	Tennessee.
CedarStone Bank	Lebanon	Tennessee.
Liberty State Bank	Liberty	Tennessee.
Bank of Perry County	Lobelville	Tennessee.
ETMA Federal Credit Union	Louisville	Tennessee.

Foothills Bank & Trust	Maryville	Tennessee.
Bank of Mason	Mason	Tennessee.
Security Federal Savings Bank McMinnville	McMinnville	Tennessee.
Mckenzie Banking Co	Mckenzie	Tennessee.
Financial Federal Savings Bank	Memphis	Tennessee.
First Tennessee Bank, NA	Memphis	Tennessee.
Independent Bank	Memphis	Tennessee.
Paragon National Bank	Memphis	Tennessee.
Tri-state Bank of Memphis	Memphis	Tennessee.
Triumph Bank	Memphis	Tennessee.
Fifth Third Bank, National Association	Nashville	Tennessee.
Pinnacle National Bank	Nashville	Tennessee.
Community Trust & Banking Company	Ooletewah	Tennessee.
SmartBank	Pigeon Forge	Tennessee.
Bank of Ripley	Ripley	Tennessee.
1st Community Bank of East Tennessee	Rogersville	Tennessee.
The Citizens Bank of East Tennessee	Rogersville	Tennessee.
Hardin County Bank	Savannah	Tennessee.
Commerce Union Bank	Springfield	Tennessee.
Peoples State Bank of Commerce	Trenton	Tennessee.
First Vision Bank of Tennessee	Tullahoma	Tennessee.
The Traders National Bank	Tullahoma	Tennessee.
First State Bank	Union City	Tennessee.
Wayne County Bank	Waynesboro	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Central National Bank & Trust Co	Attica	Indiana.
Forethought Federal Savings Bank	Batesville	Indiana.
Bloomfield Savings Bank	Bloomfield	Indiana.
Indiana University Credit Union	Bloomington	Indiana.
United Commerce Bank	Bloomington	Indiana.
Wayne Bank And Trust Company	Cambridge City	Indiana.
First Harrison Bank	Corydon	Indiana.
Chiphone Federal Credit Union	Elkhart	Indiana.
Inova Federal Credit Union	Elkhart	Indiana.
The Citizens Exchange Bank	Fairmount	Indiana.
Fire Fighter's City-county FCU	Fort Wayne	Indiana.
Fort Financial Credit Union	Fort Wayne	Indiana.
Midwest American Federal Credit Union	Fort Wayne	Indiana.
Alliance Bank	Francesville	Indiana.
The Friendship State Bank	Friendship	Indiana.
Goshen Community Bank	Goshen	Indiana.
Indiana Business Bank	Indianapolis	Indiana.
Lafayette Community Bank	Lafayette	Indiana.
Farmers and Merchants Bank	Laotto	Indiana.
The Lynnville National Bank	Lynnville	Indiana.
State Bank of Medora	Medora	Indiana.
First Trust Federal Credit Union	Michigan. City	Indiana.
Citizens State Bank of New Castle	New Castle	Indiana.
Notre Dame Federal Credit Union	Notre Dame	Indiana.
First Federal Savings Bank	Rochester	Indiana.
1st Source Bank	South Bend	Indiana.
Centrebank	Veedersburg	Indiana.
Merchants B&T Co	West Harrison	Indiana.
Centier Bank	Whiting	Indiana.
Northstar Bank	Bad Axe	Michigan.
Omni Community Credit Union	Battle Creek	Michigan.
Nstar Community Bank	Bingham Farms	Michigan.
OSB Community Bank	Brooklyn	Michigan.
Chelsea State Bank	Chelsea	Michigan.
Century B&T Co	Coldwater	Michigan.
Southern Michigan Bank & Trust	Coldwater	Michigan.
Davison State Bank	Davison	Michigan.
Community Alliance Credit Union	Dearborn	Michigan.
First State Bank	Decatur	Michigan.
Level One Bank	Farmington Hills	Michigan.
Gerber Federal Credit Union	Fremont	Michigan.
Baybank	Gladstone	Michigan.
Fifth Third Bank	Grand Rapids	Michigan.
Founders Bank & Trust	Grand Rapids	Michigan.
West Michigan Community Bank	Hudsonville	Michigan.
Miners' State Bank	Iron River	Michigan.
Peninsula Bank	Ishpeming	Michigan.
EECU a Community Credit Union	Jackson	Michigan.
First National Bank of Michigan	Kalamazoo	Michigan.

Michigan First Credit Union	Lathrup Village	Michigan.
The Dart Bank, Mason	Mason	Michigan.
Huron Valley State Bank	Milford	Michigan.
Lotus Bank	Novi	Michigan.
Oxford Bank	Oxford	Michigan.
Bank of Northern Michigan (The)	Petoskey	Michigan.
Public Service Credit Union	Romulus	Michigan.
Family First Credit Union	Saginaw	Michigan.
Old Mission Bank	Sault Ste. Marie	Michigan.
Community State Bank of St. Charles	St Charles	Michigan.
Firstbank—St. Johns	St. Johns	Michigan.
Sterling-Van Dyke Credit Union	Sterling Heights	Michigan.
First Michigan Bank	Troy	Michigan.
Wayne-Westland Federal Credit Union	Westland	Michigan.
Federal Home Loan Bank of Chicago—District 7		
The First National Bank of Allendale	Allendale	Illinois.
Old Second National Bank	Aurora	Illinois.
Tompkins State Bank	Avon	Illinois.
Beardstown Savings SB	Beardstown	Illinois.
Citizens Community Bank of Illinois	Berwyn	Illinois.
Great Lakes Bank, National Association	Blue Island	Illinois.
Marine Bank and Trust	Carthage	Illinois.
Buena Vista National Bank	Chester	Illinois.
Chester National Bank	Chester	Illinois.
Lakeside Bank	Chicago	Illinois.
Pacific Global Bank	Chicago	Illinois.
Republic Bank of Chicago	Chicago	Illinois.
The Northern Trust Company	Chicago	Illinois.
State Bank of Chrisman	Chrisman	Illinois.
The First National Bank of Dieterich	Dieterich	Illinois.
First State Bank of Dix	Dix	Illinois.
Citizens Bank of Edinburg	Edinburg	Illinois.
TheBank of Edwardsville	Edwardsville	Illinois.
Legence Bank	Eldorado	Illinois.
The Elgin State Bank	Elgin	Illinois.
Advantage National Bank	Elk Grove Village	Illinois.
First Bank & Trust	Evanston	Illinois.
Fairfield National Bank	Fairfield	Illinois.
Flora Savings Bank	Flora	Illinois.
Town Center Bank	Frankfort	Illinois.
Farmers & Mechanics Bank	Galesburg	Illinois.
Glasford State Bank	Glasford	Illinois.
Goodfield State Bank	Goodfield	Illinois.
Farmers National Bank of Griggsville	Griggsville	Illinois.
The Harvard State Bank	Harvard	Illinois.
PeopleFirst Bank	Joliet	Illinois.
Libertyville Bank & Trust Company	Libertyville	Illinois.
Clay County State Bank	Louisville	Illinois.
Homestar Bank	Manteno	Illinois.
First Federal Savings Bank of Mascoutah	Mascoutah	Illinois.
First Federal Savings & Loan Association	Mattoon	Illinois.
Morton Community Bank	Morton	Illinois.
LincolnWay Community Bank	New Lenox	Illinois.
Community Bank of Oak Park River Forest	Oak Park	Illinois.
TrustBank	Olney	Illinois.
First Federal Savings Bank	Ottawa	Illinois.
First Bank & Trust, SB	Paris	Illinois.
First National Bank in Paxton	Paxton	Illinois.
Freestar Bank, National Association	Pontiac	Illinois.
Bank of Rantoul	Rantoul	Illinois.
The First National Bank & Trust Company of Rochelle	Rochelle	Illinois.
Northwest Bank of Rockford	Rockford	Illinois.
Gateway Community Bank	Roscoe	Illinois.
Area Bank	Rosiclare	Illinois.
First Community Bank	Sherrard	Illinois.
National Bank of St. Anne	St Anne	Illinois.
Sterling Federal Bank, FSB	Sterling	Illinois.
Streator Home Building & Loan Association	Streator	Illinois.
The First National Bank of Sullivan	Sullivan	Illinois.
Savanna-Thomson State Bank	Thomson	Illinois.
Tempo Bank, A Federal Savings Bank	Trenton	Illinois.
Heritage Bank of Central Illinois	Trivoli	Illinois.
Members United Corporate Federal Credit Union	Warrenville	Illinois.
Waterman State Bank	Waterman	Illinois.

Iroquois Federal Savings & Loan Association	Watseka	Illinois.
NorStates Bank	Waukegan	Illinois.
Wemple State Bank	Waverly	Illinois.
State Bank of Illinois	West Chicago	Illinois.
Golden Eagle Community Bank	Woodstock	Illinois.
Abby Bank	Abbotsford	Wisconsin.
Sterling Bank	Barron	Wisconsin.
Calumet County Bank	Brillion	Wisconsin.
Ridgestone Bank	Brookfield	Wisconsin.
First Banking Center	Burlington	Wisconsin.
Cambridge State Bank	Cambridge	Wisconsin.
Community Bank of Cameron	Cameron	Wisconsin.
Community Bank of Central Wisconsin	Colby	Wisconsin.
Community Bank CBD	Delavan	Wisconsin.
Charter Bank Eau Claire	Eau Claire	Wisconsin.
Royal Credit Union	Eau Claire	Wisconsin.
Marine Credit Union	Fond Du Lac	Wisconsin.
Grand Marsh State Bank	Grand Marsh	Wisconsin.
Hartford Savings Bank	Hartford	Wisconsin.
Farmers State Bank	Hillsboro	Wisconsin.
Citizens State Bank	Hudson	Wisconsin.
First American Bank, NA	Hudson	Wisconsin.
The Bank of Kaukauna	Kaukauna	Wisconsin.
TSB Bank	Lomira	Wisconsin.
Bank First National	Manitowoc	Wisconsin.
Investors Community Bank	Manitowoc	Wisconsin.
Farmers & Merchants Bank and Trust	Marinette	Wisconsin.
The Stephenson National Bank & Trust	Marinette	Wisconsin.
Marshfield Savings Bank	Marshfield	Wisconsin.
Mayville Savings Bank	Mayville	Wisconsin.
McFarland State Bank	McFarland	Wisconsin.
Lincoln Community Bank	Merrill	Wisconsin.
Brewery Credit Union	Milwaukee	Wisconsin.
The PrivateBank, NA	Milwaukee	Wisconsin.
Monona State Bank	Monona	Wisconsin.
Security Bank	New Auburn	Wisconsin.
First National Bank of Niagara	Niagara	Wisconsin.
Bank of Oakfield	Oakfield	Wisconsin.
Oostburg State Bank	Oostburg	Wisconsin.
United Bank	Osseo	Wisconsin.
Pigeon Falls State Bank	Pigeon Falls	Wisconsin.
The Port Washington State Bank	Port Washington	Wisconsin.
Peoples State Bank	Prairie Du Chien	Wisconsin.
Bank of Prairie Du Sac	Prairie Du Sac	Wisconsin.
Community Financial Bank	Prentice	Wisconsin.
Community First Bank	Rosholt	Wisconsin.
Indianhead Credit Union	Spooner	Wisconsin.
Evergreen State Bank	Stoughton	Wisconsin.
Stratford State Bank	Stratford	Wisconsin.
Bank of Turtle Lake	Turtle Lake	Wisconsin.
Town and Country Bank	Watertown	Wisconsin.
First National Bank	Waupaca	Wisconsin.
People's State Bank	Wausau	Wisconsin.
WaterStone Bank	Wauwatosa	Wisconsin.
Commerce State Bank	West Bend	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

The First National Bank of Akron	Akron	Iowa.
First Iowa State Bank	Albia	Iowa.
Iowa State Bank	Algona	Iowa.
Greater Iowa Credit Union	Ames	Iowa.
Rolling Hills Bank & Trust	Atlantic	Iowa.
Audubon State Bank	Audubon	Iowa.
Benton County State Bank	Blairstown	Iowa.
First State Bank	Britt	Iowa.
Patriot Bank	Brooklyn	Iowa.
Farmers & Merchants Bank & Trust	Burlington	Iowa.
Carroll County State Bank	Carroll	Iowa.
Ohnward Bank & Trust	Cascade	Iowa.
Center Point Bank and Trust Company	Center Point	Iowa.
Iowa State Bank	Clarksville	Iowa.
Citizens First Bank	Clinton	Iowa.
The Clinton National Bank	Clinton	Iowa.
First State Bank of Colfax	Colfax	Iowa.
Frontier Savings Bank	Council Bluffs	Iowa.

Northwest Bank & Trust Company	Davenport	Iowa.
First Central State Bank	De Witt	Iowa.
Viking State Bank & Trust	Decorah	Iowa.
Defiance State Bank	Defiance	Iowa.
Bankers Trust Company	Des Moines	Iowa.
American Trust & Savings Bank	Dubuque	Iowa.
Du Trac Community Credit Union	Dubuque	Iowa.
Valley Bank	Eldridge	Iowa.
Iowa Trust & Savings Bank	Emmetsburg	Iowa.
Emmet County State Bank	Estherville	Iowa.
First Security State Bank	Evansdale	Iowa.
Manufacturers Bank & Trust Company	Forest City	Iowa.
Garnavillo Savings Bank	Garnavillo	Iowa.
Union State Bank	Greenfield	Iowa.
United Bank and Trust Company	Hampton	Iowa.
Shelby County State Bank	Harlan	Iowa.
Heritage Bank, National Association	Holstein	Iowa.
Iowa State Bank	Hull	Iowa.
United Bank of Iowa	Ida Grove	Iowa.
MidWestOne Bank	Iowa City	Iowa.
University of Iowa Community Credit Union	Iowa City	Iowa.
Community Choice Credit Union	Johnston	Iowa.
Polk County Bank	Johnston	Iowa.
Primebank	Le Mars	Iowa.
Luana Savings Bank	Luana	Iowa.
First Trust and Savings Bank	Marcus	Iowa.
Mediapolis Savings Bank	Mediapolis	Iowa.
Central State Bank	Muscatine	Iowa.
Community Bank	Nevada	Iowa.
Danville State Savings Bank	New London	Iowa.
Hedrick Savings Bank	Ottumwa	Iowa.
Community State Bank	Paton	Iowa.
The First National Bank of Primghar	Primghar	Iowa.
Bank Iowa	Red Oak	Iowa.
Pioneer Bank	Sergeant Bluff	Iowa.
The Exchange State Bank	Springville	Iowa.
Central Bank	Storm Lake	Iowa.
First State Bank	Stuart	Iowa.
Farmers Savings Bank & Trust	Traer	Iowa.
American Savings Bank	Tripoli	Iowa.
VisionBank of Iowa	West Des Moines	Iowa.
West Bank	West Des Moines	Iowa.
Farmers Trust & Savings Bank	Williamsburg	Iowa.
Adrian State Bank	Adrian	Minnesota.
Security State Bank	Aitkin	Minnesota.
Annandale State Bank	Annandale	Minnesota.
First State Bank of Ashby	Ashby	Minnesota.
First National Bank	Bagley	Minnesota.
The First National Bank of Battle Lake	Battle Lake	Minnesota.
Sherburne State Bank	Becker	Minnesota.
State Bank of Belle Plaine	Belle Plaine	Minnesota.
RiverWood Bank	Bemidji	Minnesota.
Security Bank USA	Bemidji	Minnesota.
Concorde Bank	Blomkest	Minnesota.
Bonanza Valley State Bank	Brooten	Minnesota.
CenBank	Buffalo Lake	Minnesota.
Western National Bank	Cass Lake	Minnesota.
Root River State Bank	Chatfield	Minnesota.
Citizens State Bank of Clara City	Clara City	Minnesota.
Hometown Community Bank	Cyrus	Minnesota.
Crow River State Bank	Delano	Minnesota.
Share Advantage Credit Union	Duluth	Minnesota.
First Western Bank & Trust	Eden Prairie	Minnesota.
The Bank of Elk River	Elk River	Minnesota.
Boundary Waters Bank	Ely	Minnesota.
Elysian Bank	Elysian	Minnesota.
Security State Bank of Fergus Falls	Fergus Falls	Minnesota.
Northview Bank	Finlayson	Minnesota.
Freeport State Bank	Freeport	Minnesota.
First National Bank of Fulda	Fulda	Minnesota.
State Bank of Gibbon	Gibbon	Minnesota.
Grand Marais State Bank	Grand Marais	Minnesota.
Grand Rapids State Bank	Grand Rapids	Minnesota.
First National Bank	Hawley	Minnesota.
State Bank of Hawley	Hawley	Minnesota.
The First National Bank of Herman	Herman	Minnesota.

Commercial Bank of Minnesota	Heron Lake	Minnesota.
Security State Bank of Hibbing	Hibbing	Minnesota.
Woodlands National Bank	Hinckley	Minnesota.
Stearns Bank Holdingford, National Association	Holdingford	Minnesota.
Riverland Bank	Jordan	Minnesota.
Eastwood Bank	Kasson	Minnesota.
Alliance Bank	Lake City	Minnesota.
State Bank of Lismore	Lismore	Minnesota.
Farmers State Bank of Madelia, Inc	Madelia	Minnesota.
Building Trades Federal Credit Union	Maple Grove	Minnesota.
The First National Bank of Elk River	Maple Lake	Minnesota.
Pioneer Bank	Mapleton	Minnesota.
Summit Community Bank	Maplewood	Minnesota.
Grand Timber Bank	McGregor	Minnesota.
Stonebridge Bank	Minneapolis	Minnesota.
Lake Country Community Bank	Morristown	Minnesota.
Farmers & Merchants State Bank of New York Mills, Inc	New York Mills	Minnesota.
Novation Credit Union	Oakdale	Minnesota.
Platinum Bank	Oakdale	Minnesota.
First State Bank of Okabena (Incorporated)	Okabena	Minnesota.
F & M Community Bank, National Association	Preston	Minnesota.
First State Bank of Red Wing (The)	Red Wing	Minnesota.
HomeTown Bank	Redwood Falls	Minnesota.
First National Bank of the North	Sandstone	Minnesota.
First State Bank of Sauk Centre	Sauk Centre	Minnesota.
Minnesota National Bank	Sauk Centre	Minnesota.
First Resource Bank	Savage	Minnesota.
SouthPoint Federal Credit Union	Sleepy Eye	Minnesota.
Stearns Bank, National Association	St. Cloud	Minnesota.
Lake Bank (The)	Two Harbors	Minnesota.
Stearns Bank of Upsala, National Association	Upsala	Minnesota.
Mid-Central Federal Savings Bank	Wadena	Minnesota.
The First National Bank of Waseca	Waseca	Minnesota.
Valley Bank	Waterville	Minnesota.
FortuneBank	Arnold	Missouri.
BTC Bank	Bethany	Missouri.
Bank of Billings	Billings	Missouri.
Adams Dairy Bank	Blue Springs	Missouri.
Vantage Credit Union	Bridgeton	Missouri.
County Bank	Brunswick	Missouri.
Mainstreet Bank	Bunceton	Missouri.
Farmers State Bank	Cameron	Missouri.
First Missouri State Bank of Cape County	Cape Girardeau	Missouri.
Hometown Bank, National Association	Carthage	Missouri.
First State Bank and Trust Company, Inc	Caruthersville	Missouri.
Citizens Bank of Charleston	Charleston	Missouri.
WestBridge Bank and Trust Company	Chesterfield	Missouri.
Citizens Bank and Trust Company	Chillicothe	Missouri.
Parkside Financial Bank & Trust	Clayton	Missouri.
First National Bank of Clinton	Clinton	Missouri.
Champion Bank	Creve Coeur	Missouri.
Scottrade Bank	Des Peres	Missouri.
Community Bank of El Dorado Springs	El Dorado Springs	Missouri.
Alliance Credit Union	Fenton	Missouri.
Triad Bank	Frontenac	Missouri.
United Security Bank	Fulton	Missouri.
First Bank of Missouri	Gladstone	Missouri.
Glasgow Savings Bank	Glasgow	Missouri.
Superior Bank	Hazelwood	Missouri.
Bay-Hermann-Berger Bank	Hermann	Missouri.
Home Savings Bank	Jefferson City	Missouri.
River Region Credit Union	Jefferson City	Missouri.
First State Bank of Joplin	Joplin	Missouri.
Commerce Bank, NA	Kansas City	Missouri.
Table Rock Community Bank	Kimberling City	Missouri.
Bank of Lee's Summit	Lees Summit	Missouri.
Farmers Bank of Lincoln (The)	Lincoln	Missouri.
Bank of Fairport (The)	Maysville	Missouri.
Unico Bank	Mineral Point	Missouri.
Community Bank & Trust	Neosho	Missouri.
Citizens Bank	New Haven	Missouri.
Bank Star	Pacific	Missouri.
The Paris National Bank	Paris	Missouri.
Bank Star of the LeadBelt	Park Hills	Missouri.
Phelps County Bank	Rolla	Missouri.
Community Bank of Russellville	Russellville	Missouri.

MRV Banks	Sainte Genevieve	Missouri.
Systematic Savings & Loan Association	Springfield	Missouri.
Farmers & Merchants Bank	St. Clair	Missouri.
Maries County Bank (The)	Vienna	Missouri.
McIntosh County Bank	Ashley	North Dakota.
First Security Bank—West	Beulah	North Dakota.
Kirkwood Bank and Trust Company	Bismarck	North Dakota.
Dakota Western Bank	Bowman	North Dakota.
First State Bank	Buxton	North Dakota.
United Valley Bank	Cavalier	North Dakota.
Western State Bank	Devils Lake	North Dakota.
Cornerstone Bank	Enderlin	North Dakota.
BlackRidgeBANK	Fargo	North Dakota.
Bremer Bank, National Association	Fargo	North Dakota.
Citizens State Bank of Finley (The)	Finley	North Dakota.
Garrison State Bank and Trust	Garrison	North Dakota.
Harwood State Bank	Harwood	North Dakota.
Union State Bank of Hazen	Hazen	North Dakota.
Kindred State Bank	Kindred	North Dakota.
Commercial Bank of Mott	Mott	North Dakota.
Farmers Security Bank	Washburn	North Dakota.
First National Bank & Trust of Williston	Williston	North Dakota.
First State Bank of Wilton	Wilton	North Dakota.
Citizens State Bank of Arlington	Arlington	South Dakota.
First State Bank	Armour	South Dakota.
Community Bank	Avon	South Dakota.
First Fidelity Bank	Burke	South Dakota.
DNB National Bank	Clear Lake	South Dakota.
Farmers State Bank	Hosmer	South Dakota.
Sunrise Bank Dakota	Onida	South Dakota.
Black Hills Community Bank, NA	Rapid City	South Dakota.

Federal Home Loan Bank of Dallas—District 9

First Southern Bank	Batesville	Arkansas.
First Western Bank	Booneville	Arkansas.
Chambers Bank	Danville	Arkansas.
Decatur State Bank	Decatur	Arkansas.
First State Bank of De Queen	De Queen	Arkansas.
Bank of Fayetteville (The)	Fayetteville	Arkansas.
Signature Bank of Arkansas	Fayetteville	Arkansas.
First Service Bank	Greenbriar	Arkansas.
Farmers Bank	Hamburg	Arkansas.
Heritage Bank	Leachville	Arkansas.
Central Bank	Little Rock	Arkansas.
Eagle Bank & Trust Company	Little Rock	Arkansas.
Parkway Bank	Portland	Arkansas.
First State Bank	Russellville	Arkansas.
Legacy National Bank	Springdale	Arkansas.
The First National Bank of Wynne	Wynne	Arkansas.
Business First Bank	Baton Rouge	Louisiana.
Investar Bank	Baton Rouge	Louisiana.
Landmark Bank	Clinton	Louisiana.
Caldwell Bank & Trust	Columbia	Louisiana.
Tri-Parish Bank	Eunice	Louisiana.
Gibsland Bank & Trust Company	Gibsland	Louisiana.
The Highlands Bank	Jackson	Louisiana.
Bank of Jena	Jena	Louisiana.
Midsouth Bank, NA	Lafayette	Louisiana.
South Lafourche Bank & Trust Company	Larose	Louisiana.
Merchants & Farmers B&T Company	Leesville	Louisiana.
Resource Bank	Mandeville	Louisiana.
Omni Bank	Metairie	Louisiana.
Bank of Montgomery	Montgomery	Louisiana.
Community First Bank	New Iberia	Louisiana.,
First NBC Bank	New Orleans	Louisiana.
Gulf Coast Bank & Trust Co	New Orleans	Louisiana.
Community Bank	Raceland	Louisiana.
First American Bank & Trust	Vacherie	Louisiana.
First FS & LA	Aberdeen	Mississippi.
Farmers & Merchants Bank	Baldwyn	Mississippi.
Copiah Bank, NA	Hazlehurst	Mississippi.
DeSoto County Bank	Horn Lake	Mississippi.
Planters Bank & Trust Co	Indianola	Mississippi.
First American National Bank	Iuka	Mississippi.
Citizens Bank & Trust Company	Marks	Mississippi.

Pike National Bank	McComb	Mississippi.
Bank of Franklin	Meadville	Mississippi.
United Mississippi Bank	Natchez	Mississippi.
RiverHills Bank	Port Gibson	Mississippi.
BancorpSouth Bank	Tupelo	Mississippi.
Western Bank	Alamogordo	New Mexico.
Bank 1st	Albuquerque	New Mexico.
Bank of Albuquerque, NA	Albuquerque	New Mexico.
Kirtland Federal Union	Albuquerque	New Mexico.
Western Bank	Artesia	New Mexico.
Western Commerce Bank	Carlsbad	New Mexico.
The Citizens Bank	Farmington	New Mexico.
White Sands Federal Credit Union	Las Cruces	New Mexico.
Los Alamos National Bank	Los Alamos	New Mexico.
The James Polk Stone National Bank	Portales	New Mexico.
Citizens Bank, NA	Abilene	Texas.
Anahuac National Bank	Anahuac	Texas.
The Bank Arlington	Arlington	Texas.
Horizon Bank, SSB	Austin	Texas.
The First National Bank of Baird	Baird	Texas.
First National Bank of the Mid-Cities	Bedford	Texas.
The Blanco National Bank	Blanco	Texas.
Legend Bank, NA	Bowie	Texas.
Commercial National Bank	Brady	Texas.
First Star Bank, SSB	Bremond	Texas.
The Bank and Trust of Bryan/College Station	Bryan	Texas.
First Bank	Burkburnett	Texas.
First State Bank & Trust Company	Carthage	Texas.
Spirit Bank of Texas, SSB	College Station	Texas.
Community National Bank & Trust of Texas	Corsicana	Texas.
Stockmens National Bank	Cotulla	Texas.
Texas Exchange Bank, SSB	Crowley	Texas.
Bank of Texas, NA	Dallas	Texas.
Comerica Bank	Dallas	Texas.
First Associations Bank	Dallas	Texas.
First Private Bank of Texas	Dallas	Texas.
Pavillion Bank	Dallas	Texas.
Signature Bank	Dallas	Texas.
T Bank, National Association	Dallas	Texas.
Associated Credit Union of Texas	Deer Park	Texas.
Amistad Bank	Del Rio	Texas.
DATCU Credit Union	Denton	Texas.
Northstar Bank of Texas	Denton	Texas.
First Bank & Trust East Texas	Diboll	Texas.
Pioneer Bank, SSB	Drippings Springs	Texas.
The First National Bank of Eagle Lake	Eagle Lake	Texas.
NewFirst National Bank	El Campo	Texas.
FirstLight Federal Credit Union	El Paso	Texas.
Enloe State Bank in Enloe	Enloe	Texas.
First National Bank of Emory	Emory	Texas.
Greater South Texas Bank	Falfurrias	Texas.
Pecos County State Bank	Fort Stockton	Texas.
Riverbend Bank	Fort Worth	Texas.
Security State Bank & Trust	Fredericksburg	Texas.
Collin Bank	Frisco	Texas.
The First State Bank of Gainesville	Gainesville	Texas.
Moody National Bank	Galveston	Texas.
First National Bank	George West	Texas.
First National Bank of Giddings	Giddings	Texas.
The First National Bank of Gilmer	Gilmer	Texas.
Mills County State Bank	Goldthwaite	Texas.
First State Bank	Graham	Texas.
Grand Bank of Texas	Grand Prairie	Texas.
Farmers State Bank	Groesbeck	Texas.
United Community Bank, NA	Highland Village	Texas.
Hondo National Bank	Hondo	Texas.
American First National Bank	Houston	Texas.
Encore Bank, National Association	Houston	Texas.
Icon Bank of Texas, National Association	Houston	Texas.
Preferred Bank, FSB	Houston	Texas.
Sterling Bank	Houston	Texas.
Vista Bank Texas	Houston	Texas.
Huntington State Bank	Huntington	Texas.
State National Bank of Texas	Iowa Park	Texas.
State Bank of Texas	Irving	Texas.
TIB—The Independent BankersBank	Irving	Texas.

First National Bank of Jacksboro (The)	Jacksboro	Texas.
The Jacksboro National Bank	Jacksboro	Texas.
Texas National Bank of Jacksonville	Jacksonville	Texas.
Alliance Bank Central Texas	Jewett	Texas.
Westbound Bank	Katy	Texas.
American Bank, NA	Keller	Texas.
First National Bank Texas	Killeen	Texas.
First Liberty National Bank	Liberty	Texas.
Texas Trust Credit Union	Mansfield	Texas.
The Commercial Bank	Mason	Texas.
Valliance Bank	McKinney	Texas.
Bank of Commerce	Mclean	Texas.
First National Bank of Midland	Midland	Texas.
Muenster State Bank	Muenster	Texas.
Nixon State Bank	Nixon	Texas.
First Basin Credit Union	Odessa	Texas.
West Texas State Bank	Odessa	Texas.
The Ozona National Bank	Ozona	Texas.
Texas Bay Area Credit Union	Pasadena	Texas.
Texas Citizens Bank, National Association	Pasadena	Texas.
InTouch Credit Union	Plano	Texas.
Vista Bank	Ralls	Texas.
Vision Bank—Texas	Richardson	Texas.
Cattleman's National Bank	Round Mountain	Texas.
1st Community Federal Credit Union	San Angelo	Texas.
Firstmark Credit Union	San Antonio	Texas.
USAA Federal Savings Bank	San Antonio	Texas.
Schertz Bank & Trust	Schertz	Texas.
West Texas State Bank	Snyder	Texas.
Texas Community Bank, National Association	Somerset	Texas.
Providence Bank of Texas	Southlake	Texas.
First National Bank of Stanton (The)	Stanton	Texas.
Founders Bank, SSB	Sugar Land	Texas.
Texell Federal Credit Union	Temple	Texas.
Amoco Federal Credit Union	Texas City	Texas.
The First National Bank of Trenton	Trenton	Texas.
Uvalde National Bank	Uvalde	Texas.
Central National Bank	Waco	Texas.
Wallis State Bank	Wallis	Texas.
First National Bank	Wichita Falls	Texas.

Federal Home Loan Bank of Topeka—District 10

Eagle Legacy Credit Union	Arvada	Colorado.
FirstBank of Boulder	Boulder	Colorado.
Summit Bank & Trust	Broomfield	Colorado.
The Eastern Colorado Bank	Cheyenne Wells	Colorado.
Academy Bank, National Association	Colorado Springs	Colorado.
CoBiz Bank	Denver	Colorado.
Native American Bank, National Association	Denver	Colorado.
FirstBank of Tech Center	Englewood	Colorado.
First National Bank of Estes Park	Estes Park	Colorado.
FirstBank of Northern Colorado	Fort Collins	Colorado.
Fort Collins Commerce Bank	Fort Collins	Colorado.
Larimer Bank of Commerce	Fort Collins	Colorado.
Grand Mountain Bank, FSB	Granby	Colorado.
Timberline Bank	Grand Junction	Colorado.
New West Bank	Greeley	Colorado.
Gunnison Bank & Trust Co	Gunnison	Colorado.
Red Rocks Credit Union	Highlands Ranch	Colorado.
Solera National Bank	Lakewood	Colorado.
FirsTier Bank	Louisville	Colorado.
Loveland Bank of Commerce	Loveland	Colorado.
Champion Bank	Parker	Colorado.
Equitable S&LA	Sterling	Colorado.
FirstBank North	Westminster	Colorado.
Mountain View Bank of Commerce	Westminster	Colorado.
Legacy Bank	Wiley	Colorado.
Signature Bank	Windsor	Colorado.
Stockgrowers State Bank of Ashland	Ashland	Kansas.
Mid America Bank	Baldwin City	Kansas.
American Bank of Baxter Springs	Baxter Springs	Kansas.
The Bendena State Bank	Bendena	Kansas.
The Citizens State Bank	Cheney	Kansas.
Peoples Bank	Coldwater	Kansas.
The First National Bank of Cunningham	Cunningham	Kansas.

State Bank of Downs	Downs	Kansas.
Garden City State Bank	Garden City	Kansas.
The First National Bank of Girard	Girard	Kansas.
Merit Bank	Goff	Kansas.
First National Bank	Goodland	Kansas.
American State Bank & Trust Company	Great Bend	Kansas.
The Citizens National Bank	Greenleaf	Kansas.
The First State Bank of Healy	Healy	Kansas.
Morrill & Janes Bank & Trust	Hiawatha	Kansas.
Farmers & Merchants Bank of Hill City	Hill City	Kansas.
Hillsboro State Bank	Hillsboro	Kansas.
The Hoisington National Bank	Hoisington	Kansas.
First National Bank of Holcomb	Holcomb	Kansas.
Denison State Bank	Holton	Kansas.
The Howard State Bank	Howard	Kansas.
The Jamestown State Bank	Jamestown	Kansas.
The Nekoma State Bank	Lacrosse	Kansas.
First State Bank & Trust Company	Larned	Kansas.
The Lawrence Bank	Lawrence	Kansas.
Credit Union of Johnson County	Lenexa	Kansas.
First National Bank of Liberal	Liberal	Kansas.
Lyons Federal Bank	Lyons	Kansas.
First Security Bank	Overbrook	Kansas.
Generations Bank	Overland Park	Kansas.
Sunflower Bank, NA	Salina	Kansas.
Baileyville State Bank	Seneca	Kansas.
Solomon State Bank	Solomon	Kansas.
Bank of Kansas	South Hutchinson	Kansas.
St. Marys State Bank	St. Marys	Kansas.
RelianzBank	Wichita	Kansas.
Adams State Bank	Adams	Nebraska.
Heartland Community Bank	Bennet	Nebraska.
Two Rivers Bank	Blair	Nebraska.
Brunswick State Bank	Brunswick	Nebraska.
First National Bank of Cambridge	Cambridge	Nebraska.
First National Bank of Chadron	Chadron	Nebraska.
Bank of Clarks	Clarks	Nebraska.
Farmers Bank of Cook	Cook	Nebraska.
Farmers State Bank	Dodge	Nebraska.
Bank of Doniphan	Doniphan	Nebraska.
First National Bank of Fairbury	Fairbury	Nebraska.
First National Bank and Trust Company	Falls City	Nebraska.
First National Bank of Friend	Friend	Nebraska.
The First National Bank of Gordon	Gordon	Nebraska.
Bank of Hartington	Hartington	Nebraska.
Hastings State Bank	Hastings	Nebraska.
First National Bank of Johnson	Johnson	Nebraska.
Security National Bank	Laurel	Nebraska.
Community Bank of Lincoln	Lincoln	Nebraska.
Nebraska Bankers' Bank	Lincoln	Nebraska.
Security First Bank	Lincoln	Nebraska.
Bank of Marquette	Marquette	Nebraska.
American National Bank	Omaha	Nebraska.
Bank of Paxton	Paxton	Nebraska.
Purdum State Bank	Purdum	Nebraska.
State Bank of Scotia	Scotia	Nebraska.
Valley Bank and Trust Company	Scottsbluff	Nebraska.
Iowa-Nebraska State Bank	South Sioux City	Nebraska.
Tilden Bank	Tilden	Nebraska.
First Nebraska Bank	Valley	Nebraska.
Wahoo State Bank	Wahoo	Nebraska.
Heritage Bank	Wood River	Nebraska.
Citizens Bank & Trust Company	Ardmore	Oklahoma.
Peoples State Bank	Blair	Oklahoma.
1st Bank & Trust	Broken Bow	Oklahoma.
The First State Bank	Canute	Oklahoma.
First Bank of Chandler	Chandler	Oklahoma.
Union Bank of Chandler	Chandler	Oklahoma.
Security State Bank	Cheyenne	Oklahoma.
RCB Bank	Claremore	Oklahoma.
The First National Bank of Coweta	Coweta	Oklahoma.
The First National Bank of Davis	Davis	Oklahoma.
First Bank & Trust Co	Duncan	Oklahoma.
Great Plains National Bank	Elk City	Oklahoma.
First Capital Bank	Guthrie	Oklahoma.
The First National Bank of Hooker	Hooker	Oklahoma.

First National Bank	Idabel	Oklahoma.
Idabel National Bank	Idabel	Oklahoma.
Bank of Locust Grove	Locust Grove	Oklahoma.
The Bank, National Association	McAlester	Oklahoma.
Grant County Bank	Medford	Oklahoma.
Security Bank and Trust Company	Miami	Oklahoma.
The First National Bank	Midwest City	Oklahoma.
All America Bank	Mustang	Oklahoma.
Communication Federal Credit Union	Oklahoma City	Oklahoma.
Coppermark Bank	Oklahoma City	Oklahoma.
First Liberty Bank	Oklahoma City	Oklahoma.
Frontier State Bank	Oklahoma City	Oklahoma.
Quail Creek Bank, NA	Oklahoma City	Oklahoma.
The Focus Federal Credit Union	Oklahoma City	Oklahoma.
First National Bank of Okmulgee	Okmulgee	Oklahoma.
The Community State Bank	Poteau	Oklahoma.
The First State Bank	Ryan	Oklahoma.
The Exchange Bank	Skiatook	Oklahoma.
First National Bank of Stigler	Stigler	Oklahoma.
Stroud National Bank	Stroud	Oklahoma.
Bank of Oklahoma, NA	Tulsa	Oklahoma.
Tulsa National Bank	Tulsa	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

West Valley National Bank	Avondale	Arizona.
Towne Bank of Arizona	Mesa	Arizona.
Altier Credit Union	Phoenix	Arizona.
Deer Valley Credit Union	Phoenix	Arizona.
Heritage Bank, National Association	Phoenix	Arizona.
RepublicBankAz, NA	Phoenix	Arizona.
Sonoran Bank, NA	Phoenix	Arizona.
First Arizona Savings, FSB	Scottsdale	Arizona.
Goldwater Bank, NA	Scottsdale	Arizona.
National Bank of Arizona	Tucson	Arizona.
Foothill Federal Credit Union	Arcadia	California.
Kern Federal Credit Union	Bakersfield	California.
First California Bank	Camarillo	California.
First Choice Bank	Cerritos	California.
Matadors Community Credit Union	Chatsworth	California.
Northern California National Bank	Chico	California.
Tri Counties Bank	Chico	California.
Vibra Bank	Chula Vista	California.
United Pacific Bank	City of Industry	California.
Stellar Business Bank	Covina	California.
First Northern Bank of Dixon	Dixon	California.
Community Valley Bank	El Centro	California.
California Community Bank	Escondido	California.
Folsom Lake Bank	Folsom	California.
Fresno First Bank	Fresno	California.
Pinnacle Bank	Gilroy	California.
Americas United Bank	Glendale	California.
Kings Federal Credit Union	Hanford	California.
Nuvision Financial Credit Union	Huntington Beach	California.
First Foundation Bank	Irvine	California.
Pacific Enterprise Bank	Irvine	California.
Plaza Bank	Irvine	California.
1st Enterprise Bank	Los Angeles	California.
California Business Bank	Los Angeles	California.
Commonwealth Business Bank	Los Angeles	California.
First Standard Bank	Los Angeles	California.
Hanmi Bank	Los Angeles	California.
Manufacturers Bank	Los Angeles	California
Pacific City Bank	Los Angeles	California.
Premier Business Bank	Los Angeles	California.
The Private Bank of California	Los Angeles	California.
Wedbush Bank	Los Angeles	California.
Partners Bank of California	Mission Viejo	California.
1st Capital Bank	Monterey	California.
Alta Alliance Bank	Oakland	California.
OneCalifornia Bank, FSB	Oakland	California.
Citizens Business Bank	Ontario	California.
Inland Community Bank, National Association	Ontario	California.
Desert Commercial Bank	Palm Desert	California.
The Private Bank of the Peninsula	Palo Alto	California.
LA Financial Federal Credit Union	Pasadena	California.

Inland Empire Credit Union	Pomona	California.
Bank of the Sierra	Porterville	California.
Plumas Bank	Quincy	California.
Bay Cities National Bank	Redondo Beach	California.
First National Bank of Southern California	Riverside	California.
Pacific Alliance Bank	Rosemead	California.
Community 1st Bank	Roseville	California.
American River Bank	Sacramento	California.
San Bernardino School Employees Federal Credit Union	San Bernardino	California.
Bank of Internet USA	San Diego	California.
Embarcadero Bank	San Diego	California.
Mission Federal Credit Union	San Diego	California.
North Island Financial Credit Union	San Diego	California.
San Diego Private Bank	San Diego	California.
San Diego Trust Bank	San Diego	California.
America California Bank	San Francisco	California.
JP Morgan Bank and Trust Company, NA	San Francisco	California.
Presidio Bank	San Francisco	California.
Spectrum Federal Credit Union	San Francisco	California.
Union Bank of California, National Association	San Francisco	California.
United American Bank	San Mateo	California.
Tri-Valley Bank	San Ramon	California.
American Riviera Bank	Santa Barbara	California.
Bank of Santa Barbara	Santa Barbara	California.
Community First Credit Union	Santa Rosa	California.
First Community Bank	Santa Rosa	California.
Redwood Credit Union	Santa Rosa	California.
Priority One Credit Union	South Pasadena	California.
Liberty Bank	South San Francisco	California.
Bank of Agriculture and Commerce	Stockton	California.
Star One	Sunnyvale	California.
Tustin Community Bank	Tustin	California.
Universal City Studios	Universal City	California.
Suncrest Bank	Visalia	California.
Saigon National Bank	Westminster	California.
Credit Union of Southern California	Whittier	California.
Friendly Hills Bank	Whittier	California.
River Valley Community Bank	Yuba City	California.
Sutter Community Bank	Yuba City	California.
Citibank, NA	Las Vegas	Nevada.
Kirkwood Bank of Nevada	Las Vegas	Nevada.
Nevada Federal Credit Union	Las Vegas	Nevada.
Service1st Bank of Nevada	Las Vegas	Nevada.
Sun West Bank	Las Vegas	Nevada.
Bank of North Las Vegas	North Las Vegas	Nevada.
Wells Fargo Financial National Bank	North Las Vegas	Nevada.
First Independent Bank of Nevada	Reno	Nevada.

Federal Home Loan Bank of Seattle—District 12

Alaska USA Federal Credit Union	Anchorage	Alaska.
Denali Alaskan Federal Credit Union	Anchorage	Alaska.
Alaska Pacific Bank	Juneau	Alaska.
Community First Guam FCU	Agana	Guam.
Government of Guam Employees Federal Credit Union	Hagatna	Guam.
West Oahu Community FCU	Barbers Point	Hawaii.
First Hawaiian Bank	Honolulu	Hawaii.
Hawaii National Bank	Honolulu	Hawaii.
Pacific Rim Bank	Honolulu	Hawaii.
Hawaii Community Federal Credit Union	Kailua-Kona	Hawaii.
Syringa Bank	Boise	Idaho.
Idaho Independent Bank	Coeur D'alene	Idaho.
Bank of Idaho	Idaho Falls	Idaho.
Idaho First Bank	Mccall	Idaho.
Belt Valley Bank	Belt	Montana.
Flathead Bank of Bigfork	Bigfork	Montana.
First Boulder Valley Bank	Boulder	Montana.
Bank of Bozeman	Bozeman	Montana.
First Madison Valley Bank	Ennis	Montana.
First State Bank of Forsyth	Forsyth	Montana.
Yellowstone Bank	Laurel	Montana.
Treasure State Bank	Missoula	Montana.
Montana State Bank	Plentywood	Montana.
Valley Bank of Ronan	Ronan	Montana.
High Desert Bank	Bend	Oregon.
Home Valley Bank	Cave Junction	Oregon.

Citizens Bank	Corvallis	Oregon.
Oregon Community Credit Union	Eugene	Oregon.
Oregon Pacific Banking Co	Florence	Oregon.
SOFCU Community Credit Union	Grants Pass	Oregon.
Lewis & Clark Bank	Oregon City	Oregon.
Point West Credit Union	Portland	Oregon.
Willamette Valley Bank	Salem	Oregon.
Silver Falls Bank	Silverton	Oregon.
St. Helens Community FCU	St. Helens	Oregon.
TLC Federal Credit Union	Tillamook	Oregon.
Pacific West Bank	West Linn	Oregon.
State Bank of Southern Utah	Cedar City	Utah.
America West Bank	Layton	Utah.
Central Bank	Provo	Utah.
Lehman Brothers Commercial Bank	Salt Lake City	Utah.
Liberty Bank	Salt Lake City	Utah.
Merrill Lynch Bank USA	Salt Lake City	Utah.
Morgan Stanley Bank, National Association	Salt Lake City	Utah.
Proficio Bank	Salt Lake City	Utah.
University of Utah Federal Credit Union	Salt Lake City	Utah.
Jordan Federal Credit Union	Sandy	Utah.
Bank of Bellevue	Bellevue	Washington.
Foundation Bank	Bellevue	Washington.
Westsound Bank	Bremerton	Washington.
Business Bank of Skagit County	Burlington	Washington.
Coastal Community Bank	Everett	Washington.
Frontier Bank	Everett	Washington.
Mountain Pacific Bank	Everett	Washington.
MountainCrest Credit Union	Everett	Washington.
Shorebank Pacific	Ilwaco	Washington.
Issaquah Community Bank	Issaquah	Washington.
Northwest Commercial Bank	Lakewood	Washington.
Twin City Bank	Longview	Washington.
Weyerhaeuser	Longview	Washington.
City Bank	Lynnwood	Washington.
UniBank	Lynnwood	Washington.
Golf Savings Bank	Mountlake Terrace	Washington.
Thurston First Bank	Olympia	Washington.
Gesa Credit Union	Richland	Washington.
First Sound Bank	Seattle	Washington.
Prevail Credit Union	Seattle	Washington.
School Employees Credit Union of Washington	Seattle	Washington.
Numerica Credit Union	Spokane	Washington.
State Bank Northwest	Spokane	Washington.
Washington Trust Bank	Spokane	Washington.
Columbia State Bank	Tacoma	Washington.
Commencement Bank	Tacoma	Washington.
Harborstone Credit Union	Tacoma	Washington.
Pierce Commercial Bank	Tacoma	Washington.
Westside Community Bank	University Place	Washington.
Baker-Boyer National Bank	Walla Walla	Washington.
First National Bank of Buffalo	Buffalo	Wyoming.
Jonah Bank of Wyoming	Casper	Wyoming.
Cheyenne-Laramie County Employees FCU	Cheyenne	Wyoming.
Wyoming Bank & Trust	Cheyenne	Wyoming.
State Bank of Green River	Green River	Wyoming.
Summit National Bank	Hulett	Wyoming.
Bank of Commerce	Rawlins	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before April 15, 2010, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2008–09 eighth round review cycle. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2008–09 eighth round review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail to *hmgcommunitysupportprogram@fhfa.gov* on or before the May 17, 2010 deadline for submission of Community Support Statements.

Dated: March 24, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–7215 Filed 3–31–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission,Washington, DC 20573.

Non-Vessel-Operating Common Carrier—Ocean Transportation Intermediary

Aerocosta Global Group, Inc., dba Aerocosta Global Systems Inc., 2463 208th Street, #205,Torrance, CA 90501, Officers: Hwa S. Kil, Secretary, (Qualifying Individual), Darren Kim, President/Treasurer

IDS Freight Services USA LLC, 230–59 International Airport Center Blvd., Suite 270, Jamaica, NY 11413, Officers: Scott Ornstein, Director (Qualifying Individual), S. Oxley, President

Seapassion Logistics Inc., 12403 Slauson Avenue, Unit C, Whittier, CA 90606, Officers: Jun (aka Alex) Zhong, Treasurer, (Qualifying Individual), Jun Zhang, President

United Sunfine Logistics, Inc., 20539 Walnut Drive, Suite F, Walnut, CA 91789, Officers: Andy Kung, President (Qualifying Individual), Chen Jie, CEO

Flash Air Cargo, Inc., 10775 NW 21 Street, #150, Doral, FL 33172, Officers: Jose L. Montero, President (Qualifying Individual), Lisellot Casasnovas, Vice President/Secretary

Empire Worldwide Logistics LLC, 21501 Juego Circle, Suite 29B, Boca Raton, FL 33433, Officer: Kenneth Quartarolo, Member/Manager

Perfect Logistics International Inc., 370 Amapola Avenue, Suite 207, Torrance, CA 90501, Officer: Lili Gu, President (Qualifying Individual)

P.O.L. International Inc., 245 E. Main Street, #107, Alhambra, CA 91801, Officer: Tiffany Huang, President/Secretary/Treasurer, (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary

Post Oak Management Group, L.P. dba Momentum Global Logistics, 14655 NW Freeway, #138, Houston, TX 77040, Officers: Diana D. Conner, V.P. of International Operations (Qualifying Individual), Gregory M. Giles, President

Waled International LLC, 10333 Harwin Drive, #460C, Houston, TX 77036, Officer: Abdurahman Esmael, Member/Manager (Qualifying Individual)

M & S Shipping Limited, 5701 Thurston Avenue, Suite 102, Virginia Beach, VA 23455, Officer: Peter W. Simmons, President (Qualifying Individual)

Rigenti Investment Company LLC, 5300 Pennington Avenue, Baltimore, MD 21226, Officer: Richard N. Egenti, President (Qualifying Individual)

Carijamaica Freight & Shipping, LLC, 8524 NW 72nd Street, Miami, FL 33166, Officers: Marcia J. Sayles, Manager, (Qualifying Individual), Devon O. Grant, Manager

YJC Logistics Corp. dba YJC Logistics dba YJC America, 3600 Wilshire Blvd., #1234, Los Angeles, CA 90010, Officers: David J. Chun, Treasurer (Qualifying Individual), Jeong J. Byun, CEO/President/Secretary

Route 809 Freight Forward LLC, 7801 NW 66th Street, #C, Miami, FL 33166, Officers: Eduardo Pichardo, Manager/Member (Qualifying Individual), Indhira Pantaleon, Manager/Member

Amass International Group Inc., 13191 Crossroads Parkway North, Suite 385, City of Industry, CA 91746, Officers: Jia (James) H. Bai, Secretary, (Qualifying Individual), Garrisun Ge, President/Director

American International Transport, Inc., 12833 Simms Avenue, Suite B, Hawthorne, CA 90250, Officers: David Nakama, Vice President (Qualifying Individual), Lourdes Evans, Director/Pres./Sec./Treasurer

Peters & May USA, Inc. dba Compass Marine, 1656 Carmen Drive, Elk Grove Village, IL 60007, Officers: David K. Ong, Assistant Secretary (Qualifying Individual), Jan Rydgren-Knudsen, President

Counterpoint Logistics LLC, 444 Donaldson Street, Highland Park, NJ 08904, Officer: Robby Lee, President (Qualifying Individual)

Sitorex Corporation, 5926 Glenoak Avenue, Baltimore, MD 21214, Officers: Emmanuel Ndiaye, President, (Qualifying Individual), Michael A. Boaten, Vice President

Ocean Freight Forwarder—Ocean Transportation Intermediary

LHE International, Inc., 8225 NW 68th Street, Miami, FL 33166, Officers: Leticia Machuca, President/Secretary (Qualifying Individual), Hugo M. Marte, Vice President

Marine Experts, Inc., 8009 NW 36th Street, #220, Doral, FL 33166, Officers: Ivan Garcez, President (Qualifying Individual), Ulysses Garcez, Vice President

Dated: March 26, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–7276 Filed 3–31–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
018182NF	Sea-Line-Cargo, Inc., 202 Port Jersey Blvd., Jersey City, NJ 07305	February 27, 2010.
021925F	AAA International Shipping, LLC, 509 Largovista Drive, Oakland, FL 34787.	February 19, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–7273 Filed 3–31–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 019600F.

Name: Transphere, Inc.

Address: 5800 Commerce Drive, Westland, MI 48185.

Order Published: FR: 3/17/10 (Volume 75, No. 51, Pgs. 12749–12750).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–7271 Filed 3–31–10; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0288; Docket 2010–0002, Sequence 16]

Agency Information Collection Activities; Proposed Collection; Comment Request; Open Government Citizen Engagement Ratings, Rankings, and Flagging; Information Collection; OMB Control No. 3090–0288

AGENCY: Office of Citizen Services, General Services Administration (GSA).

ACTION: Notice of a request for comments regarding an extension to an existing OMB information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), this document announces that GSA is planning to submit a request to extend an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting this ICR to OMB for review and approval, GSA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 1, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to Jonathan Rubin at *jonathan.rubin@gsa.gov*, or to the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. FAX number is 202–501–4067. Please cite OMB Control No. 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Rubin, General Services Administration, Office of Citizen Services, 1800 F Street, NW., Room G139, Washington, DC 20405; *telephone number:* 202–501–0855; *fax number:* 202–501–4281; *e-mail address: jonathan.rubin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

What Information Is GSA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

What Should I Consider When I Prepare My Comments for GSA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by GSA, be sure to identify the ICR title on the first page of your response. You may also provide the **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply To?

Title: Open Government Citizen Engagement Ratings, Rankings, and Flagging.

OMB Control Number: 3090–0288.

Abstract: This information collection request for a clearance for a replacement of the emergency ICR approved by OMB. [It is being submitted in order to fulfill the public feedback aspects of this important initiative. Visitors will be provided opportunities to provide feedback and ratings in the spirit of the President's open government and transparency initiative. Examples of feedback mechanisms are:

(1) An "agree/disagree", "vote up/vote down" or other rating system to give visitors information about which posts other visitors found most useful and interesting.

(2) A "Contact Us" entry page with an optional contact e-mail address for those visitors wishing to identify themselves.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 1,666 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.]

The estimated annual burden request is summarized here:

Estimated total number of potential respondents: 12,000,000.

Estimated total number of potential responses: 1,200,000.

Frequency of response: Occasionally.

Estimated total annual burden hours: 1,666 hours.

Estimated total annual costs: No cost to the public; no additional government resources.

What Is the Next Step in the Process for This ICR?

GSA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, GSA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 26, 2010.

Casey Colemen,

Chief Information Officer.

[FR Doc. 2010–7306 Filed 3–31–10; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, May 10, 2010. The meeting will be held from 9 a.m. until 5 p.m.

ADDRESSES: Department of Health and Human Services; Room 800, Hubert H. Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201. For a map and directions to the Hubert H. Humphrey building, please visit *http://www.hhs.gov/about/hhhmap.html.*

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H.; Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services; 200 Independence Avenue, SW., Hubert Humphrey Building, Room 712E; Washington, DC 20201. Direct all CFSAC e-mail inquiries to *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including: (1) The current state of the knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about advances in chronic fatigue syndrome.

The agenda for this meeting is being developed. The agenda will be posted on the CFSAC Web site, *http://www.hhs.gov/advcomcfs,* when it is finalized. The meeting will be broadcast over the Internet as a real-time streaming video. It will also be recorded and archived on the CFSAC Web site for viewers to watch at their convenience.

Public attendance at the meeting is limited to space available. Individuals must provide a government-issued photo ID for entry into the building where the meeting is scheduled to be held. Those attending the meeting will need to sign in prior to entering the meeting room. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at *cfsac@hhs.gov* in advance.

The Committee is most interested in receiving public comment on the CFSAC charter, which can be found at *http://www.hhs.gov/advcomcfs/charter/index.html*. Members of the public will have the opportunity to provide comment at the meeting if pre-registered. Individuals who wish to address the Committee during the public comment session must pre-register by April 26, 2010, via e-mail at *cfsac@hhs.gov.*

Time slots for public comment will be limited to three (3) minutes per speaker; no exceptions will be made. Individuals registering should submit a copy of their testimony in advance to *cfsac@hhs.gov,* prior to the close of business on April 26, 2010.

Members of the public who wish to have printed material distributed to CFSAC members for review should submit, at a minimum, one copy of the material to the Executive Secretary at *cfsac@hhs.gov,* prior to close of business (5 p.m. EDT) on Monday, April 26, 2010. Submissions are limited to five typewritten pages.

If you wish to be identified, ensure that all written testimony includes only your name and does not include personal contact information. If you wish to remain anonymous, please notify the CFSAC support team when materials are submitted to *cfsac@hhs.gov.*

Dated: March 29, 2010.

Wanda K. Jones,

Executive Secretary, CFSAC.

[FR Doc. 2010–7337 Filed 3–31–10; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day—10–10AP]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Survey of Healthcare Workers' Health and Safety Practices—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, Sections 20 and 22, Occupational Safety and Health Act of 1970, NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH will conduct a Web-based survey that will provide important hazard and exposure surveillance data that is currently unavailable for healthcare workers.

Healthcare workers represent over 8% of the U.S. workforce with many occupations projected to substantially grow in the next ten years. Healthcare workers experience higher rates of illness and injury as compared to workers in other industries and are at increased risk for many of the types of adverse health effects potentially caused by exposure to hazardous chemical agents. The proposed hazard surveillance survey will provide important information on work practices associated with the use of important classes of hazardous chemical agents including antineoplastic agents, anesthetic gases, aerosolized medications, chemical sterilants, high level disinfectants and surgical smoke. This voluntary survey is the first of its kind by the Federal government. The data collected will allow NIOSH to describe the range of health and safety practices and the types of exposure controls used by healthcare workers by hazard, occupation, and type and size of work setting. The study population for this survey includes members of 22 professional organizations who represent healthcare workers in many occupations which use or are exposed to these chemical agents. Each of the 22 participating professional organizations will be responsible for implementing the sampling approach developed by NIOSH and sending invitation and reminder emails to sampled members. The sample size for the survey is estimated to be 25,650 healthcare workers. NIOSH will use the data to guide interventions and future research. Participating professional organizations plan to use the data for benchmarking, identifying areas for expanding guidelines and for health and safety promotion.

The proposed survey is modular in design and will be only available on-line. The survey includes a screening module, separate chemical hazard modules addressing the previously mentioned hazardous chemical agents, and a core module which gathers information on a broad range of health and safety issues affecting healthcare workers. The web survey will present the modules to respondents in a seamless manner.

Depending on the size of the participating professional organization, all members or a random sample of members will be sent an email by their organization which will contain a link to the survey. Initially, respondents will complete a screening module which will determine whether they are eligible for the survey. The eligibility criteria is, they must have used or have come in contact with one or more of the hazardous chemical agents within the past week. If eligible, the respondent would complete the appropriate hazard module (*e.g.,* oncology nurses would complete hazard module on administration of antineoplastic agents) and the core module. A second hazard module may also be completed if additional chemical agents were used in the past week. Respondents will not be asked to report their names or any other identifying information.

The project supports NIOSH's surveillance strategic goal which is to advance the usefulness of surveillance information for the prevention of occupational illnesses, injuries and hazards. Further, the goal seeks to actively promote the dissemination and use of NIOSH surveillance data and information.

Once the study is completed, results will be made available via various means including the NIOSH Internet site. NIOSH expects to complete data collection no later than spring of 2011. There is no cost to respondents other than their time. The total estimated annual burden hours are 11,140.

Estimated Annualized Burden Hours

Type of respondent	Activity or form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Professional Organization	Implement NIOSH sampling approach; send invitation and reminder emails to sampled members.	22	1	5
Healthcare Workers	Screening module	25,650	1	1/60
	Primary hazard module	20,520	1	10/60
	Core module	20,520	1	20/60
	Secondary hazard module	2,052	1	10/60

Dated: March 25, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–7369 Filed 3–31–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Comment Request for Review of ACF Disaster Case Management Implementation Guide; Office of Human Services Emergency Preparedness and Response

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Administration for Children and Families (ACF), Office of Human Services Emergency Preparedness and Response (OHSEPR) intends to submit notice in the **Federal Register** for comments on the ACF Disaster Case Management Implementation Guide, dated December 2009.

Disaster case management is the process of organizing and providing a timely, coordinated approach to assess disaster-related needs including health care, mental health and human services needs that were caused or exacerbated by the event and may adversely impact an individual's recovery if not addressed. Disaster case management facilitates the delivery of appropriate resources and services, works with a client to implement a recovery plan and advocates for the client's needs to assist him/her in returning to a pre-disaster

status while respecting human dignity. If necessary, Disaster case management helps transition the client with pre-existing needs to existing case management providers after disaster-related needs are addressed. This is facilitated through the provision of a single point of contact for disaster assistance applicants who need a wide variety of services that may be provided by many different organizations.

The purpose of Disaster case management is to rapidly return individuals and families who have survived a disaster to a state of self-sufficiency. This is accomplished by ensuring that each individual has access to a Case Manager who will capture information about the individual's situation and then serve as his/her advocate and help him/her organize and access disaster-related resources, human services, health care and mental health care that will help him/her achieve pre-disaster levels of functioning and equilibrium. The service is particularly critical in situations where large-scale mortality, injuries, or personal property damage have occurred. Disaster case management is based on the principles of self-determination, self-sufficiency, federalism, flexibility and speed, and support to States.

Comments are particularly invited on: the program guidelines of the ACF Disaster Case Management Pilot Program; and recommendations on program improvements based on valid evidence and methodology.

For a copy of the ACF Disaster Case Management Implementation Guide, please visit *http://www.acf.hhs.gov/ohsepr/dcm/dcm.guide.html*, or contact James Davis at 202–744–0091 or *james.davis@acf.hhs.gov.*

DATES: Comments must be received on or before May 7, 2010.

ADDRESSES: Send or deliver comments to James Davis, National Case Management Analyst, Office of Human Services Emergency Preparedness and Response, Administration for Children and Families, 370 L'Enfant Promenade, SW., 6th Floor West, Washington, DC 20447 or via e-mail to *james.davis@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: CAPT Roberta P. Lavin, Director, Office of Human Services Emergency Preparedness and Response (OHSEPR), at *roberta.lavin@acf.hhs.gov* or 202–401–9306; Sylvia R. Menifee, Deputy Director (Operations), OHSEPR, at *sylvia.menifee@acf.hhs.gov* or 202–401–1448; James Davis, National Case Management Analyst, OHSEPR, at *james.davis@acf.hhs.gov* or 202–744–0091.

SUPPLEMENTARY INFORMATION: The Administration for Children and Families, within the Department of Health and Human Services is responsible for Federal programs that promote the economic and social well-being of families, children, individuals, and communities. ACF programs aim to achieve the following:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities that have a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, American Indian tribes, Native communities, States, and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned, reformed, and integrated to improve needed access; and
- A strong commitment to working with people with developmental disabilities, refugees, and migrants to address their needs, strengths, and abilities.

Dated: March 26, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

[FR Doc. 2010–7330 Filed 3–31–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (CSAT) National Advisory Council on April 21, 2010.

A portion of the meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. To make arrangements to attend on-site, or to request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site at *https://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with the CSAT Council's Designated Federal Official, Ms. Cynthia Graham (*see* contact information below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.nac.samhsa.gov/CSAT/csatnac.aspx*, or by contacting Ms. Graham. The transcript for the open session of the meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration's CSAT National Advisory Council.

Date/Time/Type: April 21, 2010.

From 8:30 a.m.–9 a.m.: Closed.

From 9 a.m.–5 p.m.: Open.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Cynthia Graham, Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, *Telephone:* (240) 276–1692, *FAX:* (240) 276–1690, *E-mail: cynthia.graham@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010–7230 Filed 3–31–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (CSAT) National Advisory Council on April 21, 2010.

A portion of the meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. To make arrangements to attend on-site, or to request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site at *https://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAT Council's

Designated Federal Official, Ms. Cynthia Graham (*see* contact information below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.nac.samhsa.gov/CSAT/csatnac.aspx,* or by contacting Ms. Graham. The transcript for the open session of the meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration's CSAT National Advisory Council.

Date/Time/Type: April 21, 2010. From 8:30 a.m.–9 a.m.: Closed. From 9 a.m.–5 p.m.: Open.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Cynthia Graham, Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, *Telephone:* (240) 276–1692, *FAX:* (240) 276–1690, *E-mail: cynthia.graham@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010–7243 Filed 3–31–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (CSAT) National Advisory Council on April 21, 2010.

A portion of the meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. To make arrangements to attend on-site, or to request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site at *https://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with the CSAT Council's Designated Federal Official, Ms. Cynthia Graham (*see* contact information below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.nac.samhsa.gov/CSAT/csatnac.aspx*, or by contacting Ms. Graham. The transcript for the open session of the meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration's CSAT National Advisory Council.

Date/Time/Type: April 21, 2010.

From 8:30 a.m.–9 a.m.: CLOSED.

From 9 a.m.–5 p.m.: OPEN.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Cynthia Graham, Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, *Telephone:* (240) 276–1692, *FAX:* (240) 276–1690, *E-mail: cynthia.graham@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010–7267 Filed 3–31–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR); Notice of National Conversation on Public Health and Chemical Exposures Leadership Council Conference Call

Time and Date: 2:30 p.m.–4:30 p.m. EDT, Wednesday, April 14, 2010.

Location: Teleconference.

Status: The public is invited to listen to the meeting by phone, see "contact for additional information" below.

Purpose: This is the third meeting of the National Conversation on Public Health and Chemical Exposures Leadership Council, which is convened by RESOLVE, a non-profit independent facilitator. The National Conversation on Public Health and Chemical Exposures is a collaborative initiative supported by NCEH/ATSDR and through which many organizations and individuals are helping develop an action agenda for strengthening the nation's approach to protecting the public's health from harmful chemical exposures. The Leadership Council provides overall guidance to the National Conversation project and will be responsible for issuing the final action agenda. For additional information on the National Conversation on Public Health and Chemical Exposures, visit this Web site: *http://www.atsdr.cdc.gov/nationalconversation/.*

Meeting agenda: The call will include discussing (1) selection of a co-chair, (2) updates from work groups, and (3) the results of the first National Conversation web dialogue (scheduled for April 5–7, 2010).

Contact for Additional Information: If you would like to receive additional information on listening to the meeting by phone, please contact: *nationalconversation@cdc.gov* or Ben Gerhardstein at 770–488–3646.

Dated: March 26, 2010.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–7356 Filed 3–31–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property

such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (NExT) SEP February 2010 Cycle 3.

Date: April 30, 2010.

Time: 8:30 a.m.–4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dr. Barbara Mroczkowski, Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkowskib@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7346 Filed 3–31–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Review of NIAAA Member Application.

Date: April 7, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7345 Filed 3–31–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Effect of Energy Flux on Risk Factors for Age-Related Chronic Diseases. I

Date: May 3, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Health Care Spending.

Date: May 5, 2010.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Diet Restriction.

Date: May 6, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Alicja L Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Amyloid Imaging In Aging and Dementia.

Date: May 17, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Basis of Myocardial Injury in the Elderly.

Date: May 27, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Nutrient Signaling II.

Date: June 14, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue,

Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Adiposity, Aging, and Stem Cells.

Date: June 23, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7344 Filed 3–31–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of PANVAC and Tumor Associated Antigens as Cancer Vaccines

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to Bavarian Nordic Immunotherapeutics ("BNIT") located in Mountain View, CA, USA.

Intellectual Property:

1. U.S. Patent No. 6,756,038 issued June 29, 2004 as well as issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–07];

2. U.S. Patent Application No. 10/725,373 (recently allowed) filed December 3, 2003 as well as continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–08];

3. U.S. Patent No. 6,001,349 issued 14 Dec. 1999 as well as issued and pending foreign counterparts [HHS Ref. No. E–200–1990/3–US–01];

4. U.S. Patent Application No. 10/579,025 filed May 11, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [E–087–2005/0–US–03];

5. U.S. Patent Application No. 10/579,007 filed May 11, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [E–088–2005/0–US–03];

6. U.S. Patent No. 7,118,738 issued October 10, 2006 as well as all continuations and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–154–1998/0–US–07];

7. U.S. Patent Application Nos. 08/686,280 filed July 25, 1996 as well as all issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–US–01];

8. U.S. Patent No. 7,410,644 issued August 12, 2008 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–US–08];

9. U.S. Patent Nos. 6,893,869, 6,548,068 and 6,045,802 issued May 17, 2005, April 15, 2003 and April 4, 2000 respectively, as well as issued and pending foreign counterparts [HHS Ref. Nos. E–260–1994/1–US–03, US–02, US–01]; U.S. Patent No. 7,368,116 issued May 6, 2008 and U.S. Patent Application No. 12/112,819, as well as all continuation and divisional applications [HHS Ref. Nos. E–260–1994/1–US–04 and US–05];

10. Europe Patent Application No. 00102998.2 filed October 2, 1995, Europe Patent No. 0784483 issued November 29, 2001, Europe Patent Application No. 09013495.8 filed October 26, 2009, as well as all continuation, and divisional applications [HHS Ref. Nos. E–260–1994/2–EP–15, EP–16 and EP–27]; Japan Patent Application No. 512100/96 filed October 2, 1995; Japan Patent No. 4078319 issued February 8, 2008 [HHS Ref. No. E–260–1994/2–JP–25]; and Japan Patent No. 4160612 issued July 25, 2008, as well as all continuation and divisional applications; [HHS Ref. No. E–260–1994/2–JP–21, JP–25 and JP–26]; Australia Patent No. 688606 issued July 2, 1998 [E–260–1994/2–AU–11]; Canada Patent No. 2201587 issued June 25, 2002 [E–260–1994/2–CA–12];

11. Canada Patent Application No. 2,412,050 filed June 15, 2001 [HHS Ref. No. E–187–2000/0–CA–05]; Australia Patent No. 2001268452 issued November 30, 2006 [HHS Ref. No. E–187–2000/0–AU–06]; Japan Patent Application No. 2002–510097 filed June 15, 2001 [HHS Ref. No. E–187–2000/0–JP–07]; Hong Kong Patent Application No. 03105975.5 filed June 15, 2001 [HHS Ref. No. E–187–2000/0–HK–08]; as well as all continuation and divisional applications;

12. U.S. Patent Application No. 12/280,534 filed February 21, 2007, [HHS Ref. No. E–104–2006/0–US–06]; Australia Patent Application No. 2007221255 filed February 21, 2007 [HHS Ref. No. E–104–2006/0–AU–03]; Europe Patent Application No. 07751371.1 filed February 21, 2007, [HHS Ref. No. E–104–2006/0–US–06]; filed February 21, 2007, [HHS Ref. No. E–104–2006/0–EP–05]; Canada Patent Application No. 2642994 filed February 21, 2007 [HHS Ref. No. E–104–2006/0–CA–04]; as well as all continuation and divisional and applications;

13. U.S. Patent Application No. 12/528,796 filed August 26, 2009 [HHS Ref. No. E–074–2007/0–US–07]; Australia Patent Application No. 2008221383 filed February 27, 2008 [HHS Ref. No. E–074–2007/0–AU–03]; Europe Patent Application No. 08743578.0 filed February 27, 2008 [HHS Ref. No. E–074–2007/0–EP–05]; Canada Patent Application No. 2,678,404 filed February 27, 2008 [HHS Ref. No. E–074–2007/0–CA–04]; Japan Patent Application No. not yet assigned filed February 27, 2008 [HHS Ref. No. E–074–2007/0–JP–06] as well as all continuation, divisional and pending foreign counterpart applications;

Group II—Nonexclusive Licensed Patent Rights:

1. U.S. Patent No. 6,969,609 issued November 29, 2005; U.S. Patent No. 7,211,432 issued May 1, 2007; U.S. Patent Application No. 11/723,666 filed March 21, 2007; as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–256–1998/0, 1];

2. U.S. Patent Application Nos. 60/448,591 and 10/543,944 filed February 20, 2003 and February 20, 2004 respectively, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–028–2007/0];

3. U.S. Patent No. 6,699,475 issued March 2, 2004, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–134–2007/0];

4. U.S. Patent No. 5,093,258 issued March 3, 1992, as well as all continuation and divisional applications, and issued and pending

foreign counterparts [HHS Ref. No. E–135–2007/0];

5. U.S. Patent Application No. 07/205,189 filed June 10, 1988, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref No. E–136–2007];

6. U.S. Patent Application No. 60/625,321 filed November 5, 2004, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–138–2007]; and

7. U.S. Patent Application No. 07/340,052 filed April 18, 1989, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–147–2007].

The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be use of Licensed Patent Rights for development of therapeutics for human cancers. The field of use will specifically exclude prostate cancer, melanoma and colorectal cancer. For the avoidance of doubt, delivery formulations shall specifically exclude canary poxvirus vectors, NYVAC, non-viral eukaryotic expression vectors and recombinant yeast vectors in all geographic territories.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 3, 2010 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D. Licensing and Patenting Associate, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 435–5587; *Facsimile:* (301) 435–4013; *E-mail:* chatterjeesa@od.nih.gov.

SUPPLEMENTARY INFORMATION: Cancer immunotherapy is a recent approach where tumor associated antigens (TAAs), which are primarily expressed in human tumor cells, and not expressed or minimally expressed in normal tissues, are employed to generate a tumor-specific immune response. Specifically, these antigens serve as targets for the host immune system and elicit responses that results in tumor destruction. The initiation of an effective T-cell immune response to antigens requires two signals. The first one is antigen-specific via the peptide/major histocompatibility complex and the second or "costimulatory" signal is required for cytokine production, proliferation, and other aspects of T-cell activation.

The patents and patent applications describe a vaccine technology, TRICOM, in conjunction with tumor associated antigens (TAAs). The TRICOM technology employs avirulent poxviruses to present a combination of costimulatory signaling molecules with tumor-associated antigens (TAAs) to activate T-cells and break the immune systems tolerance towards cancer cells. This is achieved using recombinant poxvirus DNA vectors that encode both T-cell costimulatory molecules and TAAs. The combination of the three (3) costimulatory molecules B7.1, ICAM–1 and LFA–3, hence the name TRICOM, has been shown to have more than the additive effect of each costimulatory molecule when used individually to optimally activate both CD4+ and CD8+ T cells. When a TRICOM based vaccine expressing TAAs is administered it greatly enhances the immune response against the malignant cells expressing those TAAs. By changing the TAAs used for immunization with TRICOM vaccines, immune responses can be generated to diverse types of cancers. The versatility of the vector-based TRICOM based vaccine is that it allows, including several TAAs, to help maximize the effectiveness. Transgenes reflecting alterations of TAAs can also be inserted into TRICOM based vaccines to further enhance immunogenicity. The addition of the two well-known TAAs, carcinoembryonic antigen (CEA) and MUC–1 to the TRICOM vector results in the PANVAC vaccine, which is used in a prime and boost vaccine strategy. It is well established that the overexpression of these two (2) TAAs are associated with the presence of a variety of carcinomas; therefore PANVAC can potentially be effective against a range of tumor types.

Additionally, new TAAs are being continually identified. One such example is the antigen Brachyury. Although Brachyury has been well known for its role in developmental cell biology, it has recently been implicated in tumor cell invasion and metastasis. Pre-clinical data indicates that Brachyury is aberrantly expressed on tumors of the lung, intestine, stomach, kidney, bladder, uterus, ovary, and testis, and in chronic lymphocytic leukemia. When used in combination with costimulatory molecules, it can effectively activate T-cells to kill tumors cells that originated from above mentioned tumors. Therefore, as one example, Brachyury combined with TRICOM also has potential as a cancer immunotherapy for the treatment of several tumors.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 26, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–7341 Filed 3–31–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0026]

Science and Technology Directorate; Submission for Review; Information Collection Request for the Department of Homeland Security Science and Technology Directorate First Responders Community of Practice

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on a new data collection form for the Science and Technology Directorate (S&T) First Responders Community of Practice (FRCoP): User Registration Page (DHS Form 10059 (9/09)). The FRCoP web-based tool will be collecting profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users will be required to authenticate prior to entering the site. In addition, the tool will provide members the

capability to create wikis, discussion threads, blogs, and documents allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members will also be able to participate in threaded discussions and comment on other members' content. The S&T FRCoP program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. Section 313 of the Homeland Security Act of 2002 (Pub. L. 107–296) established this requirement. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until May 3, 2010.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Science and Technology Directorate, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Please include docket number DHS–2010–0026 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Jeffery Harris (202) 254–6015.

SUPPLEMENTARY INFORMATION: The User Registration Form will be available on the FRCoP Web site found at (*https://communities.firstresponder.gov*). The user will complete the form online and submit it through the Web site.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* First Responders Community of Practice: User Registration Form.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: DHS Science and Technology Directorate, DHS Form 10059 (09/09).

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual first responders who wish to participate in the FRCoP.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 5000.

b. *An estimate of the time for an average respondent to respond:* 0.25 burden hours.

Dated: March 24, 2010.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2010–7275 Filed 3–31–10; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–28, and Form G–28I, Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection under Review: Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, and Form G–28I, Notice of Entry of Appearance of Foreign Attorney. OMB Control No. 1615–0105.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 1, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add the OMB Control Number 1615–0105 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Accredited Representative, and Notice of Entry of Appearance of Foreign Attorney.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–28, and Form G–28I. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on Forms G–28 and G–28I are used by DHS to determine eligibility of the individual to appear as a representative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,479,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 825,507 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.* We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: March 26, 2010.

Stephen Tarragon

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–7265 Filed 3–31–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CDSOA)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60–Day Notice and request for comments; Revision of an existing collection of information: 1651–0086.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Procedures. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 1, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CDSOA).

OMB Number: 1651–0086.

Form Number: 7401.

Abstract: This collection of information is required to implement the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). This Act prescribes the administrative procedures, including the time and manner, under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based upon certain qualifying expenditures that they incur after the issuance of the order or finding. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

CBP Form 7401 captures the information from claimants that CBP needs to determine how the distributions are made. This form is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA program and also provide them with a copy of the form. The form can also be submitted electronically through *http://www.pay.gov.*

In order to expedite the distribution process, CBP proposes to add two data elements to both the paper form and the electronic form, including: "Start Date of Qualifying Expenditures" and "End Date of Qualifying Expenditures".

Current Actions: This submission is being submitted to extend the expiration date with a revision to Form 7401 and to the on-line application.

Type of Review: Revision and extension of an existing information collection.

Affected Public: Businesses.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,000.

Dated: March 29, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–7289 Filed 3–31–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–09]

Announcement of Funding Awards for the Public and Indian Housing Family Self-Sufficiency Program Under the Resident Opportunity and Self-Sufficiency (ROSS) Program for Fiscal Year 2009

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement 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 for funding under the FY 2009 Notice of Funding Availability (NOFA) for the Public and Indian Housing Family Self-Sufficiency Program under the Resident Opportunity and Self-Sufficiency (ROSS) Program for Fiscal Year 2009. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the funding priority categories established in the NOFA.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY 2009 Public and Indian Housing Family Self-Sufficiency Program under the Resident Opportunity and Self-Sufficiency (ROSS) Program awards, contact the Office of Public and Indian Housing's Grant Management Center, Acting Director, Keia L. Neal, Department of Housing and Urban Development, Washington, DC, telephone (202) 475–8908. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

The authority for the $12,000,000 in one-year budget authority for the Public and Indian Housing Family Self-Sufficiency Program under the Resident Opportunity and Self-Sufficiency (ROSS) Program is found in the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR 984.

This program is intended to promote the development of local strategies to coordinate the use of assistance under the Public Housing program with public

and private resources, enable participating families to increase earned income and financial literacy, reduce or eliminate the need for welfare assistance, and make progress toward achieving economic independence and housing self-sufficiency. The FSS program provides critical tools that can be used by communities to support welfare reform and help families develop new skills that will lead to economic self-sufficiency. A Public Housing Family Self-Sufficiency Program Coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

The Fiscal Year 2009 awards announced in this Notice were selected for funding in a competition announced in the **Federal Register** NOFA published on June 22, 2009. 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 names, addresses, and amounts of the 207 awards made under the Public and Indian Housing Family Self-Sufficiency Program under Resident Opportunity and Self-Sufficiency (ROSS) Program competition.

Dated: February 26, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Appendix A

Fiscal Year 2009

Funding Awards for the

Public and Indian Housing Family Self Sufficiency Program Under

Resident Opportunity and Self-Sufficiency (ROSS)

Recipient	Address	City	State	Zip code	Amount ($)
Alexander City Housing Authority	2110 County Road	Alexander City	AL	35010	$38,773
Housing Authority of the Birmingham District.	1826 3rd Avenue South	Birmingham	AL	35233	68,000
Housing Authority of the City of Prichard.	4559 St. Stephens Road	Eight Mile	AL	36613	48,896
Huntsville Housing Authority	200 Washington Street	Huntsville	AL	35804	55,000
Jefferson County Housing Authority	3700 Industrial Parkway	Birmingham	AL	35217	55,666
Mobile Housing Board	151 South Claiborne Street	Mobile	AL	36602	47,259
Tuscaloosa Housing Authority	2808 10th Avenue	Tuscaloosa	AL	35401	39,847
Housing Authority of the City of North Little Rock Arkansas.	2201 Division	North Little Rock	AR	72114	39,446
Housing Authority of the City of West Memphis.	2820 Harrison Street	West Memphis	AR	72301	42,230
City of Phoenix Housing Department	251 West Washington 4th Floor	Phoenix	AZ	85003	68,000
City of Tucson	P.O. Box 27210 310 North Commerce Park Loop.	Tucson	AZ	85726	68,000
Housing Authority City of Yuma	420 South Madison Avenue	Yuma	AZ	85364	60,639
Housing Authority of Maricopa County	2024 North 7th Street Suite 101	Phoenix	AZ	85006	48,911
Bear River Band of Rohnerville Rancheria.	27 Bear River Drive	Loleta	CA	95551	67,208
Housing Authority of the City of Madera.	205 North G Street	Madera	CA	93637	52,785
Housing Authority of the City of Oxnard	435 South D Street	Oxnard	CA	93030	68,000
Housing Authority of the City of San Buenaventura.	995 Riverside Street	Ventura	CA	93001	67,465
Housing Authority of the City of San Luis Obispo.	487 Leff Street	San Luis Obispo	CA	93401	53,031
Housing Authority of the County of Kern.	601–24th Street	Bakersfield	CA	93301	62,710
Housing Authority of the County of Marin.	4020 Civic Center Drive	San Rafael	CA	94903	66,950
Housing Authority of the County of San Bernardino.	715 East Brier Drive	San Bernardino	CA	92408	68,000
Housing Authority of the County of San Joaquin.	448 South Center Street	Stockton	CA	95203	116,934
Housing Authority of the County of Santa Cruz.	2931 Mission Street	Santa Cruz	CA	95060	68,000
Housing Authority of the County of Stanislaus.	P.O. Box 581918 1701 Robertson Road.	Modesto	CA	95358	65,000
Sacramento City Housing Authority	630 I Street	Sacramento	CA	95814	68,000
Adams County Housing Authority	7190 Colorado Boulevard 6th Floor	Commerce City	CO	80022	66,950
Boulder Housing Partners aba Housing Authority City of Boulder.	4800 Broadway	Boulder	CO	80304	68,000
Fort Collins Housing Authority	1715 West Mountain	Fort Collins	CO	80521	68,000
Housing Authority of the City and County of Denver.	777 Grant Street	Denver	CO	80203	236,150
Housing Authority of the City of Meriden.	22 Church Street	Meriden	CT	6451	56,834
Housing Authority of the City of New Haven.	360 Orange Street	New Haven	CT	6511	57,181
Housing Authority of the City of Norwalk.	P.O. Box 508 24½ Monroe Street	Norwalk	CT	6856	68,000
Housing Authority of the Town of Greenwich.	249 Milbank Avenue	Greenwich	CT	6830	68,000

Recipient	Address	City	State	Zip code	Amount ($)
Hialeah Housing Authority	75 East 6th Street	Hialeah	FL	33010	39,120
Housing Authority of Brevard County	615 Kurek Court	Merritt Island	FL	32953	53,614
Housing Authority of Lakeland	430 Hartsell Avenue	Lakeland	FL	33815	50,567
Housing Authority of the City of Fort Myers.	4224 Michigan Avenue	Fort Myers	FL	33916	58,342
Housing Authority of the City of Fort Pierce.	707 North 7th Street	Fort Pierce	FL	34950	45,320
Housing Authority of the City of Tampa	1514 Union Street	Tampa	FL	33607	65,625
Jacksonville Housing Authority	1300 Broad Street	Jacksonville	FL	32202	44,967
Lee County Housing Authority	14170 Warner Circle North West	North Fort Myers	FL	33903	47,380
Sarasota Housing Authority	1300 Boulevard of the Arts	Sarasota	FL	34236	46,350
The Housing Authority of the City of Daytona Beach.	211 North Ridgewood Avenue Suite 200.	Daytona Beach	FL	32114	43,709
The West Palm Beach Housing Authority.	1715 Division Avenue	West Palm Beach	FL	33407	39,035
City of Carrollton Housing Authority	P.O. Box 627 1 Roop Street	Carrollton	GA	30112	59,295
Housing Authority of Columbus, Georgia.	P.O. Box 630 1000 Wynnton Road	Columbus	GA	31902	45,000
Housing Authority of Savannah	1407 Wheaton Street	Savannah	GA	31404	67,980
Housing Authority of the City of Albany, GA.	P.O. Box 485 521 Pine Avenue	Albany	GA	31702	29,938
Macon Housing Authority	2015 Felton Avenue	Macon	GA	31201	63,368
Northwest Georgia Housing Authority	800 North Fifth Avenue	Rome	GA	30162	45,521
Tri-City Housing Authority	P.O. Box 220 33 Martin Luther King Jr. Drive.	Woodland	GA	31836	68,000
City of Des Moines Municipal Housing Agency.	100 East Euclid Avenue Suite 101	Des Moines	IA	50313	31,091
Eastern Iowa Regional Housing Authority.	7600 Commerce Park	Dubuque	IA	52002	64,802
Nampa Housing Authority	211 19th Avenue North	Nampa	ID	83687	42,529
Chicago Housing Authority	626 West Jackson Boulevard	Chicago	IL	60661	56,274
Housing Authority of Greene County	P.O. Box 336 325 North Carr	White Hall	IL	62092	45,910
Housing Authority of Henry County	125 North Chestnut Street	Kewanee	IL	61443	47,493
Housing Authority of the City of Rock Island.	227—21st Street	Rock Island	IL	61201	65,000
Macoupin County Housing Authority	P.O. Box 226 760 Anderson Street	Carlinville	IL	62626	41,375
Rockford Housing Authority	223 South Winnebago Street	Rockford	IL	61102	66,955
Springfield Housing Authority	200 North Eleventh Street	Springfield	IL	62703	38,192
Housing Authority of the City of Elkhart	1396 Benham Avenue	Elkhart	IN	46516	39,788
Housing Authority of the City of Fort Wayne, Indiana.	P.O. Box 13489 7315 Hanna Street	Fort Wayne	IN	46869	42,600
Housing Authority of the City of Terre Haute.	2001 North 19th Street	Terre Haute	IN	47804	63,553
Housing Authority of the County of Delaware, Indiana.	2401 South Haddix Avenue	Muncie	IN	47302	49,764
Indianapolis Housing Agency	1919 North Meridian Street	Indianapolis	IN	46202	45,000
The Housing Authority of the City of Michigan City, Indiana.	621 East Michigan Boulevard	Michigan City	IN	46360	41,375
Lawrence-Douglas County Housing Authority.	1600 Haskell Avenue	Lawrence	KS	66044	67,880
Salina Housing Authority	P.O. Box 1202 469 South 5th Street	Salina	KS	67402	58,350
Housing Authority of Bowling Green	247 Double Springs Road	Bowling Green	KY	42101	46,350
Housing Authority of Glasgow	P.O. Box 1745 111 Bunche Avenue	Glasgow	KY	42142	40,631
Louisville Metro Housing Authority	420 South Eighth Street	Louisville	KY	40203	68,000
Housing Authority of New Orleans	4100 Touro Street	New Orleans	LA	70122	68,000
Jefferson Parish Housing Authority	1718 Betty Street	Marrero	LA	70072	45,893
Shreveport Housing Authority	2500 Line Avenue	Shreveport	LA	71104	36,220
Boston Housing Authority	52 Chauncy Street	Boston	MA	2111	68,000
Framingham Housing Authority	1 John J Brady Drive	Framingham	MA	1702	67,620
Holyoke Housing Authority	475 Maple Street, Suite One	Holyoke	MA	1040	46,353
Lynn Housing Authority & Neighborhood Development (LHAND).	10 Church Street	Lynn	MA	1902	51,528
Somerville Housing Authority	30 Memorial Road	Somerville	MA	2145	65,500
Worcester Housing Authority	40 Belmont Street	Worcester	MA	1605	65,500
Housing Authority of Baltimore City	417 East Fayette Street Room 923	Baltimore	MD	21202	68,000
Housing Authority of the City of Frederick.	209 Madison Street	Frederick	MD	21701	53,045
Housing Authority of the City of Hagerstown.	35 West Baltimore Street	Hagerstown	MD	21740	99,050
Housing Authority of Washington County.	319 East Antietam Street 2nd Floor	Hagerstown	MD	21740	4,311
Housing Commission of Anne Arundel County.	7477 Baltimore-Annapolis Boulevard	Glen Burnie	MD	21061	63,000

Recipient	Address	City	State	Zip code	Amount ($)
Housing Opportunities Commission	10400 Detrick Avenue	Kensington	MD	20895	137,034
Rockville Housing Enterprises	621A Southlawn Lane	Rockville	MD	20850	22,403
Housing Authority of the City of Brewer	15 Colonial Circle Suite 1	Brewer	ME	4412	51,293
Lewiston Housing Authority	1 College Street	Lewiston	ME	4240	17,329
Portland Housing Authority	14 Baxter Boulevard	Portland	ME	4101	18,599
Detroit Housing Commission	1301 East Jefferson	Detroit	MI	48207	68,000
Grand Rapids Housing Commission	1420 Fuller Avenue South East	Kent	MI	49507	65,500
Muskegon Housing Commission	1080 Terrace Street	Muskegon	MI	49442	43,452
Housing & Redevelopment of Virginia, MN.	442 Pine Mill Court	Virginia	MN	55792	56,120
Housing Authority of St. Louis Park	5005 Minnetonka Boulevard	St. Louis Park	MN	55416	17,510
Washington County Housing and Redevelopment Authority.	321 Broadway Avenue	Saint Paul Park	MN	55071	28,396
Housing Authority of Kansas City, MO	301 East Armour	Kansas City	MO	64111	54,213
Housing Authority of the City of Columbia, MO.	201 Switzler Street	Columbia	MO	65203	50,870
St. Louis Housing Authority	4100 Lindell Boulevard	St. Louis	MO	63108	68,000
The Housing Authority of the City of Saint Charles.	1041 Olive Street	Saint Charles	MO	63301	43,602
Natchez Housing Authority	2 Auburn Avenue	Natchez	MS	39120	61,673
The Housing Authority of the City of Biloxi.	P.O. Box 447 330 Benachi Avenue	Biloxi	MS	39533	42,800
The Housing Authority of the City of Meridian.	2425 East Street	Meridian	MS	39301	55,350
Missoula Housing Authority	1235 34th Street	Missoula	MT	59801	68,000
Burlington Housing Authority	133 North Ireland Street	Burlington	NC	27217	56,783
City of Concord Housing Department	P.O. Box 308 283 Harold Goodman Circle.	Concord	NC	28026	47,153
City of Hickory Public Housing Authority.	Post Office Box 2927	Hickory	NC	28603	48,615
Gastonia Housing Authority	P.O. Box 2398 340 West Long Avenue.	Gastonia	NC	28053	50,000
Greensboro Housing Authority	P.O. Box 21287	Greensboro	NC	27420	62,490
Housing Authority of the City of Asheville.	165 South French Broad Avenue	Asheville	NC	28801	55,000
Housing Authority of the City of Charlotte.	1301 South Boulevard	Charlotte	NC	28203	65,000
Housing Authority of the City of Greenville.	1103 Broad Street	Greenville	NC	27834	58,613
Housing Authority of the City of High Point.	500 East Russell Avenue	High Point	NC	27261	101,674
Housing Authority of the City of Kinston, NC.	608 North Queen Street	Kinston	NC	28501	45,589
Lexington Housing Authority	1 Jamaica Drive	Lexington	NC	27292	56,363
The Housing Authority of The City of Durham.	P.O. Box 1726 330 East Main Street	Durham	NC	27701	68,000
Housing Authority of the City of Lincoln	5700 R Street	Lincoln	NE	68505	50,346
Housing Authority of the City of Omaha	540 South 27th Street	Omaha	NE	68105	44,277
Kearney Housing Agency	P.O. Box 1236 2715 Avenue I	Kearney	NE	68848	45,000
Atlantic City Housing Authority	227 North Vermont Avenue 17th Floor	Atlantic City	NJ	8401	56,374
Housing Authority of the City of Camden.	2021 Watson Street 2nd Floor	Camden	NJ	8103	47,608
Housing Authority of the County of Morris.	99 Ketch Road	Morristown	NJ	7960	35,050
Millville Housing Authority	P.O. Box 803 1153 Holly Berry Lane	Millville	NJ	8332	46,679
New Brunswick Housing Authority	7 Van Dyke Avenue	New Brunswick	NJ	8901	68,000
The Housing Authority of Plainfield	510 East Front Street	Plainfield	NJ	7060	68,000
The Newark Housing Authority	500 Broad Street 2nd Floor	Newark	NJ	7102	68,000
City of Albuquerque Housing Services	1840 University Boulevard South East	Albuquerque	NM	87106	67,465
Clovis Housing & Redevelopment Agency, Inc.	2101 West Grand Avenue	Clovis	NM	88101	43,709
Housing Authority of Truth or Consequences.	108 South Cedar	Truth or Consequences.	NM	87901	54,590
Santa Fe Civic Housing Authority	664 Alta Vista Street	Santa Fe	NM	87505	55,908
Santa Fe County Housing Authority	52 Camino De Jacobo	Santa Fe	NM	87507	54,939
Taos County Housing Authority	Box 4239 NDCBU 525 Ranchitos Road.	Taos	NM	87571	48,792
Housing Authority of the City of Las Vegas.	340 North 11th Street	Las Vegas	NV	89101	123,937
Housing Authority of the City of Reno	1525 East 9th Street	Reno	NV	89512	27,392
Housing Authority of the County of Clark, NV.	5390 East Flamingo Road	Las Vegas	NV	89122	53,543

Recipient	Address	City	State	Zip code	Amount ($)
Buffalo Municipal Housing Authority	300 Perry Street	Buffalo	NY	14204	68,000
Cohoes Housing Authority	100 Manor Sites	Cohoes	NY	12047	15,116
Geneva Housing Authority	P.O. Box 153 41 Lewis Street	Geneva	NY	14456	64,993
Mechanicville Housing Authority	1 Harris Avenue	Mechanicville	NY	12118	33,475
Monticello Housing Authority	76 Evergreen Drive	Monticello	NY	12707	37,660
Municipal Housing Authority of the City of Schenectady.	375 Broadway	Schenectady	NY	12305	55,533
New Rochelle Municipal Housing Authority.	50 Sickles Avenue	New Rochelle	NY	10801	68,000
Rochester Housing Authority	675 West Main Street	Rochester	NY	14611	64,210
Troy Housing Authority	One Eddy's Lane	Troy	NY	12180	60,190
Akron Metropolitan Housing Authority	100 West Cedar Street	Akron	OH	44307	127,730
Chillicothe Metropolitan Housing Authority.	178 West Fourth Street	Chillicothe	OH	45601	48,859
Dayton Metropolitan Housing Authority	P.O. Box 8750 400 Wayne Avenue	Dayton	OH	45401	63,148
Fairfield Metropolitan Housing Authority	315 North Columbus Street	Lancaster	OH	43130	56,019
Geauga Metropolitan Housing Authority	385 Center Street	Chardon	OH	44024	61,800
Lorain Metropolitan Housing Authority	1600 Kansas Avenue	Lorain	OH	44052	62,895
Lucas Metropolitan Housing Authority	435 Nebraska Avenue	Toledo	OH	43604	53,505
Morgan Metropolitan Housing Authority	4580 N. Street Route 376 NW	McConnelsville	OH	43756	48,397
Springfield Metropolitan Housing Authority.	101 West High Street	Springfield	OH	45502	45,078
Trumbull Metropolitan Housing Authority.	4076 Youngstown Road, South East Suite 101.	Warren	OH	44484	48,620
Youngstown Metropolitan Housing Authority.	131 West Boardman Street	Youngstown	OH	44503	59,518
Zanesville Metropolitan Housing Authority.	407 Pershing Road	Zanesville	OH	43701	51,487
Housing Authority of the City of Muskogee.	220 North 40th Street	Muskogee	OK	74401	41,200
Housing Authority of the City of Shawnee, OK.	P.O. Box 3427 601 West Seventh Street.	Shawnee	OK	74802	89,465
Housing Authority of the City of Tulsa	415 East Independence Street	Tulsa	OK	74106	45,352
Housing Authority & Community Services Agency of Lane County.	177 Day Island Road	Eugene	OR	97401	68,000
Housing Authority & Urban Renewal Agency of Polk County, Oregon.	204 Southwest Walnut Avenue P.O. Box 467.	Dallas	OR	97338	15,419
Housing Authority of Portland	135 South West Ash Street	Portland	OR	97204	199,524
Housing Authority of the City of Salem	360 Church Street South East	Salem	OR	97301	68,000
Altoona Housing Authority	2700 Pleasent Valley Boulevard	Altoona	PA	16602	56,674
Housing Authority of Northumberland County.	50 Mahoning Street	Milton	PA	17847	52,154
Housing Authority of the City of York	P.O. Box 1963 31 South Broad Street	York	PA	17405	43,959
Philadelphia Housing Authority	12 South 23rd Street 6th Floor	Philadelphia	PA	19103	67,465
Westmoreland County Housing Authority.	154 South Greengate Road	Greensburg	PA	15601	58,909
The Housing Authority of the City of Providence.	100 Broad Street	Providence	RI	2903	68,000
Housing Authority of the City of Columbia, South Carolina.	1917 Harden Street	Columbia	SC	29204	48,329
Housing Authority of the City of Spartanburg.	201 Caulder Avenue, Suite A	Spartanburg	SC	29306	51,100
North Charleston Housing Authority	2170 Ashley Phosphate Road #700	North Charleston	SC	29406	50,000
The Housing Authority of the City of Greenville, SC.	511 Augusta Street	Greenville	SC	29605	34,962
Crossville Housing Authority	P.O. Box 425	Crossville	TN	38557	55,182
Jackson Housing Authority	125 Preston Street	Jackson	TN	38301	98,318
Kingsport Housing & Redevelopment Authority.	P.O. Box 44	Kingsport	TN	37662	62,305
Memphis Housing Authority	700 Adams Avenue	Memphis	TN	38105	68,000
Metropolitan Development and Housing Agency.	701 South Sixth Street	Nashville	TN	37206	133,677
Shelbyville Housing Authority	P.O. Box 560 316 Templeton Street	Shelbyville	TN	37160	48,483
Cameron County Housing Authority	65 Castellano Circle	Brownsville	TX	78521	50,565
Housing Authority of the City of Austin	P.O. Box 6159	Austin	TX	78762	106,160
Housing Authority of the City of Fort Worth.	P.O. Box 460 1201 East 13th Street	Fort Worth	TX	76102	68,000
Housing Authority of the City of Mission, Texas.	1300 East 8th	Mission	TX	78572	35,000
Housing Authority of the City of Waco	P.O. Box 978 4400 Cobbs Drive	Waco	TX	76703	51,221
Housing Authority of the County of Hidalgo.	1800 North Texas Boulevard	Weslaco	TX	78596	40,518

Recipient	Address	City	State	Zip code	Amount ($)
San Marcos Housing Authority	1201 Thorpe Lane	San Marcos	TX	78666	40,846
The Housing Authority of the City of Dallas, Texas (DHA).	3939 North Hampton Road	Dallas	TX	75212	54,796
Housing Authority of the County of Salt Lake.	3595 South Main Street	Salt Lake City	UT	84115	57,915
Alexandria Redevelopment and Housing Authority.	600 North Fairfax Street	Alexandria	VA	22314	68,000
Bristol Redevelopment and Housing Authority.	809 Edmond Street	Bristol	VA	24201	40,624
Chesapeake Redevelopment & Housing Authority.	1468 South Military Highway	Chesapeake	VA	23320	48,871
Danville Redevelopment and Housing Authority.	135 Jones Crossing	Danville	VA	24541	47,271
Fairfax County Redevelopment and Housing Authority.	3700 Pender Drive Suite 300	Fairfax	VA	22030	68,000
Norfolk Redevelopment & Housing Authority.	201 Granby Street	Norfolk	VA	23510	136,000
Portsmouth Redevelopment & Housing Authority.	801 Water Street 2nd Floor	Portsmouth	VA	23704	53,729
Richmond Redevelopment and Housing Authority (RRHA).	901 Chamberlayne Parkway	Richmond	VA	23220	67,465
Waynesboro Redevelopment and Housing Authority.	P.O. Box 1138 1700 New Hope Road	Waynesboro	VA	22980	43,000
Housing Authority of the City of Tacoma.	902 South L Street	Tacoma	WA	98405	57,925
Housing Authority of the City of Vancouver.	2500 Main Street	Vancouver	WA	98660	63,860
King County Housing Authority	600 Andover Park West	Tukwila	WA	98188	66,855
Seattle Housing Authority	P.O. Box 19028 120 6th Avenue North.	Seattle	WA	98109	60,715
Housing Authority of the City of Milwaukee.	P.O. Box 324 Milwaukee	Milwaukee	WI	53201	67,980
Charleston-Kanawha Housing Authority	1525 Washington Street West	Charleston	WV	25312	35,200
Parkersburg Housing Authority	1901 Cameron Avenue	Parkersburg	WV	26101	36,503
Wheeling Housing Authority	P.O. Box 2089 11 Community Street	Wheeling	WV	26003	45,000
Housing Authority of the City of Cheyenne.	3304 Sheridan Street	Cheyenne	WY	82009	32,398

[FR Doc. 2010–7348 Filed 3–31–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–10]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the South Haven Housing Commission, of South Haven, MI, for the purchase and installation of AKW Mullen shower stalls at the River Terrace Senior Apartments.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register.**

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on March 15, 2010, upon request of the South Haven Housing Commission, HUD granted an exception to the applicability of the Buy

American requirements with respect to work, using CFRFC grant funds, based on the fact that the inclusion of the domestic equivalent of the manufactured goods (AKW Mullen shower stalls) would have increased the cost of the overall project by more than 25 percent.

Dated: March 23, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–7349 Filed 3–31–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Royalty Policy Committee (RPC) Notice of Renewal

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of renewal of the Royalty Policy Committee.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Royalty Policy Committee.

The Royalty Policy Committee provides advice to the Secretary of the Interior on the management of Federal and Indian mineral leases and revenues under the laws governing the Department of the Interior. The Committee will also review and comment on revenue management and other mineral and energy-related policies, and provide a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and public interest groups. The Royalty Policy Committee reports to the Secretary of the Interior through the Director of the Minerals Management Service.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Dan, Minerals Revenue Management, Minerals Management Service; Denver, Colorado 80225–0165; telephone number (303) 231–3392.

Certification

I hereby certify that the renewal of the Royalty Policy Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et. seq.*

Dated: March 26, 2010.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–7404 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N287; 40120–1113–0000–C2]

Notice of Availability of a Technical Agency Draft Recovery Plan for Pyne's Ground-Plum (*Astragalus bibullatus*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and opening of public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the technical agency draft recovery plan for Pyne's ground-plum (*Astragalus bibullatus*), a species endemic to the Central Basin in Tennessee. The draft recovery plan includes specific recovery objectives and criteria the species would have to meet in order for us to downlist it to threatened status or delist it under the Endangered Species Act of 1973, as amended (Act). We request review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, we must receive comments on the draft recovery plan on or before *June 1, 2010.*

ADDRESSES: If you wish to review the draft recovery plan, you may obtain a copy by contacting the Tennessee Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501 (telephone 931/528–6481), or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans.* If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address, or fax your comments to 931/528–7075.

3. You may send comments by e-mail to *geoff_call@fws.gov.*

For additional information about submitting comments, see the "Request for Public Comments" section below.

FOR FURTHER INFORMATION CONTACT: Geoff Call at the above address (telephone 931/528–6481, ext. 213).

SUPPLEMENTARY INFORMATION:

Background

We listed Pyne's ground-plum as an endangered species under the Act (16 U.S.C. 1531 *et seq.*), on September 26, 1991 (56 FR 48748). This species is a rare perennial member of the pea family (Fabaceae) endemic to the limestone cedar glades in the Central Basin Section of the Interior Low Plateau (Tennessee). It is currently known from only eight extant occurrences (specific locations or sites) located within 90 square miles in Rutherford County, Tennessee, within a short distance of the rapidly growing city of Murfreesboro.

Factors contributing to its endangered status are an extremely limited range and loss of habitat. The primary threat is the loss of habitat from residential, commercial, or industrial development; livestock grazing; woody encroachment; and recreational uses such as all terrain vehicles.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The objective of this technical agency draft plan is to provide a framework for the recovery of this species so that protection under the Act is no longer necessary. Pyne's ground-plum will be considered for reclassification to threatened status when there are nine occurrences that are distributed throughout the cedar glade ecosystem of the Stones River Basin within Davidson, Rutherford, and Wilson Counties. Each occurrence should have at least 100 plants, be maintained for at least 5 years, have a cooperative management agreement in place, and be located on lands owned and managed by a public agency, or located on private lands protected by a permanent conservation easement.

Pyne's ground-plum will be considered for delisting when there are

12 occurrences that are distributed throughout the cedar glade ecosystem of the Stones River Basin within Davidson, Rutherford, and Wilson Counties. Each occurrence should have at least 100 plants, be maintained for at least 10 years, have a cooperative management agreement in place, and be located on lands owned and managed by a public agency or located on private lands protected by a permanent conservation easement.

As reclassification and recovery criteria are met, the status of the species will be reviewed and it will be considered for reclassification or removal from the Federal List of Endangered and Threatened Wildlife and Plants.

Request for Public Comments

We request written comments on the recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

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.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 14, 2010.

Jeffrey M. Fleming,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–7373 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals by the Gulf of Mexico OCS Region.

SUMMARY: In accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), the Minerals Management Service (MMS) announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

FEDERAL REGISTER

Activity/operator	Location	Date
Noble Energy, Inc., Structure Removal, SEA ES/SR 09–059 ...	Eugene Island, Block 308, Lease OCS–G 00996, located 76 miles from the nearest Louisiana shoreline.	10/2/2009
Coastal Planning & Engineering, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA M09–012.	Located off the coast of Pinellas County, Florida on the Federal OCS of the Gulf of Mexico.	10/2/2009
Beryl Oil and Gas LP, Structure Removal, SEA ES/SR 09–182	South Timbalier, Block 195, Lease OCS–G 03593, located 42 miles from the nearest Louisiana shoreline.	10/2/2009
XTO Offshore, Inc., Structure Removal, SEA ES/SR 09–192 ...	High Island, Block A367, Lease OCS–G 23222, located 120 miles from the nearest Texas shoreline.	10/6/2009
Walter Oil & Gas Corporation, Well Conductor Removal, SEA RPM EL390–SS002.	Eugene Island, Block 390, Lease OCS–G 14487, located 85 miles from the nearest Louisiana shoreline.	10/9/2009
Walter Oil & Gas Corporation, Well Conductor Removal, SEA RPM EW991–SS01.	Ewing Bank, Block 991, Lease OCS–G 13088, located 72 miles from the nearest Louisiana shoreline.	10/9/2009
Walter Oil & Gas Corporation, Well Severance, SEA RPM MC68–SS001.	Mississippi Canyon, Block 68, Lease OCS–G 15464, located 20 miles from the nearest Louisiana shoreline.	10/9/2009
Walter Oil & Gas Corporation, Well Severance, SEA RPM MC837–SS01.	Mississippi Canyon, Block 837, Lease OCS–G 16650, located 64 miles from the nearest Louisiana shoreline.	10/9/2009
ExxonMobil Corporation, Revised Exploration Plan for Seismic Activities, SEA R–4982 AA.	Located in the Central Planning Area of the Gulf of Mexico, 230 miles from Grand Chenier, Louisiana.	10/15/2009
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–205.	West Cameron, Block 328, Lease OCS–G 22542, located 47 miles from the nearest Louisiana shoreline.	10/16/2009
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–204.	East Cameron, Block 282, Lease OCS–G 21581, located 85 miles from the nearest Louisiana shoreline.	10/19/2009
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 09–209	Eugene Island, Block 339, Lease OCS–G 02318, located 83 miles from the nearest Louisiana shoreline.	10/19/2009
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–207.	High Island, Block A544, Lease OCS–G 14897, located 86 miles from the nearest Texas shoreline.	10/19/2009

FEDERAL REGISTER—Continued

Activity/operator	Location	Date
Energy Partners, Ltd., Structure Removals, SEA ES/SR 09–193, 09–194, 09–195, 09–196, 09–197, 09–198, 09–199, 09–200, 09–201.	Well Protectors No. 28 & No. 11 "A", South Pass, Block 27, Lease OCS–00352 & OCS–00693, Well Protectors No. 29, No. 149, No. 50, No. 51, No. 41, No. 40, & No. 3, South Pass, Block 28, Lease OCS–G 00353 & 00694, located 4 miles from the nearest Louisiana shoreline.	10/19/2009
EMGS Americas, Geological & Geophysical Exploration for Mineral Resources, SEA T09–014.	Located in the Western Planning Area south of Galveston, Texas.	10/20/2009
EMGS Americas, Geological & Geophysical Exploration for Mineral Resources, SEA T09–015.	Located in the Western Planning Area south of Galveston, Texas.	10/20/2009
EMGS Americas, Geological & Geophysical Exploration for Mineral Resources, SEA T09–016.	Located in the Western Planning Area south of Galveston, Texas.	10/20/2009
Coastal Technology Corporation, Geological & Geophysical Prospecting for Mineral Resources, SEA E09–008.	Located off the coast of Pinellas County, Florida on the Federal OCS of the Gulf of Mexico.	10/21/2009
Chevron USA, Inc., Revised Exploration Plan, SEA ES/SR R–4984 AA.	Located in the Central Planning Area of the Gulf of Mexico, 120 miles south of Leeville, Louisiana.	10/21/2009
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–206.	West Cameron, Block 206, Lease OCS–24757, located 68 miles from the nearest Louisiana shoreline.	10/28/2009
Venice Gathering System, LLC, Structure Removal, SEA ES/SR 09–202.	West Delta, Block 20, Row No. 13513, located 6 miles from the nearest Louisiana shoreline.	10/28/2009
Anglo-Suisse Offshore Partners, LLC, Structure Removal, SEA ES/SR 09–211 & 09–213.	West Delta, Block 029, Lease OCS–00385, located 7 miles from the nearest Louisiana shoreline.	10/30/2009
TGS–NOPEC Geophysical Company, Geological & Geophysical Exploration for Mineral Resources, SEA M09–010.	Located in the Eastern Gulf of Mexico	11/4/2009
Anglo-Suisse Offshore Partners, LLC, Structure Removal, SEA ES/SR 09–212.	West Delta, Block 28, Lease OCS–00384, located 7 miles from the nearest Louisiana shoreline.	11/4/2009
Murphy Exploration & Production Company, Initial Exploration Plan, SEA N–9424.	De Soto Canyon, Block 4, located 65 miles from the nearest Louisiana shoreline, 80 miles from the nearest Mississippi shoreline, 74 miles from the nearest Alabama shoreline, 78 miles from the nearest Florida shoreline, & 128 miles to shoreline, located in Port Fourchon, Louisiana.	11/5/2009
ENI US Operating Co, Inc., Initial Exploration Plan, SEA N–9423.	Lloyd Ridge, Block 411, located 154 miles from the nearest Louisiana shoreline, 168 miles from the nearest Mississippi shoreline, 163 miles from the nearest Alabama shoreline, 165 miles from the nearest Florida shoreline, & 185 miles to shoreline, located in Port Fourchon, Louisiana.	11/5/2009
Tarpon Operating & Development, LLC, Well Conductor Removal, SEA ES/SR RPM HIA308–SS01.	High Island, Block A308, Lease OCS–G 25603, located 103 miles from the nearest Louisiana shoreline.	11/10/2009
TGS–NOPEC Geophysical Company, Geological & Geophysical Prospecting for Mineral Resources, SEA L09–036.	Located in the Central Gulf of Mexico south of Mobile, Alabama.	11/12/2009
CGGVerita's Geological & Geophysical Prospecting for Mineral Resources, SEA T09–018.	Located in the Western and Central Gulf of Mexico south of Lake Charles, Louisiana.	11/12/2009
WESTEMGECO, LLC, Geological & Geophysical Prospecting for Mineral Resources, SEA T09–019.	Located in the Western and Central Gulf of Mexico south of Lake Charles, Louisiana.	11/12/2009
Shell Offshore, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA L09–035.	Located in the Central Gulf of Mexico south of Venice, Louisiana.	11/12/2009
Noble Energy, Inc., Revised Exploration Plan for Seismic Activities, SEA R–4988 AA.	Green Canyon, Block 723, Lease OCS–G 21813, located 124 miles south of Terrebonne Parish, Louisiana.	11/13/2009
Nexen Petroleum, USA, Inc., Structure Removal, SEA ES/SR 09–215.	Eugene Island, Block 258, Lease OCS–G 01959, located 57 miles from the nearest Louisiana shoreline.	11/18/2009
Maritech Resources, Inc., Structure Removal, SEA ES/SR 09–214.	Main Pass, Block 162, Lease OCS–G 13968, located 44 miles from the nearest Louisiana shoreline.	11/18/2009
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 09–217.	Ship Shoal, Block 170, Lease OCS–G 03584, located 33 miles from the nearest Louisiana shoreline.	11/18/2009
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–208.	West Cameron, Block 383, Lease OCS–G 22546, located 62 miles from the nearest Louisiana shoreline.	11/18/2009
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 09–048.	West Cameron, Block 590, Lease OCS–G 22567, located 90 miles from the nearest Louisiana shoreline.	11/18/2009
Murphy Exploration & Production Company, Initial Exploration Plan, SEA N–9416.	De Soto Canyon, Blocks 47 & 48, located 76 miles from the nearest Louisiana shoreline, 85 miles from the nearest Mississippi shoreline, 80 miles from the nearest Alabama shoreline, and 85 miles from the nearest Florida shoreline.	11/19/2009
EMGS Americas, Geological & Geophysical Exploration for Mineral Resources, SEA T09–017.	Located in the Western Planning Area south of Galveston, Texas.	11/19/2009
CGGVeritas, Geological & Geophysical Prospecting for Mineral Resources, SEA T09–021.	Located in the Western and Central Gulf of Mexico south of Lake Charles, Louisiana.	11/19/2009
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 09–047.	West Cameron, Block 561, Lease OCS–G 04094, located 100 miles from the nearest Louisiana shoreline.	11/20/2009
Seneca Resources Corporation, Structure Removal, SEA ES/SR 09–221 & 09–222.	Vermilion, Block 309, Lease OCS–G 16310, located 74 miles from the nearest Louisiana shoreline.	11/23/2009
Chevron USA, Inc., Structure Removal, SEA ES/SR 09–220 ...	Eugene Island, Block 26, Lease OCS–G 03147, located 10 miles from the nearest Louisiana shoreline.	11/25/2009

FEDERAL REGISTER—Continued

Activity/operator	Location	Date
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 09–219.	Brazos, Block 578, Lease OCS–G 25517, located 12 miles from the nearest Texas shoreline.	11/30/2009
Shell Offshore, Inc., Revised Exploration Plan, SEA R–4991 AA.	Garden Banks, Block 426, Lease OCS–G 08241, located 136 miles offshore, south of Vermilion Parish, Louisiana.	12/1/2009
Shell Offshore, Inc., Revised Exploration Plan for Seismic Activities, SEA R–4992 AA.	Mississippi Canyon, Block 984, Lease OCS–G 22919, located 66 miles south of Plaquemines Parish, Louisiana.	12/1/2009
Fugro Multi Client Services, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA M09–010.	Located in the Eastern Gulf of Mexico	12/4/2009
Hess Corporation, Revised Development Operations Coordination Document, SEA R–4996 AA.	Located in the Central Planning Area of the Gulf of Mexico, 135 miles south of Intracoastal City, Louisiana.	12/10/2009
Shell Offshore, Inc., Revised Exploration Plan for Seismic Activities, SEA R–4997 AA.	Located in the Central Planning Area of the Gulf of Mexico, 112 miles south of Theodore, Alabama.	12/15/2009
Maritech Resources, Inc, Structure Removal, SEA ES/SR 09–225.	South Marsh Island, Block 48, Lease OCS–00786, located 45 miles from the nearest Louisiana shoreline.	12/17/2009
EMGS Americas, Geological & Geophysical Exploration for Mineral Resources, SEA L09–039.	Located in the Central Planning Area south of Mobile, Alabama.	12/22/2009
Coastal Planning & Engineering, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA M09–003.	Located off the coast of Longboat Key, Florida on the Federal OCS of the Gulf of Mexico.	12/22/2009
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 09–227.	East Cameron, Block 298, Lease OCS–G 21583, located 89 miles from the nearest Louisiana shoreline.	12/28/2009
Arena Offshore, LLC, Structure Removal, SEA ES/SR 09–025	East Cameron, Block 359, Lease OCS–G 02567, located 105 miles from the nearest Louisiana shoreline.	12/29/2009
Maritech Resources, Inc., Structure Removal, SEA ES/SR 09–218.	Ship Shoal, Block 219, Lease OCS–G 00829, located 47 miles from the nearest Louisiana shoreline.	12/29/2009
Beryl Resources, LP, Structure Removal, SEA ES/SR 09–237	Main Pass, Block 89, Lease OCS–G22790, located 8 miles from the nearest Louisiana shoreline.	12/31/2009

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: January 29, 2010.

Lars Herbst,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2010–7335 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000; WYW163340, WYW177903]

Notice of Availability of the Record of Decision for the Environmental Impact Statement for the West Antelope II Coal Lease-by-Application, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the West Antelope II Coal Lease by Application (LBA) Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/West_Antelope_II.html.* Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Tyson Sackett, Acting Wyoming Coal Coordinator, at 307–775–6487, or Ms. Mavis Love, Land Law Examiner, at 307–775–6258. Both Mr. Sackett's and Ms. Love's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability is for the West Antelope II Coal Tract and addresses leasing Federal coal in Campbell and Converse Counties, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 2, which is the preferred alternative of the West Antelope II Coal Lease by Application Final EIS. Under Alternative 2, the West Antelope II Coal LBA area, as modified by the BLM, will be divided into two separate LBA tracts referred to as the West Antelope II North Tract and the West Antelope II South Tract. The West Antelope II North Tract (WYW163340), as modified by the BLM, includes 2,837.63 acres, more or less, and contains an estimated 350.2 million tons of mineable coal. The West Antelope II South Tract (WYW177903), as modified by the BLM, includes 1,908.60 acres, more or less, and contains an estimated 56.3 million tons of mineable coal. Two competitive coal lease sales will be announced in the **Federal Register** at a later date.

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register**. The ROD contains instructions for filing an appeal with the IBLA.

Larry Claypool,

Acting State Director.

[FR Doc. 2010–7173 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Northwest Museum Whitman College, Walla Walla, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Northwest Museum (also known as Maxey Museum), Whitman College, Walla Walla, WA, that meets the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

On February 15, 1907, cultural items from the collection of Reverend Myron Eells were donated to the Northwest Museum by his widow, Sarah Eells. Rev. Eells lived and collected in the Umatilla-Hermiston area. The cultural items in the Myron Eells Collection are catalogued as being from "Umatilla" or "Umatilla Landing," which is believed to be Umatilla, OR. This area was the main village site of the *Imatalamláma* (Umatilla Tribe), one of the member tribes of the Confederated Tribes of the Umatilla Indian Reservation. Some of the objects were previously in the possession of J.H. Kunzie, a known collector of funerary objects from Umatilla burial areas at the confluence of the Umatilla and Columbia Rivers. This area has a large cemetery that had been looted for many years and several major excavations were done prior to the construction of the McNary and John Day Dams on the Columbia River. Therefore, based on provenience, collector history, and the nature of the objects, the museum reasonably believes the objects are unassociated funerary objects. The 10 unassociated funerary objects are 1 digging stick handle (Whit-E–0252); 1 lot of stone beads (Whit-E–0390); 1 lot of stone and tooth beads (Whit-E–0396); 1 charcoal point (Whit-E–0511); 3 projectile points (Whit-E–0631,Whit-E–0633, Whit-E–0638); 1 stone pipe (Whit-O–0016); and 2 Umatilla arrowheads (WHIT-E–0531).

On an unknown date, cultural items were removed from the Columbia River near the mouth of the Umatilla River. They were donated to the Northwest Museum by William Worthington in 1910. Based on provenience, similarity to other funerary objects, and tribal consultation evidence, the museum reasonably believes the cultural items are unassociated funerary objects. The seven unassociated funerary objects are stone scrapers (WHIT-O–0124 through Whit-O–0128), and grooved stones (Whit–0179 and Whit-O–0185).

In 1931, the Northwest Museum purchased two cultural items that were removed at the Umatilla gravel pit by Lee Hopkins. Through consultation evidence with the tribe, it is known that human remains have been previously found in this gravel pit. There are no human remains from this site in the possession of the museum. Therefore, the museum reasonably believes that the cultural items are unassociated funerary objects. The two unassociated funerary objects are a stone pestle (Whit-O–0135) and a stone mortar (Whit-O–0196).

Between 1925 and 1930, cultural items were removed from or near the village site of Wallula, WA, by various donors. This site was the main village site of the *Waluulapam* (Walla Walla Tribe), a member tribe of the Confederated Tribes of the Umatilla Indian Reservation. It is a heavily-excavated burial area, and is located at the mouth of the Walla Walla River and along the Columbia River. Therefore, based on provenience, similarity to other funerary objects, and tribal consultation evidence, the museum reasonably believes the cultural items are unassociated funerary objects. The 16 unassociated funerary objects are 1 stone resembling a human foot (WHIT-A–0039); 1 stone scraper (WHIT-BR–0076); 1 pestle (WHIT-BR–0089); and 13 stone implements (WHIT-BR–0040, WHIT-A–0035, WHIT-BR–0042, 0044, 0045, 0066–0071, 0093, 0094).

At an unknown date, a stone pestle (Whit-O–0137) was collected at the mouth of the Walla Walla River by Lew C. Greenwood. In 1922, the pestle was loaned to the Maxey Museum by Mr. Greenwood. Since that time, no one has come forward to claim the stone pestle and the museum and college have acquired legal possession of this artifact to facilitate the NAGPRA process. Based on provenience, the museum reasonably believes the stone pestle is an unassociated funerary object.

In 1908, a stone hammer (WHIT-U–0146) was removed from "opposite Memaloose Island, one-half mile from Wallula" (*Mamalose* translates to 'burial place')," by C.F. Renand. Based on provenience, similarity to other funerary objects, and tribal consultation evidence, the museum reasonably believes the stone hammer is an unassociated funerary object.

The enrolled members of the Confederated Tribes of the Umatilla Indian Reservation are direct descendants of the *Imatalamláma* (Umatilla), *Waluulapam* (Walla Walla), and *Weyiiletpu* (Cayuse) people who have lived, traveled, and are buried in their aboriginal territories of southeastern Washington and northeastern Oregon. They are described in the ethnographic literature as people who fished; gathered roots, berries, medicines, and other flora; and hunted on a seasonal-round basis (Ray 1938, Stern 1998, Suphan 1974, and Swindell 1942). Winter villages for the *Imatalamláma*, *Weyiiletpu*, and *Waluulapam* were located along the Columbia and Snake Rivers. In the summer, the tribes headed into the mountains adjacent to these rivers and tributaries to hunt, fish, and gather along the tributaries of the Walla Walla, Umatilla, John Day, Grande Ronde, Wallowa, Imnaha, Powder, and Burnt Rivers. Two major permanent winter villages, *Imatalam* and *Waluula*, were along the Columbia River at the mouths of the Umatilla and Walla Walla Rivers. Both of these sites were surrounded by burial areas which were looted or excavated over the course of many years. Many artifacts found their way into museum collections. The above mentioned cultural items are considered unassociated funerary objects by the Confederated Tribes of the Umatilla Indian Reservation due to their original location in known burial sites, and that they are similar to other funerary objects that have already been repatriated to them.

Officials of the Northwest Museum, Whitman College have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 37 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of Native American individuals. Officials of the Northwest Museum, Whitman College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nina Lerman, Director, Northwest Museum, Maxey Hall, Whitman College, 345 Boyer Ave., Walla Walla, WA 99362, telephone (509) 527–5888 or (509) 527–5798, before May 3, 2010. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla

Indian Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Northwest Museum, Whitman College is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon that this notice has been published.

Dated: March 16, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–7252 Filed 3–31–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–LLCOF00000–L07770900–XZ0000–241A00]

Notice of Meeting, Front Range Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held April 20, 2010 from 9:15 a.m. to 4 p.m.

ADDRESSES: BLM Royal Gorge Field Office, 3028 East Main Street, Cañon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Cass Cairns, Front Range RAC Coordinator, BLM Royal Gorge Field Office, 3028 E. Main St., Cañon City, CO 81212. *Phone:* (719) 269–8553. *E-mail: ccairns@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Front Range District, which includes the Royal Gorge Field Office and the San Luis Valley Public Lands Center, Colorado. Planned agenda topics include: Arkansas River Travel Management Plan Supplemental Rules process; BLM Renewable Energy Team; 2010 Spring and Fall Prescribed Burn Program, and the 2010 Fire Season Outlook; Manager updates on current land management issues that include; Park Center Well; American Recovery Reinvestment Act projects update; status of Over The River draft Environmental Impact Statement; and establishing the 2010 Front Range RAC meeting schedule.

This meeting is open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: March 26, 2010.

Anna Marie Burden,

Acting State Director.

[FR Doc. 2010–7287 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L58820000.PH0000.LXRSMA990000; HAG 10–0198]

Meeting Notice for the Medford District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the Medford District Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Medford District Resource Advisory Council (Medford RAC) will meet as indicated below:

DATES: The Medford RAC meeting will begin 8:30 a.m. PDT on April 21, 2010.

ADDRESSES: The Medford RAC will meet at the Medford Interagency Office, 3040 Biddle Road in Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Whittington, Medford District Public Affairs Officer, 3040 Biddle Road, Medford, OR 97504 or via phone at 541–618–2220 or via electronic mail at *jim_whittington@blm.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda includes decisions on Title II project submissions and other matters as may reasonably come before the council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 9:30 a.m. on April 21, 2010 at the meeting location. Those who verbally address the Medford RAC are asked to provide a written statement of their comments or presentation. Unless otherwise approved by the RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the RAC for a maximum of three minutes. If reasonable accommodation is required, please contact the BLM's Medford District Public Affairs Officer at 541–618–2220 as soon as possible.

Timothy B. Reuwsaat,

District Manager, Medford District Office.

[FR Doc. 2010–7376 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–384 and 731–TA–806–808 (Second Review)]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on certain hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from Brazil, the antidumping duty orders on hot-rolled steel from Brazil and Japan, and the suspended investigation on hot-rolled steel from Russia.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on hot-rolled steel from Brazil, the antidumping duty orders on hot-rolled steel from Brazil and Japan, and the suspended investigation on hot-rolled steel from Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–212, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

consideration, the deadline for responses is May 3, 2010. Comments on the adequacy of responses may be filed with the Commission by June 14, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov).* The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On June 29, 1999, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of hot-rolled steel from Japan (64 FR 34778). Effective July 6, 1999, Commerce suspended the antidumping and countervailing duty investigations on such imports from Brazil (64 FR 38792 and 38797, July 19, 1999). Note: I switched the order here because the AD suspension is the one cited first. and, effective July 12, 1999, Commerce suspended the antidumping duty investigation on such imports from Russia (64 FR 38642, July 19, 1999). After terminating the suspension agreement with respect to the antidumping duty investigation on imports of hot-rolled steel from Brazil (67 FR 6226, February 11, 2002), Commerce issued an antidumping duty order on such imports (67 FR 11093, March 12, 2002). Effective September 26, 2004, Commerce terminated the suspension agreement with respect to the countervailing duty investigation on imports of hot-rolled steel from Brazil and issued a countervailing duty order on such imports (69 FR 56040, September 17, 2004). Following five-year reviews by Commerce and the Commission, effective May 12, 2005, Commerce issued a continuation of the countervailing duty order on hot-rolled steel from Brazil (70 FR 30417, May 26, 2005), the antidumping duty orders on hot-rolled steel from Brazil and Japan (70 FR 30413, May 26, 2005), and the suspended investigation on imports of hot-rolled steel from Russia (70 FR 32571, June 3, 2005). The Commission is now conducting second reviews to determine whether revocation of the orders and termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The Subject Countries in these reviews are Brazil, Japan, and Russia.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and full five-year review determinations, the Commission found one *Domestic Like Product* consisting of all hot-rolled steel, as defined in Commerce's scope.

(4) The Domestic Industry is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and full five-year review determinations, the Commission defined the *Domestic Industry* as all producers of hot-rolled steel.

(5) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other

reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 3, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders and the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 19, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–6623 Filed 3–31–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–661]

In the Matter of Certain Semiconductor Chips Having Synchronous Dynamic Random Access Memory Controllers and Products Containing Same; Notice of Commission Determination To Review in Part an Initial Determination Finding Respondents in Violation of Section 337; Denial of Respondents' Joint Motion To Extend Target Date; Schedule for Briefing on the Issues on Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") Initial Determination on Violation of Section 337 ("ID") and Recommended Determination on Remedy and Bond finding that Respondents violated section 337 of the Tariff Act of 1930 by importation into the United States, the sale for importation, or the sale within the United States after importation, of certain semiconductor chips having synchronous dynamic random access memory controllers and products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 6,470,405 ("the '405 patent"), 6,591,353 ("the '353 patent"), and 7,287,109 ("the '109 patent").

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–661 on December 10, 2008, based on a complaint filed by Rambus, Inc. of Los Altos, California ("Rambus"). 73 FR 75131–2. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices by reason of infringement of certain claims of the '353 patent, the '405 patent, the '109 patent, as well as certain claims of U.S. Patent Nos. 7,117,998 ("the '998 patent); 7,210,016 ("the '016 patent"); 7,287,119 ("the '119 patent"); 7,330,952 ("the '952 patent"); 7,330,953 ("the '953 patent"); and 7,360,050 ("the '050 patent"). The Commission's notice of investigation named the following respondents: NVIDIA Corporation of Santa Clara, California; Asustek Computer, Inc. of Taipei, Taiwan; ASUS Computer

International, Inc. of Fremont, California; BFG Technologies, Inc. of Lake Forest, Illinois; Biostar Microtech (USA) Corp. of City of Industry, California; Biostar Microtech International Corp. of Hsin Ten, Taiwan; Diablotek Inc. of Alhambra, California; EVGA Corp. of Brea, California; G.B.T. Inc. of City of Industry, California; Gigabyte Technology Co., Ltd. of Taipei, Taiwan; Hewlett-Packard Co. of Palo Alto, California; MSI Computer Corp. of City of Industry, California; Micro-star International Co., Ltd. of Taipei, Taiwan; Palit Multimedia Inc. of San Jose, California; Palit Microsystems Ltd. of Taipei, Taiwan; Pine Technology Holdings, Ltd. of Hong Kong and Sparkle Computer Co. of Taipei, Taiwan (referred to collectively as "Respondents").

On July 13, 2009, the Commission issued a notice terminating the '119, '952, '953, and '050 patents and certain claims of the '109 patent from the investigation.

On January 22, 2010, the ALJ issued his ID on Violation of Section 337 and Recommended Determination on Remedy and Bond. The ALJ found that Respondents violated section 337 by importing certain semiconductor chips having synchronous dynamic random access memory controllers and products containing same with respect to various claims of the '405, '353, and '109 patents. The ALJ determined that there was no violation of section 337 with respect to the asserted '016 and '998 patent claims.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review the final ID in part, to reject Rambus's petition to vacate Order No. 15, and to deny Respondents' motion to extend the target date. Specifically, the Commission has determined to review (1) the ID's anticipation and obviousness findings with respect to the Ware patents; (2) the ID's obviousness-type double patenting analysis regarding the asserted Barth I claims; and (3) the ID's analysis of the alleged obviousness of the asserted Barth I claims. The Commission requests briefing based on the evidentiary record on these issues. The Commission is particularly interested in concise responses to the following questions:

Regarding the Ware patents:

(1) What are the differences between the scope and content of the Coteus patent and the asserted Ware claims?

(2) What is the appropriate skill level of one of ordinary skill in the art?

(3) In light of the underlying facts, would the asserted claims of the Ware patents have been obvious to one of ordinary skill in the art at the time of invention? In your answer, please identify which claim element(s), if any, are not disclosed in the Coteus reference but would have been obvious to one of ordinary skill in the art.

Regarding the issue of obviousness-type double patenting of the Barth I claims:

Under the facts as found by the ALJ, do the differences in scope of the asserted Barth I patent claims and the claims of the Farmwald '037 patent render the asserted Barth I claims patentably distinct?

Regarding obviousness with respect to the asserted Barth I claims:

(1) What are the differences between the scope and content of the asserted prior art and the asserted Barth I claims?

(2) What is the appropriate skill level of one of ordinary skill in the art?

(3) In light of the underlying facts, would the asserted claims of the Barth I patents have been obvious to one of ordinary skill in the art at the time of invention?

Please address only those references and combinations of references that were properly preserved under the ALJ's Ground Rule 11.1.

Furthermore, in connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease-and-desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be *concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony.* Additionally, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Further, regarding the potential issuance of a general exclusion order, the Commission requests briefing specific to whether the statutory criteria set forth in section 337(d)(2) are met in this investigation. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 6, 2010. Reply submissions must be filed no later than the close of business on April 15, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential

treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42–43 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–43).

By order of the Commission.

Issued: March 25, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7279 Filed 3–31–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–005]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 31, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1059 (Review) (Hand Trucks and Certain Parts Thereof from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 15, 2010.)
5. Outstanding action jackets:

(1) Document No. GC–10–028 concerning Inv. No. 337–TA–644 (Certain Composite Wear Components and Products Containing Same).

(2) Document No. GC–10–031 concerning Inv. No. 337–TA–568 (Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoietin).

(3) Document No. GC–10–034 concerning Inv. No. 337–TA–668 (Certain Non-Shellfish Derived Glucosamine and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: March 29, 2010.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–7403 Filed 3–30–10; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–473 (Final) and 731–TA–1173 (Final)]

Certain Potassium Phosphate Salts From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–473 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1173 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of certain potassium phosphate salts, provided for in subheadings 2835.24.00 and 2835.39.10 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Angela M. W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain potassium phosphate salts, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 29, 2009, by ICL Performance Products, LP, St. Louis, MO and Prayon, Inc. Augusta, GA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as anhydrous Monopotassium Phosphate (MKP), anhydrous Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (TKPP), whether anhydrous or in solution (collectively "phosphate salts"). *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 75 FR 12508, March 16, 2010.

section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 18, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 2, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 26, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 28, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 25, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 9, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 9, 2010. On June 23, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 25, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 29, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–7312 Filed 3–31–10; 8:45 am]

BILLING CODE P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 30, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Towers Watson, One Alliance Center, 3500 Lenox Road, 9th Floor, Atlanta, GA 30326.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Towers Watson, One Alliance Center, 3500 Lenox Road, 9th Floor, Atlanta, GA on April 30, 2010, from 8:30 a.m. to 5 p.m..

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 17, 2010.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2010–7268 Filed 3–31–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 26, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection

requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each 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: DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB 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 submission of responses.

Agency: Employment and Training Administration.

Type of Review: New collection (Request for a new OMB Control Number).

Title of Collection: Occupational Code Assignment (OCA).

OMB Control Number: 1205–XXXX (Pending).

Agency Form Number: N/A.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 4,800.

Total Estimated Annual Burden Hours: 420.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: This ICR requests OMB clearance for pilot survey of self-identified Latino Americans as part of the research project The Voice of Latino Workforce Experience. The pilot survey will analyze first-person accounts from Latino workers in Washington, DC, Fort Lauderdale, and Chicago. The goal of this research is to evaluate a questionnaire for eliciting quality data on Latinos' employment and workforce choices. The data collected will inform subsequent research aimed at assisting workforce professionals better understand and serve their Latino customers. For additional information, see related notice published in the **Federal Register** on November 17, 2009 (74 FR, page 59244).

Agency: Employment and Training Administration.

Type of Review: Revision and Extension of a currently approved collection.

Title of Collection: National Agriculture Workers Survey (NAWS).

OMB Control Number: 1205–0453.

Agency Form Numbers: N/A.

Affected Public: Individuals or households and Private Sector (Farms).

Total Estimated Number of Respondents: 4,008.

Total Estimated Annual Burden Hours: 3,411.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: NAWS provides an understanding of the manpower resources available to U.S. agriculture. It is the national source of information on the demographic, occupational health and employment characteristics of hired crop workers. For additional information, see related notice published in the **Federal Register** on November 30, 2009 (74 FR 62603).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–7333 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,013]

Pentron Clinical Technologies, a Wholly-Owned Subsidiary of Kerr Dental/Sybron Dental Specialities, Formally Known as Customedix Corporation, Including On-Site Leased Workers From Reitman Personnel and A.R. Mazzotta, Wallingford, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 8th, 2010, applicable to workers of Pentron Clinical Technologies, a subsidiary of Kerr Dental/Sybron Dental Specialties, including on-site leased workers from Reitman Personnel and A.R. Mazzotta, Wallingford, Connecticut. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7037).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce dental materials such as dental prosthetics, dental composites, dental impressions, dental adhesives, and other dental materials.

Information shows that Pentron Clinical Technologies, a subsidiary of Kerr Dental/Sybron Dental Specialties was formally known as Customedix Corporation. Some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account under the name Customedix Corporation.

Accordingly, the Department is amending this certification to property reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of dental materials such as dental prosthetics, dental composites, dental impressions, dental adhesives, and other dental materials to Mexicali, Mexico.

The amended notice applicable to TA–W–73,013 is hereby issued as follows:

All workers of Pentron Clinical Technologies, a subsidiary of Kerr Dental/Sybron Dental Specialties, formally known as Customedix Corporation, including on-site leased workers from Reitman Personnel and A.R. Mazzotta, Wallingford, Connecticut,

who became totally or partially separated from who became totally or partially separated from employment on or after December 2, 2008, through January 13 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 22nd day of March 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7320 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,840A]

Willstaff Staffing Agency, Willstaff Crystal, Inc., and MDS Industrial Resources, Inc., Working On-Site at Tyler Pipe Company, Waterworks Division, South Plant; Tyler, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 13, 2009, applicable to workers of Willstaff Staffing Agency and MDS Industrial Resources, Inc., working on-site at Tyler Pipe Company, Waterworks Division, South Plant, Tyler, Texas. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65798).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of cast-iron water pipes.

Information indicates that workers leased from Willstaff Staffing Agency working on-site at Tyler Pipe Co., Waterworks Division, South Plant, Tyler, Texas had their wages reported under a separate unemployment insurance (UI) tax account under the name Willstaff Crystal, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by imports of cast-iron water pipes.

The amended notice applicable to TA–W–71,840A is hereby issued as follows:

All workers of Willstaff Staffing Agency, Willstaff Crystal, Inc., and MDS Industrial Resources, Inc., working on-site at Tyler Pipe Company, Waterworks Division, South Plant, Tyler, Texas (TA–W–71,840A), who became totally or partially separated from employment on or after July 28, 2008, through October 13, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 15th day of March, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7328 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70, 405]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Avaya Inc. Worldwide Services Group, Global Support Services (GSS) Organization; Including On-Site Leased Workers from Kelly Services Inc., P/S Partner Solutions Ltd., Exceed Resources Inc., Real Soft, Inforquest Consulting Group, CCSI Inc., ICONMA LLC, MGD Consulting, Inc., Case Interactive LLC, Sapphire Technologies, Highlands Ranch, Colorado; Including Employees in Support of Avaya, Inc., Worldwide Services Group, Global Support Services (GSS) Organization, Highlands Ranch, Colorado Operating Out of the Following States: TA–W–70,405A, Florida; TA–W–70,405B, California; TA–W–70,405C, South Carolina; TA–W–70,405D, Alabama; TA–W–70,405E, Michigan; TA–W–70,405F, Arizona; TA–W–70,405G, Ohio; TA–W–70,405H, Pennsylvania; TA–W–70,405I, North Carolina; TA–W–70,405J, Colorado; TA–W–70,405K, New York; TA–W–70,405L, Maryland; TA–W–70,405M, Georgia; TA–W–70,405N, New Jersey; TA–W–70,405O, Indiana; TA–W–70,405P, Tennessee; TA–W–70,405Q, Wisconsin; TA–W–70,405R, Oregon; TA–W–70,405S, Mississippi; TA–W–70,405T, Illinois; TA–W–70,405U, Texas; TA–W–70,405V, Iowa; TA–W–70,405W, Oklahoma; TA–W–70,405X, Washington; TA–W–70,405Y, South Dakota; TA–W–70,405Z, Nevada; TA–W–70,405AA, New Hampshire; TA–W–70,405BB, Montana; TA–W–70,405CC, Virginia; TA–W–70,405DD, Massachusetts; TA–W–70,405EE, Connecticut.

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 11, 2009, applicable to workers of Avaya Inc., Worldwide Services Group, Global Support Services (GSS) Organization, including on-site leased workers from Kelly Services Inc., P/S Partner Solutions Ltd., Exceed Resources Inc., Real Soft, InfoQuest Consulting Group, CCSI Inc., ICONMA LLC, MGD Consulting, Inc., Case Interactive LLC., and Sapphire Technologies, Highlands Ranch, Colorado. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57338).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers provide technical support for communication systems.

New information shows that worker separations have occurred involving employees in support of the Highlands Ranch, Colorado location of the subject firm working off-site at the above mentioned states. These workers provided technical support for communication systems supporting the Highlands Ranch, Colorado production facility of the subject firm.

Based on these findings, the Department is amending this certification to include workers in support of the Highlands Ranch, Colorado location facility of the subject firm working out of various states.

The amended notice applicable to TA–W–70,405 is hereby issued as follows:

All workers of Avaya Inc., Worldwide Services Group, Global Support Services (GSS) Organization, including on-site leased workers from Kelly Services Inc., P/S Partner Solutions Ltd., Exceed Resources Inc., Real Soft, InfoQuest Consulting Group, CCSI Inc., ICONMA LLC, MGD Consulting, Inc., Case Interactive LLC., and Sapphire Technologies, Highlands Ranch, Colorado (TA–W–70,405), including employees in support of Avaya Inc., Worldwide Services Group, Global Support Services (GSS) Organization Highlands Ranch, Colorado working off-site in the states of Florida (TA–W–70,405A), California (TA–W–70,405B), South Carolina (TA–W–70,405C), Alabama (TA–W–70,405D), Michigan (TA–W–70,405E), Arizona (TA–W–70,405F), Ohio (TA–W–70,405G), Pennsylvania (TA–W–70,405H), North Carolina (TA–W–70,405I), Colorado (TA–W–70,405J), New York (TA–W–70,405K), Maryland (TA–W–70,405L),

Georgia (TA–W–70,405M), New Jersey (TA–W–70,405N), Indiana (TA–W–70,405O), Tennessee (TA–W–70,405P), Wisconsin (TA–W–70,405Q), Oregon (TA–W–70,405R), Mississippi (TA–W–70,405S), Illinois (TA–W–70,405T), Texas (TA–W–70,405U), Iowa (TA–W–70,405V), Oklahoma (TA–W–70,405W), Washington (TA–W–70,405X), South Dakota (TA–W–70,405Y), Nevada (TA–W–70,405Z), New Hampshire (TA–W–70,405AA), Montana (TA–W–70,405BB), Virginia (TA–W–70,405CC), Massachusetts (TA–W–70,405DD), Connecticut (TA–W–70,405EE), who became totally or partially separated from who became totally or partially separated from employment on or after May 19, 2008, through September 11, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 17th day of March, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7325 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,324]

Delphi Packard Electrical/Electronic Architecture, a Subsidiary of Delphi Corporation, Including On-Site Leased Workers From Bartech and EDS, an HP Company, Warren, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 8th, 2009, applicable to workers of Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech and EDS, an HP Company, Warren, Ohio. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3930).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wiring and connector components.

The company reports that on-site leased workers from EDS, an HP Company, were employed on-site at the Warren, Ohio location of Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from EDS, an HP Company, working on-site at the Warren, Ohio location of Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation.

The amended notice applicable to TA–W–70,324 is hereby issued as follows:

All workers of Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech and EDS, an HP Company, Warren, Ohio (TA–W–70,324), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, Rootstown, Ohio (TA–W–70,324A), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, Vienna, Ohio (TA–W–70,32B), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, Howland, Ohio (TA–W–70,324C), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, Cortland, Ohio (TA–W–70,324D), who became totally or partially separated from employment on or after May 19, 2008, through two years from the certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 28th day of January 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7321 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70, 975A]

B&C Corporation, JR Engineering Division, Including B&C Distribution Center, Including On-Site Leased Workers From B&C Services, Inc., Barberton, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 2, 2009, applicable to workers of B&C Corporation, JR Engineering Division, including on-site leased workers from B&C Services, Inc., Barberton, Ohio. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59253).

At the request of the State agency and a petitioner, the Department reviewed the certification for workers of the subject firm. The workers provided wheel machining and polishing services.

New information received from the petitioner shows that worker separations occurred during the relevant time period at the B&C Distribution Center, Inc. of the B&C Corporation, JR Engineering Division, Barberton, Ohio. The B&C Distribution Center provides distribution and logistical support for B&C Corporation.

Accordingly, the Department is amending this certification to include workers of the B&C Distribution Center, Barberton, Ohio location of B&C Corporation, JR Engineering Division.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of wheel machining and polishing services.

The amended notice applicable to TA–W–70,975 and TA–W–70,975A are hereby issued as follows:

All workers of B&C Corporation, JR Wheel Division, including on-site leased workers from B&C Services, Norton, Ohio (TA–W–70,975) and B&C Corporation, JR Engineering Division, including the B&C Distribution Center, Inc., including on-site leased workers from B&C Services, Inc., Barberton, Ohio (TA–W–70,975A), who became totally or partially separated from employment on or after June 2, 2008, through October 2, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under

Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 23rd day of March 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7326 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,045]

Bayer Material Science, LLC, Formally Known as Sheffield Plastics, Including On-Site Leased Workers from Randstadt Work Solutions, Berlin, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 8th, 2010, applicable to workers of Bayer Material Science, LLC, formally known as Sheffield Plastics, including on-site leased workers from Randstadt Work Solutions, Berlin, Connecticut. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3934).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produced polycarbonate film products.

Information shows that Bayer Material Science, LLC was formally known as Sheffield Plastics. Some workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax account under the name Bayer Material Science, LLC, formally known as Sheffield Plastics.

Accordingly, the Department is amending this certification to property reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of polycarbonate film products to Thailand.

The amended notice applicable to TA–W–71,045 is hereby issued as follows:

All workers of Bayer Material Science, LLC, formally known as Sheffield Plastics, including on-site leased workers from Randstadt Work Solutions, Berlin, Connecticut, who became totally or partially separated from employment on or after June 5, 2008 through January 8, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 22nd day of March 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance

[FR Doc. 2010–7327 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,398]

Cessna Aircraft Company, a Division of Textron, Inc., Including On-Site Leased Workers From Express Professional Staffing, Formerly Known as Express Employment Professionals, Bend, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10th, 2009, applicable to workers of Cessna Aircraft Company, a division of Textron, Inc., including on-site leased workers from Express Professional Staffing, formerly known as Express Employment Professionals, Bend, Oregon. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3934).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produced single engine aircraft.

Information shows that the on-site leased firm Express Professional Staffing was formerly known as Express Employment Professionals. Some workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax account names Express Professional Staffing and Express Employment Professionals.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production in single engine aircraft to Mexico.

The amended notice applicable to TA–W–70,398 is hereby issued as follows:

All workers of Cessna Aircraft Company, a division of Textron, Inc, including on-site leased workers from Express Professional Staffing, formerly known as Express Employment Professionals, Bend, Oregon, who became totally or partially separated from employment on or after May 18, 2008, through two years from the certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 22nd day of March 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7324 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,291]

Maxim Integrated Products, Formerly Known as Dallas Semiconductor, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 8th, 2009, applicable to workers of Maxim Integrated Products, Dallas, Texas. The notice was published in the **Federal Register** on August 19, 2009 (74 FR 41932).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produced integrated circuits (analog and mixed signal).

Information shows that Maxim Integrated Products was formerly known as Dallas Semiconductor. Some workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts under the names Maxim Integrated Products, Inc. and Dallas Semiconductor.

Accordingly, the Department is amending this certification to property reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of integrated circuits (analog and mixed

signal) to Japan, Thailand and the Philippines.

The amended notice applicable to TA–W–70,291 is hereby issued as follows:

All workers of Maxim Integrated Products, formerly known as Dallas Semiconductor, Dallas, Texas, who became totally or partially separated from employment on or after May 19, 2008, through July 8, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 22nd day of March 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7323 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,027]

Ram Rod Industries, LLC, Prentice, WI; Notice of Revised Determination Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

The group eligibility requirements for workers of a Firm under section 222(a) of the Act, 19 U.S.C. 2272(a), are satisfied if the following criteria are met:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm have decreased absolutely; and

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm.

On September 21, 2009, workers of the subject firm were denied eligibility to apply for TAA benefits. Additional information has prompted the Department of Labor to issue this revised determination. Consequently, the Department has decided to issue a revised determination based on an internal reconsideration of the original findings.

Further investigation revealed that workers of Ramrod Industries, who are engaged in employment related to the production of hydraulic cylinders, meet the criteria for certification.

Section 222(a)(1) has been met because at least five percent of workers have been separated during the relevant period.

Section 222(a)(2)(A)(ii) has been met because imports of articles or services like or directly competitive with the hydraulic cylinders produced by Ramrod Industries have increased. Specifically, one of the firm's major customers has sharply increased imports of goods like or directly competitive with those produced at Ramrod's Spencer location.

In addition, United States aggregate imports of hydraulic cylinders for consumption increased significantly in 2008.

Finally, Section 222(a)(2)(A)(iii) has been met because the increased imports of hydraulic cylinders by customers of Ramrod Industries contributed importantly to the worker group separations and sales/production declines at Ramrod Industries.

All workers of Ramrod Industries LLC, Prentice, Wisconsin, who became totally or partially separated from employment on or after May 19, 2008, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

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

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7322 Filed 3–31–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–037)]

NASA Advisory Council; Technology and Innovation Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council (NAC). The Meeting will be held for the purpose of reviewing the Space Technology Program planning.

DATES: Thursday, April 22, 2010, 8:30 a.m. to 4:30 p.m. EDT.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room MIC–7 (7H45), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Diaz, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–0728, fax (202) 358–4078, or *evelyn.diaz-1@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Office of the Chief Technologist Update

—Space Technology Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Evelyn Diaz via e-mail at *evelyn.diaz-1@nasa.gov* or by telephone at (202) 358–0728.

Dated: March 26, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–7400 Filed 3–31–10; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Dates Correction

Correction

In the Notices section beginning on page 15401 in the issue of March 29th, 2010, make the following correction:

On pages 15401 through 15499, the date at the top of each page is corrected to read "Monday, March 29, 2010".

This change will be made to all versions of the **Federal Register** appearing online. The print edition of Monday, March 29, 2010 will not be reprinted.

[FR Doc. 2010–7528 Filed 3–31–10; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0144]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–2004, "Emergency Planning for Research and Test Reactors."

FOR FURTHER INFORMATION CONTACT: R.A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7404 or e-mail *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG) is temporarily identified by its task number, DG–2004, which should be mentioned in all related correspondence. DG–2004 is proposed Revision 2 of Regulatory Guide 2.6, dated March 1983. Title 10 of the *Code of Federal Regulations,* Section 50.34(b)(6)(v) (10 CFR 50.34(b)(6)(v)) requires that each application for a license to operate a facility include in a final safety analysis report, along with other information, the applicant's plans for coping with emergencies, including the items specified in Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities" to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." In addition, 10 CFR 50.54(q) requires licensees to follow and maintain in effect emergency plans that meet the requirements of Appendix E. This guide provides licensees and applicants with a method that the staff of the NRC considers acceptable for use in complying with the Commission's regulations on the content of emergency plans for research and test reactors.

II. Further Information

The NRC staff is soliciting comments on DG–2004. Comments may be accompanied by relevant information or supporting data and should mention DG–2004 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Comments would be most helpful if received by May 31, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0144 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–2010–0144. 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), 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, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–2004 is available electronically under ADAMS Accession Number ML092400206. In addition, electronic copies of DG–2004 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

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–2010–0144.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 24th day of March 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–7390 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; NRC–2010–0124]

FirstEnergy Nuclear Operating Company; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 26, 2010 (75 FR 14638), which incorrectly stated a wrong county for Perry Nuclear Plant. This action is necessary to correct the county for Perry.

FOR FURTHER INFORMATION CONTACT: Michael Mahoney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3867, e-mail *michael.mahoney@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 14638, in the 1st column under Nuclear Regulatory Commission, 20th line, it is corrected to read from "Ottawa County, Ohio" to "Lake County, Ohio."

Dated in Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Michael Mahoney,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7331 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, and 50–423; NRC–2010–0128]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit Nos 1, 2, and 3; Exemption

1.0 Background

Dominion Nuclear Connecticut, Inc. (DNC or the licensee) is the holder of Facility Operating License Nos. DPR–21, DPR–65, and NPF–49, which authorize operation of the Millstone Power Station, Unit Nos. 1, 2, and 3 (Millstone). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one boiling water reactor and two pressurized water reactors located in New London County, Connecticut. The boiling water reactor is permanently shut down.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009 (74 FR 13926), requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans. The final rule became effective on May 26, 2009, and compliance with the final rule is required by March 31, 2010.

The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from two of these new requirements that DNC now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010. Specifically, by letter dated January 12, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100131116), as supplemented by letter dated January 12, 2010 (ADAMS Accession No. ML100131115), DNC requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Due to procurement needs and installation activities associated with the required security system upgrades, the licensee has requested exemption from the March 31, 2010, implementation date specified in the new rule for two specific requirements. The two items subject to the request for exemption are proposed to be implemented by August 31, 2010, and September 30, 2010, respectively. The January 12, 2010, letter, contains four attachments that were designated by the licensee as containing safeguards information and, accordingly, the attachments are not available to the public. The supplemental January 12, 2010, letter contains, as an attachment, an environmental assessment.

Being granted this exemption for the two items would allow the licensee sufficient time to complete the upgrades to the Millstone security system as required by the recent revisions to 10 CFR 73.55.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption request would, as noted above, allow an extension from March 31, 2010, until August 31, 2010, for certain uninterruptible power requirements and September 30, 2010, for certain alarm station requirements. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, NRC approval of the licensees exemption request is authorized by law.

In the draft final rule sent to the Commission on July 9, 2008 (ADAMS Accession No. ML081780209), the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (*Reference:* June 4, 2009 letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute, ADAMS Accession No. ML091410309). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Millstone Schedule Exemption Request

The licensee provided detailed information regarding the proposed exemption in the attachments to its letter dated January 12, 2010. The attachments describe a comprehensive plan to upgrade the Millstone security system to meet the new requirements in 10 CFR Part 73. Due to the procurement needs and installation activities associated with the required security system upgrades, the licensee has requested an exemption from the March 31, 2010, implementation date specified in the new rule for two specific requirements. DNC proposes to implement certain alarm station requirements by September 30, 2010, and certain uninterruptible power supply requirements by August 31, 2010.

The attachments to the licensee's letter dated January 12, 2010, details the specific portions of the regulations for which the site cannot be in compliance by the March 31, 2010, implementation date, along with justifications for each of the proposals. The attachments also provide a milestone schedule with the activities necessary to bring the licensee into full compliance by September 30, 2010.

Notwithstanding the schedule exemptions for these limited requirements, the licensee would continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By September 30, 2010, Millstone would be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date to August 31, 2010, and September 30, 2010, with regard to the two specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC has determined that the long-term benefits that will be realized when the security upgrades are completed justifies extending the March 31, 2010, full compliance date for the two items in the licensee's exemption request. The security measures that DNC needs additional time to implement at Millstone are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010, deadline for the two items specified in the attachments to DNC's letter dated January 12, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by September 30, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 14634; dated March 26, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7386 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302, NRC–2010–0105]

Florida Power Corporation, et al.; Crystal River Unit 3 Nuclear Generating Plant; Exemption

1.0 Background

Florida Power Corporation (FPC, the licensee) is the holder of Facility Operating License No. DPR–72 that authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (CR–3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized water reactor located in Citrus County, Florida.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published as a final rule in the **Federal Register** on March 27, 2009 (74 FR 13926–13993), effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from four of these new requirements that CR–3 now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be

implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009 (Agencywide Documents Access and Management System Accession No. ML093370143), and as supplemented by letter dated January 15, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Attachment 1 of the licensee's November 30, 2009, letter and its letter dated January 15, 2010, contain security-related information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for four specific requirements stated in 10 CFR 73.55 from the current March 31, 2010, deadline to November 15 and December 15, 2010. Being granted this exemption for the four items would allow the licensee to implement specific parts of the revised requirements that involve significant physical upgrades to the CR–3 security system. A major security project that is planned is the expansion of the site protected area. Other plant modifications that are significant in scope involve the construction of new facilities, extensive design and procurement efforts, and work with high voltage cabling and the personnel safety risk associated with such work.

3.0 Discussion of Part 73 Schedule Exemption From the March 31, 2010, Full Implementation Date

As stated in 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" In accordance with 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption would, as noted above, allow an extension from March 1, 2010, until November 15 and December 15, 2010, for compliance with the new rule in four specified areas. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (*Reference:* June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Crystal River Schedule Exemption Request

The licensee provided detailed information in Attachment 1 of the FPC letter dated November 30, 2009, requesting an exemption. It describes the specific security systems at CR–3 that require modification to comply with the requirements, which includes relocation and upgrades to the security intrusion detection system, construction of a building addition, and the addition of uninterruptable power supplies. These plant modifications are significant in scope involving the construction of new facilities, extensive design and procurement efforts, and work with high voltage cabling. These modifications warrant a thorough review of the safety-security interface and have to be coordinated with the CR–3 refueling outage in fall 2009. All of these efforts require careful design, planning, procurement, and implementation efforts. Attachment 1 of the November 30, 2009, letter contains security-related information regarding the site security plan, details of specific portions of the regulation of which the site cannot be in compliance by the March 31, 2010, deadline, changes to the site's security configuration to meet the new requirements, and a timeline with critical path activities for the licensee to achieve full compliance by December 15, 2010. The timeline provides dates indicating when (1) Design activities are completed and approved, (2) expansion of the protected area begins and is completed, and (3) the new and relocated equipment is to be installed and tested.

The site-specific information provided within the CR–3 exemption request is relative to the requirements from which the licensee requested exemption and demonstrates the need for modification to meet the four specific requirements of 10 CFR 73.55. The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified; and is consistent with the licensee's requested compliance date.

Notwithstanding the proposed schedule exemption for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By December 15, 2010, CR–3 will be in full compliance with all of the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to four specified requirements of 10 CFR 73.55 until November 15 and December 15, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The long-term benefits that will be realized when the security systems upgrade is complete justify extending the March 31, 2010, full compliance date with regard to the specific requirements of 10 CFR 73.55 for this particular licensee. The security measures that CR–3 needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010, deadline for the four items specified in Attachment 1 of the FPC letter dated November 30, 2009, and January 15, 2010, letter, the licensee is required to be in partial compliance and in full compliance with 10 CFR 73.55 by November 15, and December 15, 2010, respectively. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

In accordance with 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 13320, dated March 19, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25 day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7389 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333; NRC–2010–0136]

James A. Fitzpatrick Nuclear Power Plant; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (JAFNPP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Oswego County in New York State.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "PHYSICAL PROTECTION OF PLANTS AND MATERIALS," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission Orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security Orders. It is from four of these new requirements that JAFNPP now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated January 21, 2010, as supplemented by letters dated February 25 and March 2, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter dated January 21, 2010, and February 25, 2010, contain sensitive security information and, accordingly, are withheld from public disclosure in accordance with 10 CFR 2.390. The licensee has requested an exemption from the March 31, 2010, compliance date stating that due to the scope of the design, procurement, and installation activities and in consideration of impediments to construction such as winter weather conditions and equipment delivery schedules, completion of some of the new requirements contained in 10 CFR 73.55 will require additional time beyond March 31, 2010, before all requirements can be met. Specifically, the request to extend the compliance date is for four specific requirements from the current March 31, 2010, deadline to December 31, 2010. Being granted this exemption for the four items would allow the licensee to be in full compliance with the 10 CFR Part 73 Final Rule.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as "security plans." Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC approval of this exemption, as noted above, would allow an extension for the implementation date from March 31, 2010, until December 31, 2010, with the new rule for four specified requirements. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the NRC approval of the licensee's exemption request is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through

a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

JAFNPP Schedule Exemption Request

The licensee provided detailed information in letter dated January 21, 2010, requesting an exemption, as supplemented by letters dated February 25 and March 2, 2010. In its submissions, JAFNPP described a comprehensive plan including the scope of work such as the design, procurement, and installation activities, consideration of impediments to construction such as winter weather conditions and equipment delivery schedules, and provides a timeline for achieving full compliance with the new regulation. The licensee's submissions contain (1) sensitive security information regarding the site security plan, (2) details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and the reasons for the same, (3) the required changes to the site's security configuration, and (4) a timeline with critical path activities that will bring the licensee into full compliance by December 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (i.e., new roads, buildings, and fences), (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemptions for these limited requirements, the licensee stated that it will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By December 31, 2010, JAFNPP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to December 31, 2010, with regard to four specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the design, procurement, and installation activities described in the licensee's submissions, are complete, justifies extending the full compliance date in the case of this particular licensee. The security measures for which JAFNPP needs additional time to implement, are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the four items specified in the licensee's letter dated January 21, 2010, as supplemented by letters dated February 25 and March 2, 2010, the licensee is required to be in full compliance by December 31, 2010. In achieving full compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 14637; dated March 26, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7387 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281; NRC–2010–0079]

Virginia Electric and Power Company Surry Power Station, Unit Nos. 1 and 2; Exemption

1.0 Background

The Virginia Electric and Power Company, (the licensee) is the holder of Facility Operating License Nos. DPR–32 and DPR–37, which authorize operation of the Surry Power Station, Unit Nos. 1 and 2 (Surry). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Surry, Virginia.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from certain new requirements that Surry now seeks an exemption from the March 31, 2010, implementation date. All other physical scrutiny requirements established by this recent rulemaking have already or will be implemented by the licensee by March 31, 2010.

By letter dated December 7, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Certain portions of the licensee's December 7, 2009, letter contain safeguards information and, accordingly, are not available to the public. The licensee has requested an

exemption from the March 31, 2010, compliance date stating that it must perform the upgrades to portions of the Surry security system before all of the Section 73.55 requirements can be met. Specifically, the request is to extend the compliance date for certain requirements from the current March 31, 2010, deadline to August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively. Being granted this exemption for this item would allow the licensee to complete the modifications designed to update equipment and incorporate state-of-the-art technology to meet the noted regulatory requirement.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively, for the implementation date for certain requirements of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that these changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R.W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Surry Schedule Exemption Request

The licensee provided detailed information in its December 7, 2009, letter requesting an exemption. It describes a comprehensive plan for implementing certain requirements in the new Part 73 rule and provides a timeline for achieving full compliance with the new regulation. The December 7, 2009, submittal contains safeguards information regarding the site security plan, details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that would allow the licensee to achieve full compliance by August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively. The timeline provides dates indicating when (1) construction will begin on various phases of the project, (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational. Notwithstanding the schedule exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively, Surry will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively, with regard to certain requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The long-term benefits that will be realized when the security system upgrades are complete justifies exceeding the full compliance date in the case of this particular licensee. The security measures Surry needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, implementation deadline for the item specified in the licensee's December 7, 2009, letter, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 9618) published March 3, 2010, as corrected in the **Federal Register** on March 19, 2010 (75 FR 13318) by letter dated March 12, 2010 (Agencywide Documents Access and Management System Accession No. ML100600405).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7379 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0125]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station; Exemption

1.0 Background

FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NFP–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Ottawa County, Ohio.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001 security orders. It is from one of these new requirements that DBNPS now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009, as supplemented by letter dated December 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 30, 2009, letter contains proprietary and safeguards information and, accordingly, is not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a significant modification to the current site security configuration before all requirements can be met. Specifically, the request is for one specific requirement from the current March 31, 2010, deadline, to February 3, 2011. Being granted this exemption for the one item would allow the licensee to complete the modification and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The approval of this exemption, as noted above, would allow an extension from March 31, 2010, until February 03, 2011, for one specified area of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule Power Reactor Security provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R.W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Davis-Besse Nuclear Power Station Schedule Exemption Request

The licensee provided detailed information in the enclosure of its November 30, 2009, letter requesting an exemption. Enclosure 1 contains proprietary information (not publically available, contains security-related information) regarding the site security plan, details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that would ensure the licensee to achieve full compliance by February 3, 2011. The timeline provides dates indicating when (1) Construction will begin on various phases of the project, (2) outages are scheduled for the unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemption for this specific requirement, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By February 3, 2011 DBNPS will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the

licensee has provided adequate justification for its request for an extension of the compliance date with regard to the one specified requirement of 10 CFR 73.55 to February 3, 2011.

Accordingly, the Commission has determined that pursuant to10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

The NRC staff has determined that the long-term benefits that will be realized when the DBNPS equipment installation is complete, justifies extending the full compliance date with regard to the specified requirement of 10 CFR 73.55. The security measures DBNPS needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the one item specified in the enclosure of FENOC letter dated November 30, 2009, the licensee is required to be in full compliance by February 3, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 14635).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7378 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; NRC–2010–0124]

FirstEnergy Nuclear Operating Company, Perry Nuclear Power Plant; Exemption

1.0 Background

FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NFP–58, which authorizes operation of the Perry Nuclear Power Plant, Unit 1 (PNPP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one boiling-water reactor located in Lake County, Ohio.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 includes additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from one of these new requirements that PNPP now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009, as supplemented by letter dated December 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 30, 2009, letter contains proprietary and safeguards information and, accordingly, is not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a significant modification to the current site security configuration before all requirements can be met. Specifically, the request is for one specific requirement from the current March 31, 2010, deadline, to November 25, 2010. Being granted this exemption for the one item would allow the licensee to complete the modification and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The approval of this exemption, as noted above, would allow an extension from March 31, 2010, until November 25, 2010, for one specified area of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule Power Reactor Security provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what

changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Perry Nuclear Power Plant Schedule Exemption Request

The licensee provided detailed information in the enclosure of its November 30, 2009, letter, requesting an exemption. Enclosure 1 contains proprietary information regarding the site security plan, details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that would enable the licensee to achieve full compliance by November 25, 2010. The timeline provides dates indicating when (1) Construction will begin on various phases of the project, (2) outages are scheduled for the unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemption for this specific requirement, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By November 25, 2010, PNPP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to the one specified requirement of 10 CFR 73.55 to November 25, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

The NRC staff has determined that the long-term benefits that will be realized when the PNPP equipment installation is complete, justifies extending the full compliance date with regard to the specified requirement of 10 CFR 73.55. The security measures PNPP needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the one item specified in the enclosure of FENOC letter dated November 30, 2009, the licensee is required to be in full compliance by November 25, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 14638).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7375 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0413]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.11, Revision 1, "Instrument Lines Penetrating the Primary Reactor Containment."

FOR FURTHER INFORMATION CONTACT: Mekonen M. Bayssie, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7489 or e-mail *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.11, Instrument Lines Penetrating the Primary Reactor Containment," was issued with a temporary identification as Draft Regulatory Guide, DG–1225. This guide defines a basis that the staff of the NRC considers acceptable to implement the intent of General Design Criterion 55 and 56 with regard to instrument lines. This guide applies to light-water-cooled reactors with a primary containment.

II. Further Information

In September 2009, DG–1225 was published with a public comment period of 60 days from the issuance of the guide. A Summary of the Public Comment Resolution is available through the NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML100250972. Electronic copies of Regulatory Guide 1.11, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 25th day of March 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–7391 Filed 3–31–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–30, CP2010–31 and CP2010–32; Order No. 430]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add additional Global Expedited Package Services 2 (GEPS 2) contracts to the Competitive Product List. This notice addresses procedural steps associated with these filings.

DATES: Comments are due: April 5, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

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II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On March 25, 2010, the Postal Service filed a notice announcing that it has entered into three additional Global Expedited Package Services 2 (GEPS 2) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS 2 contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.[2]

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 2–3.

In support of its Notice, the Postal Service filed four attachments as follows:

1. Attachments 1A, 1B and 1C-redacted copies of the three contracts and applicable annexes;
2. Attachments 2A, 2B and 2C-a certified statement required by 39 CFR 3015.5(c)(2) for each of the three contracts;
3. Attachment 3–a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote; and
4. Attachment 4–an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 2 contracts fit within the Mail Classification Schedule language for GEPS 2. The Postal Service identifies customer specific information, general contract terms and other differences that distinguish the instant contracts from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 3–6. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the GEPS 2 contracts filed previously notwithstanding these differences. *Id.* at 6–7.

The Postal Service asserts that several factors demonstrate the contracts' functional equivalence with previous GEPS 2 contracts, including the product being offered, the market in which it is offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that because the GEPS agreements "incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same..." despite any incidental differences. *Id.* at 6.

The Postal Service contends that its filings demonstrate that each of the new GEPS 2 contracts comply with the requirements of 39 U.S.C. 3633 and is functionally equivalent to previous GEPS 2 contracts. It also requests that the contracts be included within the GEPS 2 product. *Id.* at 7.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–30, CP2010–31 and CP2010–32 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than April 5, 2010. The public portions of these filings can be accessed via the Commission's website *(http://www.prc.gov).*

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–30, CP2010–31 and CP2010–32 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than April 5, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–7280 Filed 3–31–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Notice of United States Postal Service Filing of Three Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, March 25, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 6a–3, SEC File No. 270–0015, OMB Control No. 3235–0021.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Act") sets out a framework for the registration and regulation of national securities exchanges. Under Rule 6a–3 (17 CFR 240.6a–3), one of the rules that implements Section 6, a national securities exchange (or an exchange exempted from registration as a national securities exchange based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of securities sold on the exchange each month.

The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The Commission estimates that each respondent makes approximately 25 such filings on an annual basis at an average cost of approximately $36 per response. Currently, 15 respondents (13 national securities exchanges and two exempt exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 187.5 hours (25 filings/respondent per year × 0.5 hours/response × 15 respondents) and $13,500 ($36/response × 25 responses/respondent per year × 15 respondents) per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7358 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 10b–10, SEC File No. 270–389, OMB Control No. 3235–0444.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (Commission) is soliciting comments on the existing collection of information provided for in Rule 10b–10 (17 CFR 240.10b–10) under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10b–10 requires broker-dealers to convey basic trade information to customers regarding their securities transactions. This information includes: The date and time of the transaction, the identity and number of shares bought or sold, and the trading capacity of the broker-dealer. Depending on the trading capacity of the broker-dealer, Rule 10b–10 requires the disclosure of commissions as well as mark-up and mark-down information. For transactions in debt securities, Rule 10b–10 requires the disclosure of redemption and yield information. Rule 10b–10 potentially applies to all of the approximately 5,178 firms registered with the Commission that effect transactions on behalf of customers.

Based on information provided by registered broker-dealers to the Commission in FOCUS Reports, the Commission staff estimates that on average, registered broker-dealers process approximately 1.4 billion order tickets per month for transactions on behalf of customers. Each order ticket representing a transaction effected on behalf of a customer results in one confirmation. Therefore, the Commission staff estimates that approximately 16.8 billion confirmations are sent to customers annually. The confirmations required by Rule 10b–10 are generally processed through automated systems. It takes approximately 1 minute to generate and send a confirmation. Accordingly, the Commission estimates that broker-dealers spend 280 million hours per year complying with Rule 10b–10.

The amount of confirmations sent and the cost of sending each confirmation varies from firm to firm. Smaller firms generally send fewer confirmations than larger firms because they effect fewer transactions. The Commission staff estimates the costs of producing and sending a paper confirmation, including postage to be approximately 96 cents. The Commission staff also estimates that the cost of producing and sending a wholly electronic confirmation is approximately 52 cents. Based on informal discussions with industry participants as well as no-action positions taken in this area, the staff estimates that broker-dealers used electronic confirmations for approximately 25 percent of transactions. Based on these calculations, Commission staff estimates that 12,600,000,000 paper confirmations are mailed each year at a cost of $12,096,000,000. Commission staff also estimates that 4,200,000,000 wholly electronic confirmations are sent each year at a cost of $2,184,000,000. Accordingly, Commission staff estimates that total annual cost associated with generating and delivering to investors the information required under Rule 10b–10 would be $14,280,000,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7359 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–4(e) and Form 19b–4(e), OMB Control No. 3235–0504, SEC File No. 270–447.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. The Code of Federal Regulations citation to this collection of information is 17 CFR 240.19b–4(e) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (the "Act").

Rule 19b–4(e) permits a self-regulatory organization ("SRO") to immediately list and trade a new derivative securities product so long as such product is in compliance with the criteria of Rule 19b–4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e), it is necessary that the SRO maintain, on-site, a copy of Form 19b–4(e) under the Act. Rule 19b–4(e) requires SROs to file a summary form, Form 19b–4(e), and thereby notify the Commission, within five business days after the commencement of trading a new derivative securities product. In addition, the Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e).

The respondents to the collection of information are SROs (as defined by the Act), all of which are national securities exchanges.

Twelve respondents file an average total of 3,180 responses per year, which corresponds to an estimated annual response burden of 3,180 hours.

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7366 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 1, Rules 6a–1 and 6a–2, SEC File No. 270–0017, OMB Control No. 3235–0017.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Act") sets forth a regulatory scheme for national securities exchanges. Rule 6a–1 (17 CFR 240.6a–1) under the Act generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1 (17 CFR 249.1). An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a–2 (17 CFR 240.6a–2) under the Act requires registered and exempt exchanges: (1) To amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a–1 and 6a–2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the respondent met the criteria for registration or exemption set forth in Sections 6 and 19 of the Act. Without the amendments and periodic updates of information submitted pursuant to Rule 6a–2, the Commission would have substantial difficulty determining whether a national securities exchange or exempt exchange was continuing to operate in compliance with the Act.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will

receive approximately three initial Form 1 filings per year and that each respondent would incur an average burden of 47 hours to file an initial Form 1 at an average cost per response of approximately $10,354. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 141 hours (one response/respondent × three respondents × 47 hours/response) and $31,062 (one response/respondent × three respondents × $10,354/response).

There currently are thirteen entities registered as national securities exchanges and two exempt exchanges, for a total of 15 exchanges. The Commission estimates that each registered or exempt exchange files four amendments or periodic update to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a–2. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a–2 is 1500 hours (15 respondents × 25 hours/response × four response/respondent per year) and $317,700 (15 respondents × $5,295/response × one response/respondent per year).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7360 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29192; File No. 812–13681]

Legg Mason Partners Equity Trust, et al.; Notice of Application

March 26, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts ("UITs") that are within or outside the same group of investment companies.

APPLICANTS: Legg Mason Partners Equity Trust ("LMP Equity Trust"), Legg Mason Partners Variable Equity Trust ("LMP Variable Equity Trust," and together with LMP Equity Trust, the "Trusts") and Legg Mason Partners Fund Advisor, LLC ("LMPFA" or the "Adviser").

FILING DATES: The application was filed on August 7, 2009 and amended on December 30, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 20, 2010, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Legg Mason Partners Equity Trust and Legg Mason Partners Variable Equity Trust, 55 Water Street, New York, NY 10041; Legg Mason Partners Fund Advisor, LLC, 620 Eighth Avenue, New York, NY 10018.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is a Maryland business trust registered as an open-end management investment company under the Act. Each Trust is a series trust whose shares are registered under the Securities Act of 1933, as amended.[1] The series of LMP Variable Equity Trust are offered to registered separate accounts ("Registered Separate Accounts") and unregistered separate accounts ("Unregistered Separate Accounts") of insurance companies that are not affiliates of the Adviser; those separate accounts fund certain variable annuity and variable life insurance contracts and qualified retirement and pension plans (together with Registered Separate Accounts and the Unregistered Separate Accounts, the "Variable Accounts").[2]

2. LMPFA is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser to each Trust. LMPFA provides administrative and certain oversight services to the Funds, manages the Funds' cash and short-term instruments and is responsible for the overall management of the Funds' investment programs. All investment advisers and subadvisers to any Fund

[1] Applicants request that the order also extend to any future series of the Trusts, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies, as defined in section 12(d)(1)(G) of the Act as the Trusts and that are, or in the future are, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (together with the existing series of the Trusts, the "Funds"). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Each Fund that operates as a Fund of Funds as defined below, relies on the requested order and offers its shares to Variable Accounts, a "Variable Fund of Funds".

will be registered as investment advisers under the Advisers Act.

3. Applicants request relief to the extent necessary to permit (a) Any Fund (each, a "Fund of Funds") to acquire shares of registered open-end management investment companies (the "Unaffiliated Investment Companies") and UITs (the "Unaffiliated Trusts", and together with the Unaffiliated Investment Companies, the "Unaffiliated Funds") that are not part of the same "group of investment companies" as defined in section 12(d)(1)(G)(ii) of the Act as the Fund of Funds; (b) the Unaffiliated Funds or their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 ("1934 Act") ("Broker") to sell shares of the Unaffiliated Funds to the Fund of Funds, (c) the Funds of Funds to acquire shares of certain other Funds in the same "group of investment companies" as the Fund of Funds (the "Affiliated Funds," and together with the Unaffiliated Funds, the "Underlying Funds"), and (d) the Affiliated Funds, or their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Funds of Funds. Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies that have received exemptive relief to permit their shares be listed and traded on a national securities exchange at negotiated prices ("ETFs"). Each Fund of Funds also may invest in securities and investments that are not issued by registered investment companies and that are consistent with its investment objective.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit (a) the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and (b) the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants will comply with condition 1 below, which prohibits: (a) The Adviser, any person controlling, controlled by or under common control with the Adviser, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the "Group"), and (b) any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Sub-Adviser"), any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the "Sub-Adviser Group") from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that they propose to prevent a Fund of Funds, the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities (each, a "Fund of Funds Affiliate") from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, an "Unaffiliated Fund Affiliate"). Additionally, condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) from causing an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, advisory board member, investment adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Sub-Adviser, member of an advisory board, or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. As an additional assurance that an Unaffiliated Investment Company understands and appreciates the implications of an investment by a Fund of Funds under the requested order, condition 8 requires that prior to a Fund of Funds' investment in the Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i), a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their boards of directors or trustees ("Boards") and their investment advisers understand the terms and conditions of

the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[3]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will find that the management or advisory fees charged under a Fund of Funds' advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Variable Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level, and other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rule 2830"),[4] if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds as set forth in NASD Conduct Rule 2830.

9. Applicants represent that each Variable Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding variable insurance contracts will be permitted to invest in the Variable Fund of Funds unless the insurance company has certified to such Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the separate account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except in certain circumstances identified in condition 12 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[5]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if the Commission finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[6] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

[3] An Unaffiliated Underlying Fund (including an ETF) would retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[4] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority, Inc.

[5] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[6] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Unaffiliated Fund at net asset value. Applicants would not rely on the requested relief from Section 17(a) for such secondary market transactions. A Fund of Funds could seek to transact in "Creation Units" directly with an ETF that is an Unaffiliated Fund pursuant to the requested section 17(a) relief. Certain of the Affiliated Funds also may operate as ETFs; however, no Fund of Funds will be an ETF. Applicants are not requesting, and the Commission is not granting, any relief from section 17(a) to purchase and redeem Creation Units of any ETF that is an Affiliated Fund.

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Sub-Adviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or the sponsor (in the case of an Unaffiliated Trust). With respect to each Variable Fund of Funds, a Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares or (b) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether or not the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth (1) The party from whom the securities were acquired, (b) the identity of the underwriting syndicate's members, (c) the terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names

of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Investment Company made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Variable Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level, and other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7290 Filed 3–31–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61787; File No. SR–NASDAQ–2010–015]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Apply Retroactively a Correction of a Drafting Error in Rule 7018

March 26, 2010.

I. Introduction

On January 26, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would apply retroactively, to the period from July 24, 2009 through January 25, 2010, the correction made by SR–NASDAQ–2010–014 [3] of a "typographical error" [4] formerly in Rule 7018.

The proposed rule change was published for comment in the **Federal Register** on February 23, 2010.[5] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In August 2009, Nasdaq filed SR–NASDAQ–2009–072,[6] to make clerical changes designed to streamline and simplify Rule 7018. In the "Purpose" section of the proposed rule change, Nasdaq stated "[n]one of the clerical changes will modify any fee assessed or credit earned for trading on the NASDAQ Market Center." However, due to a drafting error, Exhibit 5 to the proposed rule change (which sets out the actual language of the proposed rule change) introduced changes to the fees for orders in securities listed on the New York Stock Exchange ("NYSE") that are routed to other venues without attempting to execute in Nasdaq for the full size of the order prior to routing. Nasdaq has been billing members in accordance with the fees that were in place before it filed SR–NASDAQ–2009–072. Nasdaq filed SR–NASDAQ–2010–014 [7] to correct the error; that proposed rule change was effective upon filing with the Commission, and changed the fees from the day it was filed (January 26, 2010) going forward. The instant proposed rule change would apply the same changes retroactively to the period from July 24, 2009 through January 25, 2010.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61515 (February 12, 2010), 75 FR 7642 (February 22, 2010).

[4] The Commission notes that the "typographical error" is more accurately characterized as a drafting error by Nasdaq that resulted in the omission and misplacement of rule language.

[5] *See* Securities Exchange Act Release No. 61524 (February 16, 2010), 75 FR 8160.

[6] Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009).

[7] Securities Exchange Act Release No. 61515 (February 12, 2010), 75 FR 7642 (February 22, 2010) (SR–NASDAQ–2010–014).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The proposed rule change would allow the fee changes implemented by SR–NASDAQ–2010–014 to be applied retroactively throughout the entire period when the error was in the rule. Additionally, the proposed rule change would conform the text of the rule to the description of the proposed rule change that Nasdaq provided in SR–NASDAQ–2009–072, thereby eliminating any confusion as to the appropriate fees and Nasdaq's intentions.

In approving the proposed rule change, the Commission notes that it received no comments on the proposal, and that Nasdaq stated it "has been billing members in accordance with the correct fees since the effective date of SR–NASDAQ–2009–072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee."

The Commission urges Nasdaq to carefully proofread future proposed rule changes before filing them with the Commission, to minimize errors and the additional proposed rule changes required to correct them.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASDAQ–2010–015), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7278 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61782; File No. SR–BX–2010–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Nasdaq Execution Services

March 25, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 23, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by BX. BX has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX submits this proposed rule change to extend the pilot period of BX's prior approval to receive inbound routes of equities orders from Nasdaq Execution Services, LLC ("NES") through June 23, 2010.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NES is the approved outbound routing facility of the NASDAQ Stock Market LLC ("NASDAQ") for cash equities, providing outbound routing from NASDAQ to other market centers.[4] BX also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ.[5] The Exchange's authority to receive inbound routes of equities orders by NES is subject to a pilot period ending March 23, 2010.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through June 23, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[4] *See* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SRNASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System). *See also* Securities Exchange Act Release Nos. 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR–NASDAQ–2008–079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–NASDAQ–2008–054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

[5] *See* Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008).

[6] *See* Securities Exchange Act Release No. 61271 (December 31, 2009), 75 FR 1102 (January 8, 2010).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from NES acting in its capacity as a facility of NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for 3 months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via NES (including the attendant obligations and conditions).

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX has requested that the Commission waive the 30-day operative delay.[13] BX notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from NES, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through June 23, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–021 and should be submitted on or before April 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7361 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] E-mail from Thomas Moran, Associate General Counsel, Office of General Counsel, NASDAQ OMX BX, to Theodore S. Venuti, Special Counsel, Division of Trading and Markets, Commission, dated March 24, 2010.

[14] *See supra* Section II.A.2.

[15] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61780; File No. SR–NYSE–2010–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Period for a Revised Unit-of-Count Methodology for NYSE OpenBook

March 25, 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 March 11, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to extend the expiration date of its pilot program for a revised unit-of-count methodology for NYSE OpenBook until July 31, 2010. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov*, at NYSE, 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, NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NYSE 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

On March 9, 2009, the Commission approved a pilot program by which the Exchange redefines some of the basic "units of measure" that Vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages.[3] Under the proposal, the Exchange no longer defines the Vendor-Subscriber relationship based on the manner in which a data feed recipient or subscriber receives data (*i.e.,* through controlled displays or through data feeds). Instead, the pilot program adopts more objective billing criteria that requires Vendors to count every subscriber entitlement, whether it be an individual person or a device.

Thus, the Vendor includes in the count every person and device that has access to the data, regardless of the purposes for which the individual or device uses the data. The pilot program eliminates current exceptions to the device-reporting obligation in order to subject the count to a more objective process and simplify the reporting obligation for Vendors. (For instance, the Exchange previously has not required Vendors to report certain programmers and other individuals who receive access to data for certain specific, non-trading purposes.) These exceptions require the Exchange to monitor the manner end-users consume data, which in turn adds cost for both the Exchange and customers.

The Exchange's experience with the pilot program has been successful. A number of the Exchange's customers have embraced the pilot program and the Exchange intends to submit to the Commission a proposed rule change that would seek permanent approval of the revised unit-of-count methodology.

The Exchange established March 31, 2010, as the expiration date for the pilot program. The Exchange now seeks to extend the expiration date of the pilot program to July 30, 2010, by which time, the Exchange intends to have submitted the proposed rule change seeking permanent approval.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(4)[4] 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 the requirements under Section 6(b)(5)[5] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the pilot program benefits investors because it is more closely aligned with current data consumption, reduces costs for the Exchange's customers, and potentially serves as a model for additional pricing efficiencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[3] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

should refer to File Number SR–NYSE–2010–21 and should be submitted on or before April 22, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, it is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities 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,[9] 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,[10] 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.[11]

This proposal would extend the expiration date of the Unit of Count pilot program to July 30, 2010. The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[12] The Commission recently found that NYSE was subject to significant competitive forces in setting fees for its depth-of-book order data in the Unit of Count Filing.[13] There are a variety of alternative sources of information that impose significant competitive pressures on the NYSE in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE 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.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register.** The Commission believes that accelerating approval of this proposal is appropriate and would ensure that the Exchange could continue to offer Unit of Count billing on their market data products under the existing pilot program.[14]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–2010–21), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7363 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

[6] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

[10] 17 CFR 242.603(a).

[11] NYSE is an exclusive processor of NYSE 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.

[12] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) ("NYSE Arca Order"). 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.

[13] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

[14] The Commission notes that that the Exchange has also recently filed a proposed rule change seeking permanent approval of the pilot program for the Unit of Count billing methodology for NYSE OpenBook. *See* Securities Exchange Act Release No. 61779 (March 25, 2010) (SR–NYSE–2010–22).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61779; File No. SR–NYSE–2010–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Make Permanent a Unit-of-Count Metric Alternative for NYSE OpenBook

March 25, 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 March 11, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, 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

Last March, the New York Stock Exchange LLC (the "Exchange") introduced as a pilot program (the "Pilot Program") a revised unit-of-count metric for determining the fees payable by data recipients.[3] It is now proposing to make that revised unit-of-count metric a permanent alternative to the traditional device fee. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–59544 (March 9, 2009); 74 FR 11162 (March 16, 2009); File No. SR–NYSE–2008–131 (the "Pilot Program Filing").

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Subscribers and Data Feed Recipients.*

After consultation with the Exchange's market data customers, including large and small redistributors and broker-dealers, the Exchange found that the marketplace desires a simplified fee structure for its products, especially regarding the methodology for counting the "devices" that are the subject of the device fee. As technology has made it increasingly difficult to define "device" and to control who has access to devices, the markets have struggled to make device counts uniform among their customers.

i. *The Original Model.*

The markets created the "device fee" metric in 1960, when market data vendors first made interrogation services available to their subscribers. During the 1960s, 1970s and 1980s, a vendor would typically link its servers to display devices that the vendor provided to its subscribers. The linkages allowed the subscriber to interrogate the vendor's database for vendor-prepared displays of stock prices and quotes. The subscriber could do no more than view the vendor-provided displays of prices and quotes. The vendor reported the number of display devices through which each subscriber could receive the vendor's displays and the exchanges imposed fees on the subscribers based on that number of devices.

The markets deemed any party that received access to the price and quote data feeds to constitute something other than a subscriber. Access to a data feed meant the receipt of prices and quotes in a manner that allowed the recipient to manipulate and re-format the data (as opposed to a subscriber's receipt of the vendor's read-only controlled displays). Such parties ("Data Feed Recipients") used their data feed access:

A. To create interrogation services that they would vend to their subscribers;

B. To make the data feeds available to other parties; or

C. To use the data internally for display, analysis, portfolio valuation or other purposes other than display.

The markets imposed access fees on such parties, fees that the markets have never imposed on subscribers' receipt of controlled display services.

ii. *The Impact of Technology.*

During and after the 1980s, the markets and supporting technology evolved dramatically. Networks of personal computers replaced direct links between the vendor and each subscriber device as the standard means for distributing a vendor's interrogation service to subscribers. Vendors and subscribers applied "user id and password" entitlements to control access to the vendor's interrogation services. In time, controlled display devices became more sophisticated and enabled the subscriber to use the data for analysis and other non-display functions, functions previously reserved only for Data Feed Recipients. Vendors began to provide services in which they controlled access, but no longer provided pre-set displays of data. This evolutionary process blurred the historic distinctions between Data Feed Recipients' uses of data and subscribers' uses of data. As a result, the traditional measures for billing purposes (i.e., device fees for subscribers; access, program classification and device fees for Data Feed Recipients) became difficult to apply. This has resulted in unnecessary burdens and costs to customers and exchanges alike.

b. *The Pilot Program's Solution.*

Under the Pilot Program and a wider initiative to simplify and modernize market data administration, the Exchange provided an alternative to traditional "device" counts. Under the alternative, the Exchange redefined some of the basic "units of measure" that Vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages.

Under the Pilot Program, the Exchange no longer defines the Vendor-subscriber relationship based on the manner in which a Data Feed Recipient or subscriber receives data (i.e., through controlled displays or through data feeds). Instead, the Exchange adopted billing criteria that are more objective. The following basic principles underlie the Pilot Program.

i. *Vendors.*

- "Vendors" are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.

ii. *Subscribers.*

- "Subscribers" are unique individual persons or devices to which a Vendor provides data. Any individual or device that receives data from a Vendor is a Subscriber, whether the individual or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.
- Only a Vendor may control Subscriber access to data.
- Subscribers may not redistribute data in any manner.

iii. *Subscriber Entitlements.*

- A Subscriber Entitlement is a Vendor's permissioning of a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.
- A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.
- The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.
- At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

iv. *Subscriber Entitlement Controls.*

- A Subscriber Entitlement Control is the Vendor's process of permissioning Subscribers' access to data.
- Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.
- The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.
- Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

A. each entitlement update to the Subscriber Entitlement Control;

B. the status of the Subscriber Entitlement Control; and

C. any other changes to the Subscriber Entitlement Control over a given period.

- Only the Vendor may have access to Subscriber Entitlement Controls.

The Exchange recognizes that each Vendor and Subscriber will use NYSE OpenBook data differently and that the Exchange is one of many markets with whom Vendors and Subscribers may enter into arrangements for the receipt and use of data. In recognition of that, the Pilot Program does not restrict how Vendors may use NYSE OpenBook data in their display services and encourages Vendors to create and promote innovative uses of NYSE OpenBook information. For instance, a Vendor may

use NYSE OpenBook data to create derived information displays, such as displays that aggregate NYSE OpenBook data with data from other markets.[4]

The Pilot Program does not discriminate among data recipients and users, as the new "unit of measure" concepts would apply equally to everyone.

c. *Unit-of-Count Rules.*

Subject to the rules set forth below, the Pilot Program requires Vendors to count every Subscriber Entitlement, whether it be an individual person or a device. The Vendor must include in the count every person and device that has access to the data, regardless of the purposes for which the individual or device uses the data. The Pilot Program also eliminates exceptions to the device-reporting obligation, thereby subjecting the count to a more objective process and simplifying the reporting obligation for Vendors. Previously, the Exchange required Vendors to report certain programmers and other individuals who receive access to data for certain specific, non-trading purposes. These exceptions required the Exchange to monitor the manner through which end-users consume data and added cost for both the Exchange and customers. To simplify the process, the Pilot Program requires Vendors to report all entitlements in accordance with the following rules.

i. In connection with a Vendor's external distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to the Exchange's market data. However, where a device is dedicated specifically to a single individual, the Vendor should count only the individual and need not count the device.

ii. In connection with a Vendor's internal distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique individual (but not devices) that the Vendor has entitled to have access to the Exchange's market data.

iii. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to gain access to multiple market data services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more market data services (e.g., a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

iv. Vendors should report each unique individual person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that individual.

v. The Vendor should include in the count as one Subscriber Entitlement devices serving no entitled individuals. However, if the Vendor entitles one or more individuals to use the same device, the Vendor should include only the entitled individuals, and not the device, in the count.

d. *Permanent Approval.*

The Pilot Program has provided an opportunity for the Exchange and its customers to assess specific usage issues and to enable the Exchange to solicit feedback from customers and other industry participants.

The Exchange believes that its customers have viewed the "Subscriber Entitlement" revised unit-of-count metric favorably and that the revised metric more closely aligns with current data consumption for many of them. It has reduced costs for the Exchange's customers, and has simplified and modernized market data administration. It has subjected the count to a more objective process and simplified the reporting obligation for Vendors. The Exchange believes that the "Subscriber Entitlement" metric will serve as a model for additional pricing efficiencies.

For these reasons, the Exchange proposes to make permanent the "Subscriber Entitlement" unit-of-count methodology in accordance with the terms set forth in the Pilot Program.

e. *Impact of Pilot Program.*

Many Vendors have taken advantage of the "Subscriber Entitlement" unit-of-count methodology under the Pilot Program. Because that methodology reduces their administrative costs and, in some cases, essentially replaces the $5,000 monthly NYSE OpenBook fee with a $60 monthly "Subscriber Entitlement" fee applicable to certain of their customers, they have installed the controls and procedures necessary to count Subscriber Entitlements. For other Vendors, the new methodology does not fit their business models as well and they have elected to stay with the traditional "device" counts. The Exchange believes that the extent to which Vendors have embraced "Subscriber Entitlements" underscores the success of the Pilot Program and underlies the Exchange's proposal to seek permanent approval of the "Subscriber Entitlement" unit-of-count methodology.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(4)[5] 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 the requirements under Section 6(b)(5)[6] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the "Subscriber Entitlement" unit-of-count alternative benefits investors because it is more closely aligned with current data consumption, reduces costs for the Exchange's customers, and potentially serves as a model for additional pricing efficiencies.

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 Exchange 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 regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] In the case of derived displays, the Vendor is required to: (a) Pay the Exchange's device fees (described below); (b) include derived displays in its reports of NYSE OpenBook usage; and (c) use reasonable efforts to assure that any person viewing a display of derived data understands what the display represents and the manner in which it was derived.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2010–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–22 and should be submitted on or before April 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7365 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61781; File No. SR–NSX–2010–02]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules on Self Trade Prevention Order Modifiers

March 25, 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 March 23, 2010, National Stock Exchange, Inc. ("NSX" 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 substantially prepared by the self-regulatory organization. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Rule 11.11(c)(1) "Self Trade Prevention" Order Modifier that allows an ETP Holder to submit orders that may avoid trading against other orders of the same ETP Holder.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, on the Commission's Web site at *http://www.sec.gov,* at NSX, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new Rule 11.11(c)(1) to make available to ETP Holders an order modifier that allows an ETP Holder to submit orders that may avoid trading against other orders of the same ETP Holder. The proposed changes are more fully discussed below.

Background

The proposed "Self Trade Prevention" ("STP") modifiers are instructions designed to prevent two orders with the same designated Unique Identifier (as defined below) from executing against each other. The ETP Holder elects at the time an STP modified order is submitted whether the new order, an existing order (which must also have been submitted with an STP modifier) or both orders will be cancelled (or rejected, as applicable) instead of otherwise interacting.

The Exchange proposes adding three STP modifiers that will be implemented and can be set at one of three identification levels: the market participant level (pursuant to the "MPID"), the FIX session level (pursuant to "FIX Session ID") or an ETP Holder's user level (pursuant to the "Party ID") (any such identifier, a "Unique Identifier").[5] The STP instruction on the incoming order controls the interaction between two orders marked with STP modifiers from the same Unique Identifier. The three new STP modifiers are discussed more thoroughly below.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Each ETP Holder is issued a unique MPID identifier that allows the Exchange to determine the ETP Holder for each order and/or execution. The FIX Session ID is unique to each physical connection between the Exchange and an ETP Holder. The Party ID identifies a unique user of an ETP Holder.

STP Reject Newest ("STPN")

An incoming order marked with the STPN modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The incoming order marked with the STPN modifier will be rejected. The resting order marked with an STP modifier, which otherwise would have interacted with the incoming order from the same Unique Identifier, will remain on the NSX Book.

STPN Example 1: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order on the NSX Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same designated Unique Identifier and marked with the STPN modifier.

STPN Result 1: The incoming sell order for 500 shares @ $22.00 marked with the STPN modifier is rejected. The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers remains on the NSX Book.

STPN Example 2: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order on the NSX Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPN modifier.

STPN Result 2: The incoming sell order for 700 shares @ $22.00 marked with the STPN modifier is rejected. The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers remains on the NSX Book.

STPN Example 3: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order on the NSX Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPN modifier.

STPN Result 3: The incoming sell order for 400 shares @ $22.00 marked with the STPN modifier is rejected. The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers remains on the NSX Book.

STP Cancel Oldest ("STPO")

An incoming order marked with the STPO modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The resting order marked with the STP modifier, which otherwise would have interacted with the incoming order by the same Unique Identifier, will be cancelled. The incoming order marked with the STPO modifier will remain on the NSX Book.

STPO Example 1: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order in the NSX Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPO modifier.

STPO Result 1: The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers is cancelled. The incoming sell order for 500 shares @ $22.00 marked with the STPO modifier is entered in the NSX Book.

STPO Example 2: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order in the NSX Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPO modifier.

STPO Result 2: The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers is cancelled. The incoming sell order for 700 shares @ $22.00 marked with the STPO modifier is entered on the NSX Book.

STPO Example 3: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order in the NSX Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPO modifier.

STPO Result 3: The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers is cancelled. The incoming sell order for 400 shares @ $22.00 marked with the STPO modifier is entered on the NSX Book.

STP Cancel Both ("STPB")

An incoming order marked with the STPB modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The entire size of both orders will be rejected or cancelled, as applicable.

STPB Example 1: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order in the NSX Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPB modifier.

STPB Result 1: The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers is cancelled. The incoming sell order for 500 shares @ $22.00 marked with the STPB modifier is rejected.

STPB Example 2: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order in the NSX Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPB modifier.

STPB Result 2: The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers is cancelled. The incoming order to sell 700 shares @ $22.00 marked with the STPB modifier is rejected.

STPB Example 3: An order to buy 500 shares @ $22.00 is marked with any of the three STP modifiers and becomes a resting order in the NSX Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the STPB modifier.

STPB Result 3: The resting buy order for 500 shares at $22.00 marked with one of the three STP modifiers is cancelled. The incoming order to sell 400 shares @ $22.00 marked with the STPB modifier is rejected.

Additional Discussion

STP modifiers are intended to prevent interaction between the same Unique Identifier. STP modifiers must be present on both the buy and the sell order in order to prevent a trade from occurring and to effect a cancel and/or reject instruction.

An incoming STP order cannot interact through resting orders that have price and/or time priority. When an order with an STP modifier is entered it will first interact with all available interest in accordance with the execution process described in Exchange Rules 11.14 and 11.15. If there is a remaining balance on the order after trading with all orders with higher priority, it may then interact with an opposite side STP order in accordance with the rules established above.

STP modifiers are available for orders entered in either an agency or principal capacity. An incoming STP modified Post Only order that is immediately marketable against a resting STP modified order of the same Unique Identifier will not be rejected upon entry; rather, the order will be accepted and processed according to the STP instructions.[6] STP orders that are not

[6] Without STP modifiers of the same Unique Identifier, an incoming marketable Post Only order would be rejected so as to prevent a locked market pursuant to NSX Rule 11.11(c)(5)(A). The incoming STP modified Post Only order is processed because, pursuant to the STP instruction, one or both of the

Continued

populated correctly will not reject, but will process according to the underlying order behavior. Zero Display Reserve Orders submitted with an STP modifier will be rejected.

The Exchange believes that adding this functionality will allow ETP Holders to better manage order flow and prevent undesirable executions with themselves or the potential for (or the appearance of) "wash sales" that may occur as a result of the velocity of trading in today's high speed marketplace. Many ETP Holders have multiple connections into the Exchange due to capacity and speed related demands. Orders routed by the same ETP Holder via different connections or in different capacities may, in certain circumstances, trade against each other. The new STP modifiers provide ETP Holders the opportunity to prevent these potentially undesirable trades occurring under the same Unique Identifier on both the buy and sell side of the execution.

The Exchange notes that the STP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. Broker-dealers using the STP modifiers on agency orders will be obligated to execute those agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Finally, the Exchange notes that offering the STP modifiers will streamline certain regulatory functions by reducing inadvertent self-trade executions that would otherwise be captured by Exchange generated wash trading surveillance reports when orders are executed under the same Unique Identifier. The Exchange has developed a surveillance program to identify the use of the STP modifier on agency orders and to surveil such orders for potential misuse. For these reasons, the Exchange believes the STP modifiers offer ETP Holders enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

Effective Date

The Exchange requests that the effective date for the instant rule change be thirty days after the date of filing of this rule change, or such earlier date as the Commission determines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change advances these objectives by making available to ETP Holders a type of order modifier that is in use within the national market system[9] and by allowing firms to better manage order flow and prevent undesirable executions against themselves.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[10] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b-4(f)(6) thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSX–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NSX–2010–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

orders will be cancelled and/or rejected, as applicable.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 9, 2009) (SR–BATS–2009–022) (approving on an expedited basis a "Member Match Trade Prevention" order type pursuant to proposed BATS Rule 11.9(f)).

[10] As required under Rule 19b–4(f)(6)(iii), NSX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2010–02 and should be submitted on or before April 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7364 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61788; File No. SR–NYSEAmex–2010–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex, LLC Amending Its Fee Schedule

March 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges (the "Schedule") effective February 1, 2010. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes a new pass-through Routing Surcharge designed to recover routing, clearing and transaction fees for the execution of orders routed to away exchanges. The Exchange will not assess a Routing Surcharge on Customer orders that do not incur a transaction charge at the away exchange.

The Exchange currently routes all orders that are marketable at the National Best Bid/Offer ("NBBO"), but not executable on NYSE Amex, immediately upon receipt, to the away market(s) at the NBBO. For any order executed as a result of routing out, the Exchange currently charges fees in the same manner as if the execution occurred on the Exchange. In the case of Customer orders, the Exchange charges no transaction fee for the execution, despite incurring costs that include clearing charges, routing charges, and in some instances transaction fees.

In recent months, particularly with the replacement of the old Intermarket Options Linkage Plan and the expansion of the Penny Pilot Program, the Exchange is experiencing a rise in the number of contracts that route out, with a related rise in costs incurred for routing such orders.[3] Effective February 1, 2010 NYSE Amex will introduce a new Routing Surcharge in order to pass through routing, clearing and transaction charges associated with orders routed to away markets. The Routing Surcharge will be assessed on all non-customer orders routed to away markets and on Customer orders that are charged transaction fees at the executing exchange. If the executing exchange does not charge a transaction fee for the execution of the Customer order, the Routing Surcharge will not be assessed. The Exchange believes these fees are reasonable and represent pass through charges incurred by the Exchange for routing orders to away markets and the cost borne by the Exchange of developing, operating and maintaining smart order routing technology. Customer orders that are not charged an execution fee at the away market will not be charged the Routing Surcharge because in those instances the Exchange is not charged a fee by its routing broker. The Routing Surcharge will be made up of (i) $0.11 per contract, and (ii) all actual charges assessed by the away exchange(s) (calculated on an order-by-order basis since different away exchanges charge different amounts). The Routing Surcharge is in addition to NYSE Amex's customary execution fees applicable to the order. This fee structure is consistent with a similar fee charged by the CBOE.

The Exchange also proposes to change the Broker Dealer & Firm Electronic fee to $0.30 per contract (currently $0.15 per contract). In making this rate change the Exchange seeks to remain competitive with other markets that often charge a higher rate. In proposing this new rate, NYSE Amex also seeks to adopt industry practice which sets the electronic broker dealer rate at a level slightly higher than the manual broker dealer charge. The pricing convention sets a small premium on the electronic broker dealer rate while still providing savings to the trading participant who would otherwise have to pay brokerage fees to a floor broker if it chose to access our markets through a manual execution. The Exchange further notes that this fee was reduced from $0.45 to its current level in June 2009.

Finally, the Exchange's Cancellation Fee is currently waived until February 1, 2010. Beginning February 1, 2010 the Exchange will begin charging the Cancellation Fee and proposes to remove language from the Schedule referencing the waiver.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed fees are reasonable and apply equally to all ATP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This paragraph and the following paragraph were revised via an e-mail sent from Matthew Vaughn, Counsel Director of Compliance, NYSE Amex LLC, to Leah Mesfin, Special Counsel, Division of Trading and Markets, Commission, on February 22, 2010.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

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 either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–07 and should be submitted on or before April 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7362 Filed 3–31–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6939]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program With Central Europe

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–10–42.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: May 19, 2010.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Youth Leadership Program with Central Europe. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for a reciprocal exchange program between four European countries—Hungary, Serbia, Slovakia, and Slovenia—and the United States. Applicants should plan to recruit and select between 50 and 75 youth and adult participants in Europe and in the United States to participate in short-term exchanges in the partner countries. The exchange activities will focus broadly on the themes of civic rights and responsibilities, leadership, and community activism, and specifically on the theme of common global issues in the American-European relationship. Activities will be geared toward preparing participants to conduct projects at home that serve community needs.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Youth Leadership Program with Central Europe enables teenagers (ages 16–18) and adult educators to participate in intensive, thematic exchanges in the United States and in Europe that will help nurture the transatlantic relationship among the participating countries, as well as European integration, through the themes of civic rights and responsibilities, leadership, community activism. Exploring common global and social issues, such as climate change or the challenges and rewards of increasingly multicultural societies, will be a central focus for the activities. A key component of the program will be a regional gathering of the European alumni with the American participants in Europe during which the participants will deepen their understanding of the benefits of community service.

Goals: The goals of the program are: (1) To foster mutual understanding and respect among high school students and educators from Serbia, Slovenia, Slovakia, Hungary, and the United States; (2) To introduce young Europeans and Americans to each other's countries, focusing on how citizens help strengthen democratic

institutions and civil society; and (3) To develop a cadre of community activists who will share their knowledge and skills with their peers through positive action.

Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

European participants from Hungary, Serbia, Slovakia, and Slovenia—10 to 15 from each country—will travel together to the United States for a three-week exchange that will increase their understanding of American society and democracy and provide the students and educators with skills that they can put to use in becoming active and engaged citizens in their home countries. Participants will travel to one or more U.S. locations and engage in seminars, workshops, site visits, school visits, community service, and leadership and diversity training. The program will introduce them to activities that encourage young people to be involved in their schools and communities.

Students will participate in homestays to give them the opportunity to experience American family life. The program will include elements to prepare participants to become active alumni in their home countries, such as project planning workshops, media relations, and team building activities.

The program will also enable 10–15 American students and educators to travel to Central Europe for two to three weeks to meet with participants of the Europe-to-U.S. exchange and engage in community service projects. Activities will include visits with youth centers and schools, and the planning and implementation of a service project. This component of the program could take place in one or more of the European countries listed above. ECA urges applicants to include Serbia as one of the destination countries, if feasible, but recognizes that the strength of in-country partners may vary and prefers that the exchange take place where there are particularly strong local partner organizations that can organize educational activities.

The program should allow for interaction between the European and American participants for at least one week. This includes time spent together in both the United States and the European destination(s). The European exchange to the United States will take place first.

A strong, on-going, alumni component is essential to the success of the program and any proposal must include a detailed plan for alumni activity and involvement in the years following the exchanges. Alumni involvement should include a Web-based component with social networking. It must also include a physical reunion of the European participants after their U.S.-based exchange, to take place while the Americans are in Europe. This reunion could occur in any of the European countries while the American participants are there. The European alumni should have the chance to further their relationships, increase understanding of each other's countries, and engage in community service and workshops during a three- to five-day period. The program should include a substantive community service project in which the participants can engage together along with additional skills training specifically related to alumni activities.

Applicants must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working with the countries of Central Europe. In addition to their U.S. presence, applicants, or their partner organizations, need to have the necessary capacity in each of the four European countries to recruit and select participants for the program and to provide follow-on activities for them, and to provide a content-rich exchange program for the American participants in the selected country or countries. The European partners need to have an active role in the preparation of the proposal submitted in response to this RFGP.

Guidelines: The grant will begin on or about September 1, 2010. The grant period will be approximately 16 to 20 months in duration, according to the applicant's program plan. Applicants should propose the timing of the exchanges, which will take place in 2011. Dates may be shifted by the mutual agreement of the Department and the grant recipient.

In pursuit of the goals outlined above, the program will include the following:

- Recruitment and merit-based selection of a diverse group of youth and adult educators in Hungary, Serbia, Slovakia, Slovenia, and the United States;
- Pre-departure and arrival orientations;
- Design and planning of exchange activities in the United States and in Europe that provide a creative and substantive program on the specified themes and offer a thorough introduction to the host countries;
- Logistical arrangements, including homestay arrangements and other accommodations, disbursement of stipends, local travel, and travel between sites;
- Monitoring of the participants' safety and well-being while on the exchange;
- Follow-on activities in the participants' home countries designed to reinforce the ideas and skills imparted during the exchange program.

Recruitment and Selection: Once a grant is awarded, the grant recipient and/or its partners must consult with the Public Affairs Sections of the U.S. Embassies in Belgrade, Bratislava, Budapest, and Ljubljana and with the ECA program officer to review a recruitment and participant selection plan. Organizers must strive for a diverse applicant pool within all countries. Small groups of participants should be from the same town or region so that they can support one another in their projects upon their return home. The Department of State and/or its overseas representatives reserve final approval of all selected delegations.

Participants: Applicants should present the number of participants it expects to be able to accommodate based on its program design and budget. The total number must not be less than 50 (10 from each country) and may be up to 75 (15 from each country). Additional participants may be included if supported by other sources of funding, and must complete the same screening process for suitability as an exchange participant that the grant-funded participants do. Each country delegation will include one or two adult participants.

Participants will have strong English language skills and will demonstrate an intellectual curiosity and an interest in community engagement. The youth participants will be secondary school students, aged 16 to 18 at the time of the exchange and with at least an academic semester remaining in secondary school before graduation. They should represent the diversity of their country and demonstrate an interest in international affairs, community service, and the other project themes. The exchange participants will also include adult teachers, school administrators, and/or community leaders who work with at least some of the selected youth; they will have the dual role of both exchange participant and chaperone.

Exchange Activities: The U.S.-based component of the program should offer the participants exposure to the variety of lifestyles in the United States. The

exchange should focus primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society, community service, tolerance and respect for diversity, and building leadership skills. Suggestions for activities include simulations, volunteer service projects, and leadership training exercises. Homestays with local families must be arranged for a majority of the exchange period. Cultural and recreational activities will balance the schedule.

Since the group will be large, applicants must present a plan for breaking up the delegation into smaller groups for more manageable logistics and for more individualized attention for the participants. Applicants are granted flexibility in how they choose to address this, which may include splitting the group among different communities or within a community. It is also acceptable to conduct two separate exchanges, each for 20–30 participants, but each must be a mixed group from all four European countries.

The European-based exchange component should take place in one or more of the European partner countries, with a preference for Serbia as one of the destinations if local capacity permits. The program should focus on interactive activities, practical experiences, and other hands-on opportunities to learn about Central Europe, community service, and leadership skills. This exchange will also feature homestays and cultural activities.

Applicants are urged to present creative plans for activities that will foster interaction between the American and European delegations, as well as other peers in the host country.

Given the youth of the participants, the grant recipient will be required to provide proper staff supervision and facilitation to ensure that the European and American teenagers have safe and pedagogically robust programs while visiting the other countries. Staff, along with the adult participants, will need to assist the students with cultural adjustments, to provide societal context to enhance learning, and to counsel students as needed. Applicants should describe their plans to meet these requirements in their proposals.

Follow-on Activities: In addition to the reunion described above, the grant recipient is required to offer follow-on activities for the exchange alumni, particularly in facilitating continued engagement among the participants, advising and supporting them in the implementation of their community service projects, and offering opportunities to reinforce the lessons and themes of the exchange. Applicants should present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact. Follow-up visits with alumni by project staff or trainers are recommended.

In the long-term, a strong multi-year alumni component is a key element of this program. Applicants should present plans to encourage on-going contact and activity among participants even beyond the life of the grant.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: $500,000.

Approximate Number of Awards: One.

Anticipated Award Date: September 1, 2010.

Anticipated Project Completion Date: 16–20 months after start date, to be specified by applicant based on project plan.

Additional Information: Pending successful implementation of the project and the availability of funds in subsequent fiscal years, ECA reserves the right to renew grants for up to two additional fiscal years before openly competing grants under this program again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2.

Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $500,000 to support the program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package

Please contact the Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, Washington, DC 20522–0503, Tel (202) 632–6072, E-mail *BookbinderJB@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–10–42 when making your request. Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required

application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number ECA/PE/C/PY–10–42 on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b.

All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.

Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 et. seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do

not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, including concrete actions taken to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (*Please note* that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e.

Please take the following information into consideration when preparing your budget:

IV.3e.1.

Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. Budget requests may not exceed $275,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f.

Application Deadline and Methods of Submission

Application Deadline Date: Wednesday, May 19, 2010.

Reference Number: ECA/PE/C/PY–10–42.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one

extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–10–42, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word, Excel, and/or PDF, to the program officer at *LantzCS@state.gov.* The Bureau will provide these files electronically to the Public Affairs Sections at the relevant U.S. Embassies for their review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. *Contact Center Phone:* 800 –518–4726. *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* The proposed program should be well developed, respond to design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail. Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the organization will meet the program's objectives and plan.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. *Follow-on activities:* Proposals should provide a plan for Bureau-supported follow-on activities to help the participants stay connected and to apply and share what they have learned. In addition, applicants should also provide on-going support, both with and without Bureau funding, that ensures that these exchanges are not isolated events.

6. *Program evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

7. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) Interim program and financial reports, as required in the grant agreement;

(2) A final program and financial report no more than 90 days after the expiration of the award;

(3) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(4) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Draft schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three weeks prior to the beginning of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Youth Programs Division, ECA/PE/C/PY, U.S. Department of State, Washington, DC 20522–0503, Tel (202) 632–6421, Fax (202) 632–9355, *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–10–42.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 24, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–7357 Filed 3–31–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 471X)]

BNSF Railway Company—Discontinuance of Trackage Rights Exemption—in Alameda County, CA

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt*

Abandonments and Discontinuances of Service to discontinue trackage rights over approximately 2.04 miles of rail line owned by the Alameda Beltline Railroad (ABL), running between milepost 0.00 and 2.04, in Alameda County, CA, (the Line).[1] The Line traverses United States Postal Service Zip Code 94501.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of BNSF rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 1, 2010, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2)[3] must be filed by April 12, 2010.[4] Petitions to reopen must be filed by April 21, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 29, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–7284 Filed 3–31–10; 8:45 am]

BILLING CODE 4915–01–P

[1] One of BNSF's predecessors, The Atchison, Topeka and Santa Fe Railway Company acquired the trackage in 1982. *See The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights Exemption—Over Southern Pacific Transportation Company and Alameda Belt Line,* Finance Docket No. 30073 (ICC served Dec. 28, 1982). BNSF states that ABL is in the process of selling the Line, as well as the remainder of its rail lines to the City of Alameda. *See City of Alameda—Acquisition Exemption—Alameda Beltline Railroad,* STB Finance Docket No. 34798 (STB served Jan. 11, 2006).

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. BNSF has indicated a proposed consummation date of April 27, 2010, but, because the verified notice was filed on March 12, 2010, counsel for BNSF has been notified that the earliest this transaction may be consummated is May 1, 2010.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability and Request for Comment on the Draft Supplemental Environmental Assessment (Draft SEA) to the September 2008 Environmental Assessment for Space Florida Launch Site Operator License, Brevard County, FL

AGENCY: The Federal Aviation Administration (FAA), lead Federal agency and United States Air Force, cooperating agency

ACTION: Notice of availability, notice of public comment period, and request for comment.

SUMMARY: In accordance with National Environmental Policy Act regulations of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of and requesting comments on the Draft Supplemental Environmental Assessment (SEA) to the September 2008 Environmental Assessment for Space Florida Launch Site Operator License. The Draft SEA was prepared in response to an application for a Launch Site Operator License from Space Florida. Under the Proposed Action, the FAA would issue a Launch Site Operator License to Space Florida to operate a commercial space launch site at Launch Complex 36 (LC–36) and LC–46 at Cape Canaveral Air Force Station (CCAFS) in Brevard County, Florida. The license would allow Space Florida to support vertical launches of both solid and liquid propellant launch vehicles from LC–36 and LC–46. LC–46 is the easternmost launch complex at CCAFS, located at the tip of Cape Canaveral, and LC–36 is located in the east-central portion of CCAFS. The Draft SEA addresses the potential environmental impacts of issuing a Launch Site Operator License for the Proposed Action and the No Action Alternative.

The FAA has posted the Draft SEA on the FAA Office of Commercial Space Transportation Web site at *http://www.faa.gov/about/office_org/headquarters_offices/ast/.* In addition, copies of the Draft SEA were sent to persons and agencies on the distribution list (found in Chapter 8 of the Draft SEA). A paper copy and a CD version of the Draft SEA may be reviewed for comment during regular business hours at the following locations:

Titusville Public Library, 2121 S. Hopkins Ave., Titusville, FL 32780.

Cocoa Beach Public Library, 550 North Brevard Ave, Cocoa Beach, FL 32931.

Cape Canaveral Public Library, 201 Polk Avenue, Cape Canaveral, FL 32920.

Merritt Island Public Library, 1195 North Courtenay Parkway, Merritt Island, FL 32953.

DATES: The public comment period for the Draft SEA begins with the issuance of this Notice of Availability. The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft SEA. To ensure that all comments can be addressed in the Final SEA, comments on the draft must be received by the FAA no later than April 27, 2010. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their comments to be meaningful and inform the FAA of their interests and concerns by quoting or providing specific references to the text of the Draft SEA. Matters that could have been raised with specificity during the comment period on the Draft SEA may not be considered if they are raised for the first time later in the decision process. This commenting procedure is intended to ensure that substantive comments and

concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

ADDRESSES: Please submit comments in writing to: FAA Space Florida Supplemental EA, c/o ICF International, 9300 Lee Highway, Fairfax, VA 22031. Comments may also be submitted via e-mail to *SpaceFLSEA@icfi.com.* For questions or additional information on the Draft SEA, please contact Mr. Daniel Czelusniak, FAA Environmental Specialist, at (202) 267–5924 or *Daniel.Czelusniak@faa.gov.*

Additional Information

Under the Proposed Action, the FAA would issue a Launch Site Operator License to Space Florida to operate LC–36 and LC–46 as a commercial space launch site for vertical launches of both solid and liquid propellant launch vehicles. The proposed activities at LC–46 remain consistent with those analyzed in the 2008 EA which analyzed the potential environmental impacts of the FAA issuing a Launch Site Operator License to Space Florida to operate a commercial space launch site at LC–46. The 2008 EA analyzed the operation of several types of vertical launch vehicles from LC–46, including Athena-1 and Athena-2, Minotaur, Taurus, Falcon 1, Alliant Techsystems small launch vehicles, and other Castor® 120-based or Minuteman-derivative booster vehicles. The Proposed Action also includes construction and operation activities to redevelop LC–36 into commercial space launch site. The Draft SEA expands on the analysis provided in the 2008 EA to include an analysis of the potential environmental impacts of the construction and operation activities associated with the redevelopment of LC–36 into a commercial space launch site. Redeveloping LC–36 into a multi-use commercial space launch site involves construction of facilities to launch a Generic Launch Vehicle (GLV), which is a conceptual (or "surrogate") liquid propellant medium class launch vehicle with a solid propellant second stage, and a bipropellant third stage, used for the purposes of the environmental review. Redevelopment activities at LC–36 would include building access roads; erecting a security fence; reconstituting several existing facilities; constructing an elevated launch deck, associated flame ducts, water storage tank, and water deluge containment pool; and installing electrical, communication, and air systems. Redevelopment would occur in phases dictated by costs and schedule, and facility construction or modifications would take place only on previously disturbed ground. The only alternative to the Proposed Action is the No Action Alternative. Under this alternative the FAA would not issue a Launch Site Operator License to Space Florida for commercial launches from LC–36 and LC–46 at CCAFS.

Resource areas were considered to provide a context for understanding and assessing the potential environmental effects of the Proposed Action, with attention focused on key issues. The resource areas considered in the Draft SEA included air quality; biological resources (terrestrial vegetation and wildlife, marine species, and protected species); compatible land use (land use, light emissions, visual resources, and coastal resources); cultural resources and Section 4(f) properties; hazardous materials, solid waste, and pollution prevention; noise; socioeconomic resources; and water resources (surface water, groundwater, floodplains, and wetlands). Potential cumulative impacts of the Proposed Action are also addressed in the Draft SEA.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Environmental Specialist, Federal Aviation Administration, 800 Independence Avenue, SW., Suite 331, Washington, DC 20591, by e-mail at *Daniel.Czelusniak@faa.gov,* or by phone at (202) 267–5924.

Issued in Washington, DC on: March 24, 2010.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. 2010–7129 Filed 3–31–10; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

High-Speed Intercity Passenger Rail (HSIPR) Program

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

ACTION: Notice of funding availability.

SUMMARY: On January 28, 2010, President Obama announced the first selections for the High-Speed Intercity Passenger Rail (HSIPR) Program. This notice builds on the program framework established by FRA in the June 23, 2009 interim program guidance (74 FR 29900), and details the application requirements and procedures for obtaining the remaining funds available under the Department of Transportation Appropriations Act of 2009 that have not yet been allocated to projects. This solicitation is only applicable to the remaining FY 2009 funds. FRA has concurrently issued a solicitation for high-speed rail planning activities funded under the Department of Transportation Appropriations Act of 2010, and will release an additional solicitation in the coming months for the construction and corridor program funds provided under the FY 2010 appropriation.

DATES: Applications for funding under this solicitation are due no later than 5 p.m. EST, May 19, 2010 and must be submitted via Grants.gov (*see* instructions in Section 3.1). *See* Section 3 for additional information regarding the application process. FRA reserves the right to modify this deadline.

ADDRESSES: Supporting materials that cannot be submitted electronically may be mailed or hand delivered to: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Room W38–302, Washington, DC 20590 Att'n. HSIPR Program. Applicants are encouraged to use special courier services to avoid shipping delays. Application forms are available at *http://www.fra.dot.gov/Pages/2243.shtml.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice and the grants program, please contact the FRA HSIPR Program Manager via e-mail at *HSIPR@dot.gov,* or by mail: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 Att'n. HSIPR Program.

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Section 1: Financial Assistance Description

1.1 Authority

This financial assistance announcement pertains to remaining FY 2009 appropriations for FRA's High-Speed Intercity Passenger Rail (HSIPR) Program. These funds were authorized and appropriated under the Department of Transportation Appropriations Act,

2009 ("FY 2009 DOT Appropriations Act," Title I of Division I of Pub. L. 111–8, March 11, 2009), under the title Capital Assistance to States—Intercity Passenger Rail Service. The funding opportunities described in this guidance are available under Catalog of Federal Domestic Assistance (CFDA) number 20.317.

1.2 Program Description and Legislative History

As one of President Obama's foremost transportation priorities, the HSIPR Program is intended to help address the nation's transportation challenges by investing in an efficient network of high-speed and intercity passenger rail corridors that connect communities across America. On January 28, 2010, President Obama announced the first recipients selected to receive funding under the HSIPR Program. These initial awards were funded from the $8 billion appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act) and $90 million appropriated under the FY 2009 DOT Appropriations Act.

However, most HSIPR Program applicants sought funding under the Recovery Act portion of the original solicitation, and there remains a balance of approximately $65 million in FY 2009 funding. This financial assistance announcement is intended to provide prospective applicants with "ready-to-go" projects the opportunity to apply for the remaining FY 2009 funds prior to FRA issuing an application solicitation for FY 2010 construction funds.

1.3 Funding Approach

The FY 2009 DOT Appropriations Act appropriated $90 million for intercity passenger rail grants. These funds were combined with approximately $1.9 million in unobligated FY 2008 funding and $8 billion in ARRA funding for the first HSIPR Program application solicitation that was issued in June 2009. Of these FY 2009 funds, approximately $65 million remains. An additional $2.5 billion was appropriated for the program in FY 2010. FRA is separately soliciting applications for the different components of these appropriations:

1. *Residual FY 2009 funds (approximately $65 million):* Construction projects with a 50 percent non-Federal match. This solicitation is for these funds.

2. *FY 2010 planning funds (up to $50 million):* Planning projects with a 20 percent non-Federal match. The notice of funding availability (NOFA) for these funds is being issued concurrently with this solicitation, and can also be found in this edition of the **Federal Register**.

3. *FY 2010 stand-alone projects (up to $245 million) and corridor programs (at least $2,125 million):* Stand-alone final design/construction and/or preliminary engineering/NEPA projects and corridor program funding with a 20 percent non-Federal match. The solicitation for these funds is forthcoming.

1.4 General Award Information

The remaining $65 million in FY 2009 HSIPR Program funds are intended to assist States with the capital costs of improving existing intercity passenger rail service and providing new intercity passenger rail service.

FRA will make awards for these intercity passenger rail capital projects through cooperative agreements. Cooperative agreements allow for greater Federal involvement in carrying out the agreed upon investment. The substantial Federal involvement for these projects will include technical assistance, review of interim work products, and increased program oversight.

While there are no predetermined minimum or maximum dollar thresholds for awards, FRA anticipates making one or more awards for the entire $65 million available.

Section 2: Eligibility Information

Applications under this solicitation will be required to meet minimum requirements related to applicant eligibility, project eligibility, and the fulfillment of other prerequisites.

To the extent that an application's substance exceeds the minimum eligibility requirements described below, such qualifications will be considered in evaluating the merits of an application.

2.1 Eligible Applicant Types

Only States, including the District of Columbia, are eligible to apply for funds included in this solicitation.

2.2 Applicant and Key Partner Qualifications

For an application submitted by a State to be considered funding under this program, it must affirmatively demonstrate that the applicant has or will have the legal, financial, and technical capacity to carry out the proposal. Additionally, the applicant must demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, and the capability and willingness to maintain such equipment or facilities. Further discussion of how applicants can demonstrate compliance with these minimum qualifications appears in Appendix 1.2.

2.3 Cost Sharing and Matching

2.3.1 Treatment of Applicant Cost Sharing

Pursuant to the provisions of the FY 2009 DOT Appropriations Act, the Federal share of the costs of projects issued cooperative agreements under this solicitation may not exceed 50 percent.

If an applicant chooses the option of contributing more than the required 50 percent non-Federal share of the costs of its proposed project from its own or its partner project stakeholders' resources, such additional contributions will be considered in evaluating the merit of its application (*See* Section 4 for a complete description of evaluation and selection criteria).

2.3.2 Requirements for Applicant Cost Sharing

An applicant's contribution toward the cost of its proposed project may be in the form of cash or, with FRA approval, in-kind contributions of services, supplies, equipment, or real estate. As part of its application, an applicant offering an in-kind contribution must provide a documented estimate of the monetary value of any such contribution, and its eligibility under 49 CFR 18.24.

The applicant must provide as part of its application documentation that demonstrates that it has committed and will be able to fulfill any pledged contribution, including committing any required financial resources that are budgeted or planned at the time the application is submitted. Furthermore, funds from other Federal financial assistance programs may not be used to satisfy the 50 percent match requirement.

2.4 Eligible Projects

Eligible types of projects under this program for remaining FY 2009 HSIPR Program funds include: (1) Acquiring, constructing, or improving equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service including high-speed rail service, (2) expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), (3) highway-rail grade crossing improvements related to intercity passenger rail service, (4) mitigating environmental impacts, (5) communication and

signalization improvements, and (6) rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service.

2.5 Project Completion

All projects funded under this solicitation must be completed within 5 years of obligation.

2.6 Other Prerequisites

2.6.1 General Prerequisites

In general, proposals for remaining FY 2009 HSIPR Program funding must meet the following additional prerequisites:

- Applications must be complete, including all required forms and documentation, as defined in this notice;
- The complete application must demonstrate that the project has been identified through a rational planning process (ideally a High-Speed Intercity Passenger Rail Service Development Plan);
- States must include intercity passenger rail services as an integral part of statewide transportation planning as required under 23 U.S.C. 135;
- The project must be consistent with an overall plan for developing the benefiting High-Speed Intercity Passenger Rail service; and
- The project must result in independent utility.

2.6.2 Prerequisites for Construction Grants

If the applicant is seeking a construction grant, then the application must demonstrate all of the following:

- That Preliminary Engineering (PE) (as defined in Appendix 2 of this notice) has been completed for the proposed project, resulting in project designs that are reasonably expected to conform to all regulatory, safety, security, and other design requirements, including those under the Americans with Disabilities Act (ADA);
- That a Project NEPA document (*e.g.,*. a Categorical Exclusion worksheet, a completed Environmental Assessment, or a completed final Environmental Impact Statement) has been completed for the proposed project;
- That the applicant has reached, at a minimum, agreements in principle with key project partners, including but not limited to infrastructure-owning railroads and the railroad that operates or will operate the benefiting High-Speed Intercity Passenger Rail service, as to the scope of the proposed project and the realization of the operating benefits (*e.g.,* those reflected in changes to schedules) it is intended to generate;
- That the applicant has developed a project management plan for managing the implementation of the proposed project, including the management and mitigation of project risks; and
- That the applicant has developed a Financial Plan for each phase of service that details the "sources and uses" of both capital and operating funding.

2.6.3 Prerequisites for Equipment Procurement or Design Grants

If the applicant is seeking a grant for the procurement or design of railroad equipment, the proposed equipment should be consistent with Section 305 of PRIIA, which calls for the establishment of a standardized next-generation rail corridor equipment pool. Compliance with Section 305 of PRIIA will assist in creating the economies of scale necessary to achieve the Administration's goal, as outlined in FRA's Strategic Plan, of developing a sustainable railroad equipment manufacturing base in the United States.

2.6.4 Positive Train Control (PTC)

If the project involves improvements to railroad signaling/control systems, then the application must demonstrate that the proposed improvements are consistent with a comprehensive plan for complying with the requirements for PTC implementation under Section 104 of the Rail Safety Improvement Act of 2008 ("RSIA," Division A of Pub. L. 110–432, October 16, 2008, codified at 49 U.S.C. 20147) and with FRA's final rule on Positive Train Control Systems published in the **Federal Register** on January 15, 2010 (75 FR 2598).

2.6.5 Inclusion in STIP

Proposed projects must be specifically included in the applicant's Statewide Transportation Improvement Program (STIP) at the time of application to be eligible.

2.7 Eligibility Restrictions

Pursuant to the provisions of the FY 2009 DOT Appropriations Act, applications submitted for the following activities are ineligible to receive funding:

- Applications submitted by private entities (or any entity that is not a State);
- For projects for which commuter rail passenger transportation is the primary intended beneficiary;
- For projects involving the development of State Rail Plans or Passenger Rail Corridor Investment Plan;
- For projects involving the preparation of environmental analyses;
- For projects in which the physical improvements are located outside of the United States; or
- For any expenses associated with passenger rail operating costs of rail operators.

Additional funding use restrictions are fully described in Section 3.4.3 of this notice.

Section 3: Application and Submission Information

3.1 Applying Online

Applications for these funds will be submitted through Grants.gov by 5 p.m. EST on May 19, 2010. Program-specific application forms (identified in Section 3.3 below) may be downloaded from FRA's Web site at *http://www.fra.dot.gov/Pages/2243.shmtl.*

To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit an application can be found at Grants.gov. If you experience difficulties at any point during this process, please call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST.

Registering with Grants.gov is a one-time process; however, processing delays may occur, and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline specified. Applications will not be accepted after the due date; delayed registration is not an acceptable reason for extensions. In order to apply for funding under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following.

1. *Acquire a DUNS Number.* A Data Universal Numbering System (DUNS) number is required for Grants.gov registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free,

one-time activity. Obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dunandbradstreet.com.*

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of the application deadline. Information about CCR registration procedures can be accessed at *http://www.ccr.gov.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Complete your AOR profile on Grants.gov and create your username and password. You will need to use your organization's DUNS number to complete this step. For more information about the registration process, go to *http://Grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for your AOR from the E–Business Point of Contact (E–Biz POC).* The E–Biz POC at your organization must log in to Grants.gov to confirm you as an AOR. Please note that there can be more than one AOR for your organization.

5. *Search for the Funding Opportunity on Grants.gov.* Please use the following identifying information when searching for the funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is #20.317, titled "Capital Assistance to States—Intercity Passenger Rail Service".

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24 to 48 hours after submitting your electronic application, you should receive an e-mail validation message from Grants.gov. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

Note: When uploading attachments please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt. While you may imbed picture files such as .jpg, .gif, and .bmp, in your document files, please do not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

Experiencing Unforeseen Grants.gov Technical Issues

If you experience unforeseen Grants.gov technical issues beyond your control that prevent you from submitting your application by the deadline, you must contact FRA staff at *HSIPR@dot.gov* within 24 hours after the deadline and request approval to submit your application. At that time, FRA staff will require you to e-mail the complete grant application, your DUNS number, and provide a Grants.gov Help Desk tracking number(s). After FRA staff review all of the information submitted, as well as contact the Grants.gov Help Desk to validate the technical issues you reported, FRA staff will contact you to either approve or deny your request to submit a late application. If the technical issues you reported cannot be validated, your application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

3.2 Address To Request/Submit Application Package

If Internet access is unavailable, please write to FRA at the following address to request a paper application: U.S. Department of Transportation, Federal Railroad Administration, Attn. HSIPR Program Information (RDV–10), Mail Stop 20, 1200 New Jersey Ave., SE., Washington, DC 20590.

For supporting documentation (described in Section 3.3.1.1) that an applicant is unable to submit electronically (such as oversized engineering drawings), applicants may submit an original and two copies to the above address. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

3.3 Content and Form of Application

3.3.1 Application Package Components

The application package for HSIPR Program planning applications contains five required components:

1. HSIPR FD/Construction Application Form.
2. HSIPR Project Budget and Schedule Form.
3. OMB Standard Application Forms.
4. FRA's Assurances Document.
5. Required Supporting Documentation.

Applicants must complete all five required components of the application package; failure to do so may result in the application being removed from consideration for award. All five components of the application package must be submitted through Grants.gov.

Applicants may also submit additional documentation to support the merits of their applications. Inclusion of such supporting documentation is optional.

3.3.1.1 HSIPR FD/Construction Application Form

The most significant component of the application package is the HSIPR FD/Construction Application Form, into which the applicant enters specific information about the proposed project. The form includes fields that have been developed by FRA to capture pertinent qualitative and quantitative program-specific information that is needed for FRA to confirm applicant and project eligibility, as well as information needed for evaluation and selection of applications. The HSIPR FD/Construction Application Form requests two types of information:

1. General applicant and project information.
2. Narratives that allow the applicant to make arguments on the benefits of its proposed project and other factors that are used to evaluate the merits of the application (*See* Section 4.2 for evaluation criteria).

The HSIPR FD/Construction Application Form is available from FRA's Web site at: *http://www.fra.dot.gov/Pages/2243.shmtl.* Applicants should download and complete the form and submit as an attachment in Grants.gov.

To support the Application Form, FRA welcomes the submission of any other available supporting

documentation that may have been developed by the applicant. The format and structure of any additional supporting documents is at the discretion of the applicant. Optional supporting documentation may be provided one of two ways—(1) as attachments to the application or (2) in hard copy for materials that cannot otherwise be provided electronically.

3.3.1.2 HSIPR Project Budget and Schedule Form

The HSIPR Project Budget and Schedule Form is a MS Excel document that supports the qualitative and quantitative claims made in the applicant's HSIPR FD/Construction Application Form. In addition to capturing detailed project budget and schedule information, the form also describes the standard cost categories developed by FRA to assist in evaluating and comparing projects. Pursuant to 49 U.S.C. 24402(g), FRA reserves the right to request changes to project scopes, schedules, and budgets of selected projects. *See* Appendix 4 for more information on preparing project budgets.

3.3.1.3 OMB Standard Application Forms

The Standard Forms are developed by OMB and are required of all grant applicants. These forms should be submitted electronically through Grants.gov.

- Standard Form 424, Application for Federal Assistance.
- Standard Form 424A, Budget Information—Non-Construction Programs.
- Standard Form 424B, Assurances—Non-Construction Programs.
- Standard Form 424C, Budget Information—Construction.
- Standard Form 424D, Assurances—Construction Programs.

All applications for construction projects must use Standard Forms 424C and 424D. If the application is for equipment procurement or refurbishment, the applicant should instead use Standard Forms 424A and 424B. All applications should also complete Standard Form 424, regardless of project type.

3.3.1.4 FRA Assurances Document

FRA's assurances document contains standard Department certifications on grantee suspension and debarment, drug-free workplace requirements, and Federal lobbying. The FRA Assurances document can be obtained from FRA's Web site at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.* The document should be signed by an authorized certifying official for the applicant, scanned into electronic format, and submitted as an attachment to the application in Grants.gov.

3.3.1.5 Required Supporting Documentation

FRA requires the submission of the following additional supporting documentation for remaining FY 2009 HSIPR Program construction applications:

- *Preliminary Engineering (PE) Materials*—Applicants should provide any documents that demonstrate the PE status (or final design status, if completed) of the proposed project. The PE requirements are detailed in Appendix 2.
- *National Environmental Policy Act (NEPA) Documentation*—Applicants should provide any documents (*e.g.* a Categorical Exclusion worksheet, a completed Environmental Assessment, or a completed final Environmental Impact Statement) that demonstrate the NEPA status of the proposed project.
- *Project Management Plan*—Applicants should provide a project management plan (or equivalent) that documents assumptions and decisions regarding the communication, management processes, execution and overall project control.
- *Stakeholder Agreements*—Applicants should provide documents that demonstrate the status of all stakeholder agreements including agreements with interstate partners, host railroads, right-of-way owners and contract railroad operator providing service. The form and structure of the stakeholder agreements are at the discretion of the applicant, however, agreements should satisfy the eligibility and award requirements listed in Appendix 1.1.
- *Financial Plan*—Applicants should provide a financial plan (or equivalent).

3.3.1.6 Other Required Documentation

For any other documentation required prior to award that is not specified in this notice, FRA will make individual arrangements with applicants for the submission of the required documentation.

3.3.2 Additional Information Required Prior to Award

3.3.2.1 Construction Projects

A project NEPA determination document (a Record of Decision, Finding of No Significant Impact, or CE determination) must have been issued by FRA prior to award of a construction grant.

3.3.2.2 All Projects

Applicants are required to submit comprehensive executed partnership agreements, fulfilling all requirements for such agreements as set forth in Appendix 1.1, prior to award.

3.4 Additional Application Information

3.4.1 Submission Dates and Times

Complete applications must be submitted to Grants.gov (as specified in Section 3.1) no later than 5 p.m. EST, May 19, 2010. Grants.gov will send the applicant an automated e-mail confirming receipt of the application. Supporting documentation that cannot be submitted electronically may be sent by courier service with a waybill receipt stamped no later than 5 p.m. EST, May 19, 2010. FRA will e-mail the applicant to confirm receipt of supporting documentation sent by courier service.

Subject to demonstration of unanticipated extenuating circumstances, FRA may consider application materials submitted after the deadlines prescribed above.

FRA reserves the right to contact applicants with any concerns, questions, or comments related to applications.

3.4.2 Intergovernmental Review

This program has not been designated as subject to Executive Order 12372, pursuant to 49 CFR part 17.

3.4.3 Funding Restrictions

In general, only those costs considered allowable pursuant to OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments" (codified at 2 CFR part 225) will be considered for funding. Additionally, the following funding restrictions will apply to cooperative agreements, and must be taken into consideration in the development of budget information submitted as part of applications.

- Funding may not be used to fund expenses associated with the operation of intercity passenger rail service;
- Funding may not be used for first-dollar liability costs for insurance related to the provision of intercity passenger rail service;
- While there is no cap on grant recipient's use of grant funds for management and administrative costs, such costs must be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles cited above.

FRA will also consider reimbursement of pre-award costs incurred as early as the enactment of the

FY 2009 DOT Appropriations Act (March 11, 2009). However, such costs will be considered for reimbursement only to the extent that they are otherwise allowable under the applicable cost principles, and involve either eligible activities (*e.g.* FD), or construction activities that were subject to a NEPA determination made by FRA prior to the commencement of such construction activities. Projects for which construction activities commenced prior to receipt of an FRA environmental determination under NEPA will not be eligible for funding.

Section 4: Application Review Information

4.1 Review Criteria

Complete applications are due by 5 p.m. EST, May 19, 2010. All applications will proceed through a three-step process:

1. Screening for completeness and eligibility;
2. Evaluation review by a technical panel applying "evaluation criteria;" and
3. Final review and selection by the FRA Administrator, applying "selection criteria."

All applications will first be screened for completeness, and applicant and project eligibility. Applications determined to be both complete and eligible will be referred to a technical panel consisting of subject-matter experts for a merit-based evaluation review. The panels will be comprised of professional staff employed by FRA and other DOT modal administrations, as appropriate.

Applications will be individually reviewed and assessed against the evaluation criteria outlined in Section 4.2. For each of the criteria, the panel will assign a rating of between zero and three points, based on the application's fulfillment of the objectives of each criterion. These individual criterion ratings will then be combined according to priority of criteria, to arrive at an overall rating for the application.

The evaluation criteria, in order of priority, are:

1. Transportation Benefits.
2. Project Management Approach.
3. Sustainability of Benefits.
4. Timeliness of Project Completion.
5. Other Public Benefits.

In addition to the ratings assigned by the technical evaluation panels, the FRA Administrator may take into account several cross-cutting and comparative selection criteria to determine awards. The Administrator will review the preliminary results to ensure that the scoring has been applied consistently, and that the collective results meet several key priorities essential to the success and sustainability of the program (*see* Section 4.3). The four selection criteria are:

1. Region/Location.
2. Innovation/Resource Development.
3. Partnerships/Participation.
4. Prior HSIPR Funding Decisions and/or State Investments.

4.2 Evaluation Criteria

Careful economic analysis that quantifies and demonstrates the monetary value of user benefits and, if available, public benefits will be particularly useful to FRA in evaluating the applications. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments. FRA will consider benefits and costs using standard data provided by applicants and seek to evaluate applications in a manner consistent with Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

4.2.1 Transportation Benefits

Evaluation against this criterion will consider the qualitative factors outlined below, as supported by key quantitative metrics. As described in Section 3, applicants must provide information quantifying the anticipated benefits of the proposed project using service output data (delay reduction, schedule improvement, or capacity increases).

Each application will be assessed based on its demonstration of the proposed project's potential to meet the purpose and need and to achieve transportation benefits in a cost-effective manner, as set forth through the President's strategic transportation goals and the objectives of PRIIA. Factors to be considered in assigning a rating will include the contribution the proposed project would make to:

- Supporting the development of intercity high-speed rail service;
- Generating improvements to intercity passenger rail service, as reflected by estimated increases in ridership (as measured in passenger-miles), increased on-time performance (as measured in reductions in delays), reduced trip time, additional service frequency to meet anticipated or existing demand, and other factors;
- Generating cross-modal benefits, including anticipated favorable impacts on air or highway traffic congestion, capacity, or safety, and cost avoidance or deferral of planned investments in aviation and highway systems;
- Creating an integrated intercity passenger rail network, including integration with existing intercity passenger rail services, allowance for and support of future network expansion, and promotion of technical interoperability and standardization (including standardizing operations, equipment and signaling);
- Encouragement of intermodal integration through provision of direct, efficient transfers among intercity transportation and local transit networks at train stations, including connections at airports, bus terminals, subway stations, ferry ports, and other modes of transportation;
- Enhancing intercity travel options;
- Ensuring a state of good repair of key intercity passenger rail assets;
- Promoting standardized equipment (or rolling stock), signaling, communications and power;
- Improved freight or commuter rail operations, in relation to proportional cost-sharing (including donated property) by those other benefiting rail users;
- Equitable financial participation in the project's financing, including, but not limited to, consideration of donated property interests or services; financial contributions by freight and commuter rail carriers commensurate with the benefit expected to their operations; and financial commitments from host railroads, non-Federal governmental entities, nongovernmental entities, and others; and
- The overall safety of the transportation system, including the encouragement of the use of PTC technologies, and commitments by States or railroads of financial resources to improve the safety of highway/rail grade crossings over which intercity passenger rail service operates.

4.2.2 Project Management Approach

Applications will be evaluated against the following criterion to assess the proposed project's likelihood of successful implementation and realization of benefits. Each application will be assessed to determine the risk associated with the project's delivery within budget, on time, and as designed. Evaluation against these criteria will consider the factors outlined below, which take into account the thoroughness and quality of the supporting documentation submitted with the application.

- The applicant's financial, legal, and technical capacity to implement the project including whether the application depends upon receipt of any

waiver(s) of Federal railroad safety regulations that have not been obtained;

- The applicant's experience in administering similar grants and projects;
- The soundness and thoroughness of the cost methodologies and assumptions, and estimates for the proposed project;
- The adequacy of any completed engineering work to assess and manage/mitigate the proposed project's engineering and constructability risks;
- The reasonableness of the schedule for project implementation;
- The thoroughness and quality of the project management plan;
- The sufficiency of system safety and security planning;
- The timing and amount of the project's future noncommitted investments;
- The project's progress, at the time of application, towards compliance with environmental protection requirements; and
- The comprehensiveness and sufficiency, at the time of application, of agreements with key partners (particularly infrastructure owning railroads) that will be involved in implementing the project; and
- The overall completeness and quality of the application, including the comprehensiveness of its supporting documentation.

4.2.3 Sustainability of Benefits

Each application will be assessed based on the risk associated with the proposed project's capacity to generate, as planned, its anticipated transportation and economic benefits. Factors to be considered in assigning a rating will include:

- The presence and quality of a Financial plan that analyzes the financial viability of the proposed rail service;
- The quality and reasonableness of revenue and operating and maintenance cost forecasts for the benefiting Intercity Passenger Rail service(s);
- The availability of any required operating financial support preferably from dedicated funding sources for the benefiting Intercity Passenger Rail service(s);
- The quality and adequacy of project identification and planning;
- The reasonableness of estimates for user and non-user benefits for the project;
- The reasonableness of the operating service plan, including its provisions for protecting the future quality of other services sharing the facilities to be improved;
- The comprehensiveness and sufficiency, at the time of application, of agreements with key partners (including the railroad operating the Intercity Passenger Rail service as well as infrastructure-owning railroads) that will be involved in the operation of the benefiting Intercity Passenger Rail service, including the commitment of any affected host-rail carrier to ensure the realization of the anticipated benefits, preferably through a commitment by the affected host-rail carrier(s) to an enforceable on-time performance of passenger trains of 80 percent or greater; and
- The applicant's contribution of a cost share greater than the required minimum of 50 percent.

4.2.4 Timeliness of Project Completion

Each application will be assessed based on the timeliness of its implementation schedule, including:

- The readiness of the project to be commenced; and
- The timeliness of project completion and the realization of the project's anticipated benefits.

4.2.5 Other Public Benefits

Each application will be assessed based on its demonstration of the proposed project's potential to achieve other public benefits in a cost-effective manner. Factors to be considered in assigning a rating will include the contribution the proposed project would make to:

- Environmental quality and energy efficiency and reduction in dependence on foreign oil, including use of renewable energy sources, energy savings from traffic diversions from other modes, employment of green building and manufacturing methods, reductions in key emissions types, and the purchase and use of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment; and
- Promoting livable communities, including integration with existing high-density, livable development (*e.g.,* central business districts with public transportation, pedestrian, and bicycle distribution networks, and incorporation of transit-oriented development).

4.3 Election Criteria

4.3.1 Region/Location

- Ensuring appropriate level of regional balance across the country.
- Ensuring promotion of livable communities in urban and rural locations.
- Ensuring consistency with national transportation and rail network objectives.
- Ensuring integration with other rail services and transportation modes.

4.3.2 Innovation/Resource Development

- Pursuing new technology and innovation where the public return on investment is favorable, while ensuring delivery of near-term transportation, public and economic recovery benefits.
- Advancing the state of the art in modeling techniques for assessing potential intercity passenger rail costs and benefits.
- Promoting domestic manufacturing, supply and industrial development, including U.S.-based manufacturing and supply industries.
- Developing professional railroad engineering, operating, planning and management capacity needed for sustainable high-speed intercity passenger rail development.

4.3.3 Partnerships/Participation

- Where corridors span multiple States, emphasizing those that have organized multi-State partnerships with joint planning and prioritization of investments.
- Employing creative approaches to ensure workforce diversity and use of disadvantaged and minority business enterprises.
- Engaging local communities and a variety of other stakeholder groups in the project, where applicable.

4.3.4 Prior HSIPR Funding Decisions and/or State Investments

- Assessing how a proposed project would complement previous construction or planning grants made by the HSIPR program.
- Assessing how the proposed project would complement previous State investments in high-speed intercity passenger rail.

Section 5: Award Administration Information

5.1 Award Notices

Upon approval of an application, notification will be sent to the grant recipient through Grants.gov and via a mailed letter.

FRA will publicly announce selected projects. For projects that were not selected, FRA will notify the applicants of the decision and provide the following:

- Suggestions on application revisions for any subsequent resubmission rounds (if desired by applicant); and
- Guidance regarding subsequent rounds of funding.

5.2 Administrative and National Policy Requirements

Grant recipients must follow all administrative and national policy requirements including: procurement standards, compliance with Federal civil rights laws and regulations, disadvantaged business enterprises (DBE), debarment and suspension, drug-free workplace, FRA's and OMB's Assurances and Certifications, ADA, buy America, environmental protection, NEPA, and environmental justice. For additional details on these administrative and national policy requirements, please refer to FRA's HSIPR Notice of Grant Award Example under the high-speed rail link on FRA's Web page at *http://www.fra.dot.gov/Pages/2243.shmtl,* which includes a sample copy of FRA's current model grant/cooperative agreement.

5.3 General Requirements

Grant recipients must comply with reporting requirements. All post-award information pertaining to reporting, auditing, monitoring, and the close-out process is detailed in Appendix 3.1.

5.4 Freedom of Information Act (FOIA)

As a Federal agency, the FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applications and related materials submitted by applicants pursuant to this guidance would become agency records and thus subject to the FOIA and to public release through individual FOIA requests. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this guidance could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions, most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (*see* National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (DC Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying their request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 CFR 209.11. As noted in the Department's FOIA implementing regulation (49 CFR part 7), the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (*see* 49 CFR 7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with the FRA.

Section 6: Questions and Clarifications

Questions about this guidance and the application process should be submitted to the HSIPR Program Manager via e-mail at *HSIPR@dot.gov.*

LIST OF ACRONYMS

Acronym	Meaning
ACF	Administration for Children and Families.
ADA	Americans with Disabilities Act.
ARRA	American Recovery and Reinvestment Act of 2009 (Public Law 111–5).
CAST	Custom Applications Support and Training Unit (GrantSolutions).
CCR	Central Contractor Registration database.
CE	Categorical Exclusion—a class of action for the NEPA process.
CFS report	Commercial Feasibility Study, Federal Railroad Administration, High-Speed Ground Transportation for America, September 1997; available at: *http://www.fra.dot.gov/us/content/515.*
Department	The U.S. Department of Transportation.
DUNS	Data Universal Number System.
EA	Environmental Assessment—a NEPA document.
EIS	Environmental Impact Statement—the most extensive type of NEPA document.
FD	Final Design.
FONSI	Finding of No Significant Impact—a possible decision concluding the NEPA process.
FRA	Federal Railroad Administration—an Operating Administration of the U.S. Department of Transportation.
FTA	Federal Transit Administration.
FY	Fiscal Year.
FY 2008 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008—Title I of Division K of Public Law 110–161, December 26, 2007.
FY 2009 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009—Title I of Division I of Public Law 111–8, March 11, 2009.
FY 2010 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010—Title I of Division A of Public Law 111–117, December 16, 2009.
GS	GrantSolutions Grants Management System.
ICC	Interstate Commerce Commission.
LOI	Letter of Intent.
mph	Miles per Hour.
NEPA	National Environmental Policy Act.
NTD	National Transit Database.
OTP	On-time performance.
PE	Preliminary engineering.
PRIIA	Passenger Rail Investment and Improvement Act of 2008 (Division B of Public Law 110–432).
PTC	Positive Train Control.
ROD	Record of Decision—a possible decision concluding of the NEPA process.
RSIA	Rail Safety Improvement Act of 2008 (Division A of Pub. L. 110–432, October 16, 2008).
State DOT	State Department of Transportation.

LIST OF ACRONYMS—Continued

Acronym	Meaning
State Capital Grant Program	Capital Assistance to States—Intercity Passenger Rail Service program—established in FY 2008 DOT Appropriations Act and continued in the FY 2009 DOT Appropriations Act.

Appendix 1: Additional Information on Eligibility

Appendix 1.1 Minimum Qualifications for Applicant Eligibility

An applicant must, in addition to demonstrating that it is of an eligible type for the project, affirmatively demonstrate that it has or will have the legal, financial, and technical capacity to carry out the proposal. In addition, the applicant must demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, and the capability and willingness to maintain such equipment or facilities.

In the following discussion of the means by which applicants can satisfy these minimum requirements, the term "project" refers generally to the substance of the applicant's proposal.

For an applicant to demonstrate the legal, financial, and technical capacity to carry out its proposed project, it will be required to address the following qualifications:

- The applicant's ability to absorb potential cost overruns or financial shortfalls.
- The applicant's experience in effectively administering grants of similar scope and value (including timely completion of grant deliverables, compliance with grant conditions, and quality and cost controls); and
- The applicant's experience in managing railroad investment projects of a nature similar to that for which funding is being requested.

For an applicant to demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, it will be required to show either:

- That the applicant has or will have direct ownership of the equipment or facilities acquired, constructed, or improved by the project; or
- That the applicant has secured or has made progress towards securing and will have contractual agreements in place with the entity or entities (*e.g.,* a local government, or one or more private railroads) that have or will have direct ownership of such assets.

For an applicant to demonstrate that it has or will have the capability and willingness to maintain the equipment or facilities acquired, constructed, or improved by the project, it will be required to show:

- That it has made progress towards, and will have contractual agreements in place with, any entity or entities (*e.g.,* a local government, or one or more private railroads) that have or will have direct ownership of the equipment or facilities acquired, constructed, or improved by the project, which address financial and operational responsibility for asset maintenance;
- That to the extent financial responsibility will fall to the applicant, the applicant has the ability to cover maintenance costs; and
- The applicant's experience in maintaining assets with similar financial and operational maintenance requirements as those for the assets for which funding is being requested;

Information and documentation demonstrating the fulfillment of the minimum qualifications described above will be required to be submitted as part of full application.

Appendix 1.2 Definition of Intercity Passenger Rail

"Intercity rail passenger transportation" is defined at 49 U.S.C. 24102(4) as "rail passenger transportation except commuter rail passenger transportation." Likewise, "commuter rail passenger transportation" is defined at 49 U.S.C. 24102(3) as "short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations." In common use, the general definition of "rail passenger transportation" excludes types of local or regional rail transit such as light rail, streetcars, and heavy rail. Similarly, both Intercity Passenger Rail transportation and commuter rail passenger transportation exclude single-purpose scenic or tourist railroad operations.

The since-terminated Interstate Commerce Commission (ICC) established six features to aid in classifying a service as "commuter" rather than "intercity" rail passenger transportation: [1]

- The passenger service is primarily being used by patrons traveling on a regular basis either within a metropolitan area or between a metropolitan area and its suburbs;
- The service is usually characterized by operation performed at morning and peak periods of travel;
- The service usually honors commutation or multiple-ride tickets at a fare reduced below the ordinary coach fare and carries the majority of its patrons on such a reduced fare basis;
- The service makes several stops at short intervals either within a zone or along the entire route;
- The equipment used may consist of little more than ordinary coaches; and
- The service should not extend more than 100 miles at the most, except in rare instances; although service over shorter distances may not be commuter or short haul within the meaning of this exclusion.

FTA further refined the definition of commuter rail in the glossary for its National Transit Database (NTD) [2] Reporting Manual. In particular, FTA refined the ICC's third "feature" by specifying that "predominantly commuter [rail passenger] service means that for any given trip segment (*i.e.,* distance between any two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week."

In judging the eligibility of an application under this solicitation, FRA will determine whether the rail passenger service that is primarily intended to benefit from the proposal constitutes "intercity passenger rail transportation" under the statutory definition and ICC and FTA interpretations. FRA may also take into account whether the primary intended benefiting service has been or is currently the direct and intended beneficiary of funding provided by another Federal agency (*e.g.,* FTA) for the purpose of improving commuter rail passenger transportation and whether the service in question is or will be operated by or on behalf of a local, regional, or State entity whose primary rail transportation mission is the provision of commuter or transit service.

Appendix 2: Additional Information on Preliminary Engineering

PE completion is a prerequisite for projects submitted under this solicitation. PE entails sufficient engineering design to define a project, including identification of all environmental impacts, design of all critical project elements at a level sufficient to assure reliable cost estimates and schedules (in turn sufficient to complete project management and financial plans), and definition of procurement requirements and strategies.

The PE development process starts with the evaluation of project design alternatives (a range of rail improvements, specific alignments, and project designs) sufficient to support subsequent NEPA analysis. The NEPA environmental determination is a prerequisite for FRA to obligate construction funds. FRA acknowledges the complexity of the work required for PE, and that it will vary depending on the project scope. Thus, FRA does not pre-determine the form and structure of the PE work. FRA has opted to specify the illustrative contents of PE—thus allowing the applicant discretion to pursue the most workable approach tailored to its needs and suitable for the proposed project.

PE results in detailed estimates of project costs, benefits, and impacts of the preferred alternative that merit a higher degree of confidence than those prepared in earlier stages of planning. FRA considers that PE for

[1] *Penn Central Transportation Company Discontinuance or Change in Service of 22 Trains between Boston, Mass, and Providence R.I.,* February 10, 1971, I.C.C. 338, 318–333.

[2] In addition to serving as a reference database, the NTD captures data that serve as the basis for apportioning and allocating funding to eligible grantees under FTA's formula grant programs.

a major capital investment project is complete when:

• The signed environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI) signals that the NEPA process has been completed;

• The project scope, capital cost estimates, and financial plan are finalized;

• The project sponsor has adequately demonstrated its technical capability to advance the project into FD and construction;

• The project sponsor has adequately demonstrated its process and schedule for filing any safety regulatory waivers necessary to implement the project; and

• The project sponsor has provided an adequate system safety program plan and any necessary collision/derailment hazard analysis.

The products of PE will include: Engineering designs; a detailed project description, including provisions for compliance with the ADA; a highly accurate project cost estimate (including a description of methodologies and assumptions employed in developing the estimate) that identifies major components and that includes contingencies that are reduced from previous estimates and are broken down by phase and functional area, a thorough project management plan suitable for this phase of project development; and a solid project financial plan that includes Federal and non-Federal funding committed to the project.

PE documentation will typically include: (1) Scale maps or scale aerial photography of existing conditions at a scale of one inch = 100 to 500 feet depending on location (built-up vs. undeveloped areas); and (2) design plan drawings overlaid on the maps/photography. These design drawings will typically show: (i) Existing railroad right-of-way limits along with the railroad ownership; (ii) Proposed track changes including track removals and track installations showing track centers, turnout sizes, curve and spiral data, *etc.;* (iii) Vertical profiles and grades of existing and proposed construction; (iv) Public and private at-grade highway crossings; and (v) Passenger stations, building(s), platforms, parking, access to the primary highway system in the area, and public transit services and facilities.

The detailed project description developed in the PE typically includes an assessment of the physical condition and location of the existing project area (generally two to three miles beyond the project construction limits) and elements associated with the design(s). These elements may include: Bridges (rail and highway); track including the number and location of previously existing railroad tracks on a roadbed; buildings (stations and maintenance facilities, *etc.*); signal systems and interlocked detectors, switches, derails, and snow melters; utility systems on, over, adjacent to or under the rail line and agreements concerning them; electrification systems, if any; description of highway crossing warning systems (if any) and daily traffic counts at public and private at-grade highway crossings; existing and proposed railroad operations and routes of freight, commuter and intercity trains with train daily numbers of trains by type; a safety and security management plan; and STRACNET routes and/or moves for commercial high and wide loads. For maintenance facilities, the PE outputs will describe and provide drawings that show the location, track and facility layout, specialized equipment (if any), office and employee welfare facilities, *etc.*

FRA will be available, subject to available resources, to assist applicants in clarifying whether the PE is complete and encourages applicants to contact FRA to discuss PE.

Appendix 3: Additional Information on Award Administration

Appendix 3.1 General Requirements

Appendix 3.1.1 Standard Reporting Requirements

• *Progress Reports*—Progress reports are to be submitted quarterly. These reports must relate the state of completion of items in the statement of work to expenditures of the relevant budget elements. The grant recipient must furnish the quarterly progress report to the FRA on or before the 30th calendar day of the month following the end of the quarter being reported. Grantees must submit reports for the periods: January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. Each quarterly report must set forth concise statements concerning activities relevant to the project, and should include, but not be limited to, the following: (a) An account of significant progress (findings, events, trends, *etc.*) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in this agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.

• *Quarterly Federal Financial Report (SF–425)*—The Grantee must submit a quarterly Federal financial report electronically in the GrantSolutions system, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported (*e.g.,* for quarter ending March 31, the SF–425 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. The Grantee must use SF–425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

• *Interim Report(s)*—If required, interim reports will be due at intervals specified in the statement of work and must be submitted electronically in the GrantSolutions system.

• *Final Report(s)*—Within 90 days of the Project completion date or termination by FRA, the Grantee must submit a Summary Project Report in the GrantSolutions system. A final version of this report, detailing the results and benefits of the Grantee's improvement efforts, must be furnished by the expiration date of the project period.

Appendix 3.1.2 Audit Requirements

Grant recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. Government Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Currently, audit reports must be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, FRA and the Comptroller General of the United States must have access to any books, documents, and records of grant recipients for audit and examination purposes. The grant recipient will also give FRA or the Comptroller, through any authorized representative, access to, and the right to examine all records, books, papers or documents related to the grant. Grant recipients must require that sub-grantees comply with the audit requirements set forth in OMB Circular A–133. Grant recipients are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Appendix 3.1.3 Monitoring Requirements

Grant recipients will be monitored periodically by FRA to ensure that the project goals, objectives, performance requirements, timelines, milestones, budgets, and other related program criteria are being met. FRA will conduct monitoring activities through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, including sub-awards and sub-grantees, to provide reasonable assurance that the award is being administered in compliance with Federal requirements. Financial monitoring responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

Appendix 3.1.4 Closeout Process

Project closeout occurs when all required project work and all administrative procedures described in 49 CFR part 18, or 49 CFR part 19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout should not invalidate any continuing obligations imposed on the Grantee by an award or by the FRA's final notification or acknowledgment. Within 90 days of the Project completion date or termination by FRA, Grantees agree to submit a final Federal Financial Report (Standard Form 425), a certification or summary of project expenses, a final report, and third party audit reports, as applicable.

Appendix 4: Additional Information on Application Budgets

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable and necessary for the project. At a minimum, the budget should separate total cost of the project into the following categories:

• *Personnel:* List each position by title and name of employee, if available, show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.

• *Fringe Benefits:* Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for personnel listed in the "Personnel" budget category and only for the percentage of time devoted to the project.

• *Travel:* Itemize travel expenses of project personnel by purpose (training, interviews, and meetings). Show the basis of computation (*e.g.,* X people to Y-day training at $A airfare, $B lodging, $C subsistence).

• *Equipment:* List non-expendable items that are to be purchased. Nonexpendable equipment is tangible property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. (Note: Organization's own capitalization policy may be used for items costing less than $5,000.) Expendable items should be included either in the "Supplies" category or in the "Other" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technical advances. Rented or leased equipment should be listed in the "Contractual" category. Explain how the equipment is necessary for the success of the project. Attach a narrative describing the procurement method to be used.

• *Supplies:* List items by type (office supplies, postage, training materials, copying paper, and expendable equipment items costing less than $5,000) and show the basis for computation. (Note: Organization's own capitalization policy may be used for items costing less than $5,000.) Generally, supplies include any materials that are expendable or consumed during the course of the project.

• *Consultants/Contracts:* Indicate whether applicant's formal, written Procurement Policy (*see* 49 CFR 18.36 or 19.40–19.48) or the Federal Acquisition Regulations (FAR) are followed. *Consultant Fees:* For each consultant enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and the estimated time on the project. *Consultant Expenses:* List all expenses to be paid from the grant to the individual consultants in addition to their fees (travel, meals, and lodging). *Contracts:* Provide a description of the product or service to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be provided for sole source contracts in excess of $100,000.

• *Other:* List items (rent, reproduction, telephone, janitorial or security services, *etc.*) by major type and the basis of the computation. For example, provide the square footage and the cost per square foot for rent, or provide the monthly rental cost and how many months to rent.

• *Indirect Costs:* Indirect costs are allowed only if the applicant has a Federally approved indirect cost rate. A copy of the rate approval, (a fully executed, negotiated agreement), must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant Federal agency, which will review all documentation and approve a rate for the applicant organization.

Issued in Washington, DC, on March 29, 2010.

Karen Rae,

Deputy Administrator.

[FR Doc. 2010–7340 Filed 3–31–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

High-Speed Intercity Passenger Rail (HSIPR) Program

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

ACTION: Notice of solicitation for proposals for Federally-led multi-state passenger rail corridor planning demonstration projects.

SUMMARY: On January 28, 2010, President Obama announced the first grant awards for the High-Speed Intercity Passenger Rail (HSIPR) Program. The Department of Transportation Appropriations Act of 2010 (FY 2010 DOT Appropriations Act) allocated an additional $2.5 billion for the HSIPR Program, of which up to $50 million can be used for planning activities. The appropriations act permits the Secretary of Transportation to retain a portion of this planning funding to facilitate, at the Federal level, the preparation of planning documents for high-speed rail corridors that cross multiple States. This is a solicitation for proposals from groups of States that wish to be considered for this innovative approach to planning multi-state passenger rail corridors.

Concurrent with this solicitation, FRA has issued a notice of funding availability (NOFA) for the FY 2010 planning funds, also published in this edition of the **Federal Register**.

DATES: Proposals are due no later than 5 p.m. EST, May 19, 2010 and must be submitted via e-mail to *HSIPR@dot.gov.* The form for these proposals can be found at *http://www.fra.dot.gov/Pages/2243.shtml.*

Materials that cannot be submitted electronically may be mailed or hand delivered to: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Room W38–302, Washington, DC, 20590 Attn. HSIPR Program. States are encouraged to use special courier services to avoid shipping delays. Materials must be post-marked by May 19, 2010 to be eligible for consideration.

Overview: FRA is seeking proposals from groups of States interested in participating in a FRA-led demonstration project that could provide a future model for Federal collaboration with States on complex, multi-state corridor planning efforts. The planning project would be identified by the States, but funded and managed by FRA in close coordination with the States and other stakeholders.

Proposals are sought for projects that would result in a "passenger rail corridor investment plan." A passenger rail corridor investment plan provides the comprehensive information necessary to support a decision to proceed with funding and implementation of a major investment in a passenger rail corridor. Feasibility studies alone would not satisfy this requirement.

Passenger rail corridor investment plans include both a service development plan (SDP) and corridor-wide environmental documentation. Groups of states submitting proposals should identify whether they are proposing that FRA lead the development of both documents, a stand-alone SDP, or corridor-wide environmental document.

Service Development Plan

Service Development Plans (SDPs) should support future corridor development and must include the following elements:

• *Corridor Development Program Rationale*—Description of the corridor's transportation challenges and opportunities, based on current and forecasted travel demand and capacity conditions, demonstrating how the proposed project/program would cost-effectively address transportation and other needs. Development of the program rationale should consider multimodal system alternatives (highway, air, other, as applicable), including a qualitative and quantitative assessments of the costs, benefits and impacts and risks of the alternatives. Program rationale may also explore synergies between the proposed service

and large-scale goals and development plans within its service region and communities.

• *Service Plan*—Detail on the train service alternatives to be provided for each phase of new or improved HSIPR service, including: the service frequency, timetable (including time-distance "stringline" diagrams), general station locations, intermodal connections, and train consists. The Service Plan will rely on or include operational analyses, including, where appropriate, railroad operation simulations and equipment and crew scheduling analyses, which in turn reflect such variables as travel demand and rolling stock configuration. The planning horizon should be consistent with the anticipated useful lives of the improvements to be introduced. If the proposed service makes use of facilities that would be shared with freight, commuter rail, or other intercity passenger rail services, the planning study should consider the existing and future characteristics of those services, as developed cooperatively with freight, commuter, and intercity passenger rail partners.

• *Capital Investment Needs Assessment*—Identification of infrastructure, rolling stock and facilities improvements for each discrete phase of new or improved service implementation, including any sequence or prioritization. The plan will include cost estimates for specific capital investments needed to achieve and sustain the service plan.

• *Financial Forecast*—Operating financial projections for each phase of the planned service, with documentation of the methods, assumptions and outputs of the following: travel demand forecasts, projected revenue, and operating expenses, including maintenance of way, maintenance of equipment, transportation (train movement), passenger traffic and services (marketing, ticketing, station, and on-board services), and general/administrative expenses. Cost-sharing arrangements with infrastructure owners and rail operators should also be included.

• *Public Benefits Assessment*—Description of user and non-user benefits and, to the extent readily quantifiable, the estimated economic value of those benefits, with particular attention to job creation and retention, "green" environmental outcomes, potential energy savings, and effects on community livability.

• *Program Management Approach*—A phased program implementation strategy including a preliminary description of the intended techniques of project management that will assure quality, cost, and budget control; and the financing and organizational plans for carrying out the proposed strategy.

Corridor-Wide Environmental Documents

Environmental documentation funded through this solicitation must satisfy Service NEPA requirements. FRA has defined Service NEPA as at least a programmatic/Tier 1 environmental review (using tiered reviews and documents), or a project environmental review, that also addresses broader questions and likely environmental effects for the entire corridor relating to the type of service(s) being proposed, including cities and stations served, route alternatives, service levels, types of operations (speed, electric, or diesel powered), ridership projections, and major infrastructure components. Simple corridor programs are often best addressed with project NEPA documentation, while more complex corridor programs may need a tiering approach. FRA is responsible for establishing the scope of the environmental review, including the use of tiering or use of project NEPA documentation.

Proposal Form: The proposal form should be downloaded from: *http://www.fra.dot.gov/Pages/2243.shtml.* The form has been developed by FRA to capture pertinent qualitative and quantitative information that is needed to confirm project eligibility, as well as information FRA needs for consideration of proposals. States should provide as much information as possible about the proposed planning activities. FRA would finalize a project's goals, scope, schedule, and budget and carry out the project in coordination with the group of States.

Decision Process: FRA will be making decisions regarding FRA-funded activities considering the narrative responses provided in the proposals received from States on the following topics:

1. *Potential Transportation and Public Benefits:* Proposals should describe the underlying corridor program that will be the subject of the planning activities, including such factors as:

• The clarity and detail with which the States have identified the problem to be addressed by the proposed service;

• The market potential of the corridor being studied, taking into consideration such factors as population, density, economic activity, and travel patterns;

• The potential for the corridor to deliver high-speed and intercity passenger rail service benefits, including ridership, on-time performance, travel time, service frequencies, safety and other factors;

• The potential of the corridor program to promote economic development, including contributions to a sustainable U.S. manufacturing and supply base;

• The potential of the corridor program to enhance energy efficiency and environmental quality;

• The potential of the corridor program to promote interconnected livable communities, including complementing local or state efforts to concentrate higher-density, mixed-use, development in areas proximate to multi-modal transportation options (including intercity passenger rail stations); and

• The consideration of other transportation modes in the planning process.

2. *Future Program Viability and Sustainability:* The proposal should explain how the planning activities would lead to a long-term, viable high-speed rail corridor program:

• The likelihood that the final deliverables (Service Development Plan, Environmental Document, or State Rail Plan) will be ready and capable of being implemented;

• The demonstrated commitment of the State and other stakeholders to quickly execute the program once planning is complete;

• The degree to which the planning process meaningfully incorporates input from affected communities, local governments, regional councils and planning organizations, neighboring States, railroads, transportation modal partners, environmental interests, the public and other stakeholders—early and throughout the process;

• The likelihood that the corridor programs being studied can yield measurable service and public benefits in a reasonable period of time;

• The demonstrated ability of the States to support the future capital and operating needs of the corridor being studied;

• The thoroughness of the proposed deliverables;

• The quality of proposed methodology and assumptions; and

3. *Project Management Proposal:* Describe the proposed method for managing the project, including a description of the shared responsibilities between the FRA and the States, and the relationships and means of coordination among the participating States, service operators, and host railroads. This section should detail the mechanism by which States

will coordinate their views during the project.

4. *Justification Statement:* Identify the rationale for Federal leadership on the planning project, such as specific institutional barriers or operational complexities. Conditions that may call for a Federal leadership role include multi-state and multi-jurisdictional complexity and/or operational complexity involving multiple operating entities and/or divided property ownership and rights. Additionally, proposals should provide a narrative on how the proposed project could serve as a demonstration project and national model for future FRA-managed, multi-State planning projects.

Submission Package: States interested in providing proposals must submit the following documents to *HSIPR@dot.gov* no later than 5 p.m. EST, May 19, 2010.

- *Required*—One Application Form provided at *http://www.fra.dot.gov/Pages/2243.shtml.*
- *Required*—Letter(s) signed by all the chief executives of State transportation departments or agencies that will be part of the project, stating their commitment to participate.
- *Optional*—Letter(s) from other stakeholders or interested parties.
- *Optional*—Other supporting documents that the applicant believes would assist FRA in understanding the proposal (including, but not limited to, maps or previous planning documents).

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the FRA HSIPR Program Manager via e-mail at *HSIPR@dot.gov.*

Issued in Washington, DC, on March 29, 2010.

Karen Rae,

Deputy Administrator.

[FR Doc. 2010–7338 Filed 3–31–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

High-Speed Intercity Passenger Rail (HSIPR) Program

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

ACTION: Notice of funding availability.

SUMMARY: On January 28, 2010, President Obama announced the first selections for the High-Speed Intercity Passenger Rail (HSIPR) Program. This notice builds on the program framework established by FRA in the June 23, 2009 interim program guidance (74 FR 29900), and details the application requirements and procedures for obtaining funding for high-speed rail planning activities under the Department of Transportation Appropriations Act of 2010 (FY 2010 DOT Appropriations Act). This solicitation is only applicable to the planning funds available under the FY 2010 appropriation; a future solicitation will be released in the coming months for the stand-alone project and corridor program funds under the FY 2010 appropriation. FRA has also concurrently issued a separate solicitation for projects to be funded with funds available under the Department of Transportation Appropriations Act of 2009 that have not yet been allocated to projects. This solicitation is also published in today's edition of the **Federal Register**.

DATES: Applications for funding under this solicitation are due no later than 5 p.m. EST, May 19, 2010 and must be submitted via Grants.gov (*see* instructions in Section 3.1). *See* Section 3 for additional information regarding the application process. FRA reserves the right to modify this deadline.

Supporting materials that cannot be submitted electronically may be mailed or hand delivered to: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Room W38–302, Washington, DC 20590, Att'n: HSIPR Program. Applicants are encouraged to use special courier services to avoid shipping delays. Application forms are available at *http://www.fra.dot.gov/Pages/2243.shmtl.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice and the grants program, please contact the FRA HSIPR Program Manager via e-mail at *HSIPR@dot.gov,* or by mail: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590, Att'n: HSIPR Program.

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Section 1: Financial Assistance Description

1.1 Authority

This financial assistance announcement pertains to the funding made available for planning activities under FRA's High-Speed Intercity Passenger Rail (HSIPR) Program.

The authority for these planning funds is contained in two pieces of legislation:

- The Passenger Rail Investment and Improvement Act of 2008, under Sections 301, 302, and 501—Intercity Passenger Rail Service Corridor Capital Assistance (codified at 49 U.S.C. chapter 244); and
- The Fiscal Year (FY) 2010 Consolidated Appropriations Act ("FY 2010 DOT Appropriations Act," Title I of Division A of Pub. L. 111–117, December 16, 2009), under the title "Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service."

This document incorporates interim guidance required for this financial assistance opportunity pursuant to the FY 2010 DOT Appropriations Act and 49 U.S.C. 24402(a)(2). The funding made available under this financial assistance announcement was appropriated under the FY 2010 DOT Appropriations Act. The funding opportunities described in this guidance are available under Catalog of Federal Domestic Assistance (CFDA) number 20.319.

1.2 Program Description and Legislative History

As one of President Obama's foremost transportation priorities, the HSIPR Program is intended to help address the nation's transportation challenges by investing in an efficient network of high-speed and intercity passenger rail corridors that connect communities across America. On January 28, 2010, President Obama announced the first recipients selected to receive funding under the HSIPR Program. These initial awards were funded from the $8 billion appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act) and $90 million appropriated under the FY 2009 DOT Appropriations Act. Within the $90 million of FY 2009 funding, approximately $9 million worth of planning projects were selected.

Congress established the framework for the HSIPR Program through the passage of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Enacted in October 2008, PRIIA represents the most sweeping Congressional action on intercity

passenger rail since those that created the National Railroad Passenger Corporation (Amtrak) and the Northeast Corridor Improvement Project during the 1970s. In addition to reauthorizing Amtrak, PRIIA established three new competitive grant programs for funding high-speed intercity passenger rail capital improvements, each of which, as authorized, requires a 20 percent non-Federal match:

• *Intercity Passenger Rail Service Corridor Capital Assistance (Section 301)*—Under this section, the broadest of PRIIA's three funding programs, States (including the District of Columbia), groups of States, interstate compacts, and public Intercity Passenger Rail agencies established by one or more State(s) may apply for grants for capital improvements to benefit all types of intercity passenger rail service, including high-speed service. Amtrak may participate through a cooperative agreement with a State(s).

• *High-Speed Rail Corridor Development (Section 501)*—Although similar in structure, criteria, and conditions to Section 301, eligibility for this program is restricted to projects intended to develop Federally-designated high-speed rail corridors for intercity passenger rail services that may reasonably be expected to reach speeds of at least 110 miles per hour (mph). Applicant eligibility under Section 501 is broadened from Section 301 to include Amtrak.

• *Congestion Grants (Section 302)*—This program authorizes grants to States or to Amtrak (in cooperation with States) for facilities, infrastructure, and equipment for high-priority rail corridor projects to reduce congestion or facilitate intercity passenger rail ridership growth.

In the FY 2010 DOT Appropriations Act, Congress built upon the "jump start" in funding for high-speed and intercity passenger rail development provided through the ARRA by appropriating an additional $2.5 billion for the grant activities authorized under Sections 301, 302, and 501 of PRIIA. However, unlike the special exceptions made in ARRA, applicants will now be required to provide at least the 20 percent non-Federal match mandated in PRIIA. Additionally, Congress stipulated that up to $50 million of the funds provided can be used for planning activities.

1.3 Funding Approach

The FY 2010 DOT Appropriations Act appropriated a total of $2.5 billion for high-speed and intercity passenger rail grants; additionally, approximately $65 million remains from the FY 2009 DOT Appropriations Act. FRA is separately soliciting applications for the different components of these appropriations:

1. *FY 2010 planning funds (up to $50 million):* Planning projects with a 20 percent non-Federal match. This solicitation is for these funds. (The appropriation permits the Secretary to retain a portion of these funds for Federally-led multi-State planning projects. *See* Section 1.4 for more details.)

2. *FY 2010 stand-alone projects (up to $245 million) and corridor programs (at least $2,125 million):* Stand-alone final design/construction and/or preliminary engineering/NEPA projects and corridor program funding with a 20 percent non-Federal match. The solicitation for these funds is forthcoming.

3. *Residual FY 2009 funds (approximately $65 million):* Construction projects with a 50 percent non-Federal match. The notice of funding availability (NOFA) for these funds is being issued concurrently with this solicitation.

1.4 General Award Information

Of the $2.5 billion appropriated by Congress, up to $50 million is available for planning activities. These planning grants are authorized under Sections 301, 302, and 501 of PRIIA.

Planning grants are aimed at helping to establish a pipeline of future HSIPR construction projects and corridor development programs by advancing planning activities for corridors that are at an earlier stage of the development process. The grants can also be used for completion of State rail plans. These planning activities provide States with an opportunity to complete the prerequisite work needed to submit applications for future construction grant solicitations.

The FY 2010 DOT Appropriations Act also permits the Secretary of Transportation to retain a portion of planning funding to facilitate the preparation of planning documents for high-speed rail corridors that cross multiple States. Groups of States interested in advancing ideas for a U.S. DOT-led multi-State planning "demonstration" effort should submit proposals according to a separate and concurrently-issued notification also included in today's **Federal Register**.

FRA will make awards for (1) "passenger rail corridor investment plans" that lead directly to completion of both service development plans (SDPs) and corridor-wide environmental documents, and (2) State rail plans (*see* Section 2.4). The awards will be issued through cooperative agreements. Cooperative agreements allow for greater Federal involvement in carrying out the agreed upon investment. The substantial Federal involvement for high-speed intercity passenger rail planning activities will include agreement on the scope of study, review of draft studies, and acceptance of final deliverables.

While there are no predetermined minimum or maximum dollar thresholds for awards, FRA anticipates making multiple awards from the $50 million available for planning. As such, FRA expects applicants to tailor their applications and proposed project scopes accordingly.

Section 2: Eligibility Information

Applications for planning activities will be required to meet minimum requirements related to applicant eligibility, project eligibility, and the fulfillment of other prerequisites.

To the extent that an application's substance exceeds the minimum eligibility requirements described below, such qualifications will be considered in evaluating the merits of an application.

2.1 Eligible Applicant Types

An entity seeking assistance for planning activities must meet the definition of an "applicant" under Sections 301, 302 and 501 of PRIIA. *See* Appendix 1.1 for more details about applicant eligibility.

Eligible applicant entities are as follows:

• States (including the District of Columbia);

• Groups of States (Sections 301 and 501);

• Interstate Compacts (Sections 301 and 501);

• Public agencies established by one or more States and having responsibility for providing intercity passenger rail service (Section 301) or high-speed passenger rail service (Section 501);

• Amtrak (Section 501); and

• Amtrak, in cooperation with States (Sections 301 and 501).

2.2 Applicant and Key Partner Qualifications

For an application submitted by an eligible entity to be considered for planning funding, it must affirmatively demonstrate that the applicant has or will have the legal, financial, and technical capacity to carry out its proposed project. To demonstrate these capacities, the applicant is required to address the following qualifications:

• For an entity other than a State, its legal authority to undertake the proposed project and apply for and expend Federal financial assistance;

• The applicant's ability to provide matching funds and to absorb potential cost overruns or financial shortfalls. For entities other than States, the demonstration of such ability should include a description of the entity's own financial resources, its ability to raise revenue through taxation, dedicated funding sources, or other means, and/or explicit financial backing by one or more State governments;

• The applicant's experience in effectively administering grants of similar scope and value (including timely completion of grant deliverables, compliance with grant conditions, and quality and cost controls); and

• The applicant's experience in managing railroad planning projects of a nature similar to that for which funding is being requested.

2.3 Cost Sharing and Matching

2.3.1 Treatment of Applicant Cost Sharing

Pursuant to the provisions of the FY 2010 DOT Appropriations Act and Sections 301, 302, and 501 of PRIIA, the Federal share of the costs of projects funded through cooperative agreements under this solicitation may not exceed 80 percent.

If an applicant chooses the option of contributing, from its own or its partner project stakeholders' resources, more than the required 20 percent non-Federal share of the costs of its proposed project, such additional contributions will be considered in evaluating the merit of its application (*see* Section 4 for a complete description of evaluation and selection criteria).

2.3.2 Requirements for Applicant Cost Sharing

An applicant's contribution toward the cost of its proposed project may be in the form of cash or, with FRA approval, in-kind contributions of services or supplies. As part of its application, an applicant offering an in-kind contribution must provide a documented estimate of the monetary value of any such contribution, and its eligibility under 49 CFR 18.24 or 19.23.

The applicant must provide as part of its application documentation that demonstrates that it has committed and will be able to fulfill any pledged contribution, including committing any required financial resources that are budgeted or planned at the time the application is submitted. Furthermore, funds from other Federal financial assistance programs may not be used to satisfy the 20 percent match requirement.

All applicants will be required to demonstrate the ability to absorb any cost overruns and deliver the proposed project with no Federal funding or financial assistance beyond that provided in the cooperative agreement.

2.4 Eligible Projects

There are two types of eligible planning projects: (1) Those that lead directly to "passenger rail corridor investment plans" (which include both service development plans and corridor-wide environmental documentation); and (2) those that lead directly to a State rail plan.

2.4.1 Passenger Rail Corridor Investment Plans

Passenger rail corridor investment plans include both a service development plan (SDP) and corridor-wide environmental documentation. Groups of States submitting proposals should identify whether they are proposing that FRA lead the development of both documents, a stand-alone SDP, or corridor-wide environmental document.

Applicants seeking planning funds to develop a passenger rail corridor investment plan must apply for any necessary work to develop *both* a service development plan and corridor-wide environmental documentation. If the applicant has already completed one of these documents or a component thereof, FRA must have accepted that document as meeting the minimum requirements outlined herein in order for the applicant to receive a grant to complete the remaining component(s).

2.4.1.1 Service Development Plan

Service Development Plans (SDPs) should support future corridor development. SDPs funded through this solicitation must include the following elements:

• *Corridor Development Program Rationale*—Description of the corridor's transportation challenges and opportunities, based on current and forecasted travel demand and capacity conditions, demonstrating how the proposed project/program would cost-effectively address transportation and other needs. Development of the program rationale should consider multimodal system alternatives (highway, air, other, as applicable), including a qualitative and quantitative assessments of the costs, benefits and impacts and risks of the alternatives. Program rationale may also explore synergies between the proposed service and large-scale goals and development plans within its service region and communities.

• *Service Plan*—Detail on the train service alternatives to be provided for each phase of new or improved HSIPR service, including: the service frequency, timetable (including time-distance "stringline" diagrams), general station locations, intermodal connections, and train consists. The Service Plan will rely on or include operational analyses, including, where appropriate, railroad operation simulations and equipment and crew scheduling analyses, which in turn reflect such variables as travel demand and rolling stock configuration. The planning horizon should be consistent with the anticipated useful lives of the improvements to be introduced. If the proposed service makes use of facilities that would be shared with freight, commuter rail, or other intercity passenger rail services, the planning study should consider the existing and future characteristics of those services, as developed cooperatively with freight, commuter, and intercity passenger rail partners.

• *Capital Investment Needs Assessment*—Identification of infrastructure, rolling stock and facilities improvements for each discrete phase of new or improved service implementation, including any sequence or prioritization. The plan will include cost estimates for specific capital investments needed to achieve and sustain the service plan.

• *Financial Forecast*—Operating financial projections for each phase of the planned service, with documentation of the methods, assumptions and outputs of the following: travel demand forecasts, projected revenue, and operating expenses, including maintenance of way, maintenance of equipment, transportation (train movement), passenger traffic and services (marketing, ticketing, station, and on-board services), and general/administrative expenses. Cost-sharing arrangements with infrastructure owners and rail operators should also be included.

• *Public Benefits Assessment*—Description of user and non-user benefits and, to the extent readily quantifiable, the estimated economic value of those benefits, with particular attention to job creation and retention, "green" environmental outcomes, potential energy savings, and effects on community livability.

• *Program Management Approach*—A phased program implementation strategy including a preliminary description of the intended techniques of project management that will assure quality, cost, and budget control; and the financing and organizational plans for carrying out the proposed strategy.

2.4.1.2 Corridor-Wide Environmental Documents

Eligible planning projects include those that lead directly to completion of NEPA and related environmental documentation for corridor programs. Environmental documentation funded through this solicitation must satisfy Service NEPA requirements. FRA has defined Service NEPA as at least a programmatic/Tier 1 environmental review (using tiered reviews and documents), or a project environmental review, that also addresses broader questions and likely environmental effects for the entire corridor relating to the type of service(s) being proposed, including cities and stations served, route alternatives, service levels, types of operations (speed, electric, or diesel powered), ridership projections, and major infrastructure components. Simple corridor programs are often best addressed with project NEPA documentation, while more complex corridor programs may need a tiering approach. FRA is responsible for establishing the scope of the environmental review, including the use of tiering or use of project NEPA documentation.

2.4.2 State Rail Plans

Eligible planning projects include those that result in completion of State rail plans. The contents of State rail plans funded through this solicitation must satisfy Chapter 227 of Title 49 and include the following:

- The State's goals for a multimodal system, the role of rail within that system, and current freight and passenger rail activities.
- A description of the existing freight and passenger system, current operating objectives for freight and passenger rail, and the system performance.
- A discussion of the institutional structure of the rail program, ongoing safety and security programs, and a general analysis of the economic and environmental impacts of rail within the State.
- A summary of all passenger and freight rail proposals under consideration in the State for commuter and intercity markets, their capital costs, timing, phasing and funding, public and private benefits, supporting studies and reports, and how they would address rail system deficiencies.
- A description of the vision for rail transportation in the State, how it relates to the national rail plan (if available in its final form by the time of the planning activities) and regional plans, and how it would be carried out through rail agencies, supporting legislation, and any new rail programs within the State.
- A 5-year and 20-year rail service and investment program and a discussion of their effects on State transportation, rail capacity and congestion, other modes, safety and congestion, energy and greenhouse gas emissions, environmental, economic and employment conditions, and the distribution of benefits to communities in terms of livability.
- Specific information for the passenger element of the service and investment program including: Financing plan, service development plan, and 5 and 20-year public and private benefits.
- Specific information for the freight element of the service and investment program, including: Financing plan and 5 and 20-year public private benefits.
- A description of public, agency, and interested party participation in the plan development, how their recommendations were addressed in process, and how rail planning is coordinated with other State transportation planning and programs, including Section 135 of Title 23.

2.5 Project Completion

FRA encourages all planning projects to be completed within 1 to 2 years of obligation.

2.6 Eligibility Restrictions

Pursuant to the provisions of the FY 2010 DOT Appropriations Act and Sections 301, 302, and 501 of PRIIA, planning activities outlined below are ineligible to receive funding:

- Applications for planning activities submitted by private entities other than Amtrak;
- Projects for which commuter rail passenger transportation is the primary intended beneficiary; and
- For any expenses associated with passenger rail operating costs.

Additional funding use restrictions are fully described in Section 3.4.3 of this notice.

Section 3: Application and Submission Information

3.1 Applying Online

Applications for these funds will be submitted through Grants.gov by 5 p.m. EST on May 19, 2010. Program-specific application forms (identified in Section 3.3 below) may be downloaded from FRA's Web site at *http://www.fra.dot.gov/Pages/2243.shmtl*.

To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit an application can be found at Grants.gov. If you experience difficulties at any point during this process, please call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST.

Registering with Grants.gov is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline specified. Applications will not be accepted after the due date; delayed registration is not an acceptable reason for extensions. In order to apply for funding under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following.

1. *Acquire a DUNS Number.* A Data Universal Numbering System (DUNS) number is required for Grants.gov registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dunandbradstreet.com.*

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check

registration status well in advance of the application deadline. Information about CCR registration procedures can be accessed at *http://www.ccr.gov.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Complete your AOR profile on Grants.gov and create your username and password. You will need to use your organization's DUNS number to complete this step. For more information about the registration process, go to *http://www.grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC).* The E-Biz POC at your organization must log in to Grants.gov to confirm you as an AOR. Please note that there can be more than one AOR for your organization.

5. *Search for the Funding Opportunity on Grants.gov.* Please use the following identifying information when searching for the funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is #20.319 titled "High-Speed Rail Corridors and Intercity Passenger Rail Service—Capital Assistance Grants."

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24 to 48 hours after submitting your electronic application, you should receive an e-mail validation message from Grants.gov. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

Note: When uploading attachments please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt. While you may imbed picture files such as .jpg, .gif, and .bmp, in your document files, please do not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

Experiencing Unforeseen Grants.gov Technical Issues

If you experience unforeseen Grants.gov technical issues beyond your control that prevent you from submitting your application by the deadline, you must contact FRA staff at *HSIPR@dot.gov* within 24 hours after the deadline and request approval to submit your application. At that time, FRA staff will require you to e-mail the complete grant application, your DUNS number, and provide a Grants.gov Help Desk tracking number(s). After FRA staff review all of the information submitted, as well as contact the Grants.gov Help Desk to validate the technical issues you reported, FRA staff will contact you to either approve or deny your request to submit a late application. If the technical issues you reported cannot be validated, your application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

3.2 Address To Request/Submit Application Package

If Internet access is unavailable, please write to FRA at the following address to request a paper application: U.S. Department of Transportation, Federal Railroad Administration, Attn. HSIPR Program Information (RDV–10), Mail Stop 20, 1200 New Jersey Ave., SE., Washington, DC 20590.

For optional supporting documentation (described in Section 3.3.1) that an applicant is unable to submit electronically (such as oversized engineering drawings), applicants may submit an original and two copies to the above address. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

3.3 Content of Application

3.3.1 Application Package Components

The application package for HSIPR Program planning applications contains three required components:

1. HSIPR Planning Application Form.
2. OMB Standard Application Forms.
3. FRA's Assurances Document.

Applicants must complete all three required components of the application package; failure to do so may result in the application being removed from consideration for award. All three components of the application package must be submitted through Grants.gov.

Applicants may also submit additional documentation to support the merits of their applications. Inclusion of such supporting documentation is optional.

3.3.1.1 HSIPR Planning Application Form

The most significant component of the application package is the HSIPR Planning Application Form, into which the applicant enters specific information about the proposed project. The form includes fields that have been developed by FRA to capture pertinent qualitative and quantitative program-specific information that is needed for FRA to confirm applicant and project eligibility, as well as information needed for evaluation and selection of applications. The HSIPR Planning Application Form requests three types of information:

1. General applicant and project information.
2. Narratives that allow the applicant to make arguments on the benefits of its proposed planning activities and other factors that are used to evaluate the merits of the application (*See* Section 4.2 and 4.3 for a summary of evaluation and selection criteria).
3. A Statement of Work (SOW)—scope, schedule and budget—that provides a description of the work that will be completed under the cooperative agreement, including the planning objectives, deliverables, milestones, project management information, and a budget broken down by deliverables and milestones that includes the assumptions used to develop the estimates. Pursuant to 49 U.S.C. 24402(g), FRA reserves the right to request changes to project scopes, schedules, and budgets of selected projects. *See* Appendix 3 for more information on preparing project budgets.

The HSIPR Planning Application Form is available from FRA's Web site at: *http://www.fra.dot.gov/Pages/2243.shtml.* Applicants should download and complete the form and submit as an attachment in Grants.gov.

In support of any information provided in the Application Form, FRA welcomes the submission of any other available supporting documentation that may have been developed by the applicant. The format and structure of any additional supporting documents is at the discretion of the applicant. Optional supporting documentation may be provided one of two ways—(1) as attachments to the application, or (2) in hard copy for materials that cannot otherwise be provided electronically. Applicants should provide notifications of any documentation being submitted in hard copy in the appropriate section

of the HSIPR Program Application Form.

Optional supporting documentation could include items such as maps, preliminary engineering documents, environmental work, implementation plans, stakeholder agreements, or financial plans.

3.3.1.2 OMB Standard Application Forms

The Standard Forms are developed by OMB and are required of all grant applicants. These forms should be submitted electronically through Grants.gov.

- Standard Form 424, Application for Federal Assistance.
- Standard Form 424A, Budget Information—Non-Construction Programs.
- Standard Form 424B, Assurances—Non-Construction Programs.

3.3.1.3 FRA Assurances Document

FRA's assurances document contains standard Department certifications on grantee suspension and debarment, drug-free workplace requirements, and Federal lobbying. The FRA assurances document can be obtained from FRA's Web site at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.* The document should be signed by an authorized certifying official for the applicant, scanned into electronic format, and submitted as an attachment to the application in Grants.gov.

3.3.1.4 Other Required Documentation

For any other documentation required prior to award that is not specified in this notice, FRA will make individual arrangements with applicants for the submission of the required documentation.

3.4 Additional Application Information

3.4.1 Submission Dates and Times

Complete applications must be submitted to Grants.gov (as specified in Section 3.1) no later than 5 p.m. EST, May 19, 2010. Grants.gov will send the applicant an automated e-mail confirming receipt of the application. Supporting documentation that cannot be submitted electronically may be sent by courier service with a waybill receipt stamped no later than 5 p.m. EST, May 19, 2010. FRA will e-mail the applicant to confirm receipt of supporting documentation sent by courier service.

Subject to demonstration of unanticipated extenuating circumstances, FRA may consider application materials submitted after the deadlines prescribed above.

FRA reserves the right to contact applicants with any concerns, questions, or comments related to applications.

3.4.2 Intergovernmental Review

This program has not been designated as subject to Executive Order 12372, pursuant to 49 CFR part 17.

3.4.3 Funding Restrictions

In general, only those costs considered allowable pursuant to OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments" (codified at 2 CFR part 225) will be considered for funding. Additionally, the following funding restrictions will apply to cooperative agreements awarded for planning activities, and must be taken into consideration in the development of budget information submitted as part of applications.

- Funding may not be used to fund expenses associated with the operation of intercity passenger rail service;
- Funding may not be used for first-dollar liability costs for insurance related to the provision of intercity passenger rail service;
- While there is no cap on grant recipient's use of grant funds for management and administrative costs, such costs must be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles cited above.

FRA will also consider reimbursement of pre-award costs incurred as early as the enactment of the FY 2010 DOT Appropriations Act (December 16, 2009). However, such costs will be considered for reimbursement only to the extent that they are otherwise allowable under the applicable cost principles.

Section 4: Application Review Information

4.1 Application Review Process

Complete applications are due by 5 p.m. EST, May 19, 2010. All applications will proceed through a three-step process:

1. Screening for completeness and eligibility;
2. Evaluation review by a technical panel applying "evaluation criteria;" and
3. Final review and selection by the FRA Administrator, applying "selection criteria."

All applications will first be screened for completeness, as well as applicant and project eligibility. Applications determined to be both complete and eligible will be referred to a technical panel consisting of subject-matter experts for a merit-based evaluation review. The panels will be comprised of professional staff employed by FRA and other DOT modal administrations, as appropriate.

Applications will be individually reviewed and assessed against the evaluation criteria outlined in Section 4.2. For each of the criteria, the panel will assign a rating of between zero and three points, based on the application's fulfillment of the objectives of each criterion. These individual criterion ratings will then be combined according to priority of criteria, to arrive at an overall rating for the application.

The evaluation criteria, in order of priority, are:

1. Potential Transportation and Public Benefits.
2. Future Program Viability and Sustainability.
3. Project Delivery Approach.

Applications will be reviewed based on both the underlying projects being studied and the quality of the planning activities being proposed. These criteria relate to the underlying projects or corridors that are the subject of the planning activities as well as the proposed planning activities themselves.

In addition to the ratings assigned by the technical evaluation panels, the FRA Administrator may take into account several cross-cutting and comparative selection criteria to determine awards. The Administrator will review the preliminary results to ensure that the scoring has been applied consistently, and that the collective results meet several key priorities essential to the success and sustainability of the program (*see* Section 4.3). The four selection criteria are:

1. Region/Location.
2. Innovation/Resource Development.
3. Partnerships/Participation.
4. Prior HSIPR Funding Decisions and/or State Investments.

4.2 Evaluation Criteria

4.2.1 Potential Transportation and Public Benefits

The review panel will consider how the proposed service would result in future transportation and public benefits by evaluating the characteristics of the underlying projects or corridors that are the subjects of the study.

Some of the factors that may be considered for *passenger rail corridor investment programs* include:

- The clarity and detail with which the applicant has identified the problem to be addressed by the proposed service;
- The market potential of the corridor being studied, taking into consideration

such factors as population, density, economic activity, and travel patterns;

• The potential for the corridor to deliver high-speed and intercity passenger rail service benefits, including ridership, on-time performance, travel time, service frequencies, safety and other factors;

• The potential of the corridor program to promote economic development, including contributions to a sustainable U.S. manufacturing and supply base;

• The potential of the corridor program to enhance energy efficiency and environmental quality;

• The potential of the corridor program to promote interconnected livable communities, including complementing local or State efforts to concentrate higher-density, mixed-use, development in areas proximate to multi-modal transportation options (including intercity passenger rail stations); and

• The consideration of other transportation modes in the planning process.

Some of the factors that may be considered for *State rail plans* include:

• The clarity and detail with which the applicant has identified the problems to be addressed by the State's vision for rail transportation and rail investment program;

• The potential for the State rail plan to lead to passenger and freight rail service benefits, including ridership, on-time performance, travel time, service frequencies, goods movement, safety and other factors;

• The potential of the State rail plan to promote economic development, including contributions to a sustainable U.S. manufacturing and supply base;

• The potential of the State rail plan to enhance energy efficiency and environmental quality;

• The potential of the State rail plan to promote interconnected livable communities, including complementing local or State efforts to concentrate higher-density, mixed-use, development in areas proximate to multi-modal transportation options (including intercity passenger rail stations); and

• The integration of the State rail plan with the planning processes of other transportation modes.

4.2.2 Future Program Viability and Sustainability

This criterion will be used to evaluate the extent to which the planning project will support a viable and sustainable high-speed rail program, including consideration of:

• The likelihood that the final deliverables (Service Development Plan, Environmental Document, or State Rail Plan) will be ready and capable of being implemented;

• The demonstrated commitment of the State and other stakeholders to quickly execute the program once planning is complete;

• The degree to which the planning process meaningfully incorporates input from affected communities, local governments, regional councils and planning organizations, neighboring States, railroads, transportation modal partners, environmental interests, the public and other stakeholders—early and throughout the process;

• The likelihood that the corridor programs being studied can yield measurable service and public benefits in a reasonable period of time;

• The demonstrated ability of the applicant to support the future capital and operating needs of the corridor(s) being studied;

• The thoroughness of the proposed deliverables;

• The quality of proposed methodology and assumptions; and

• The applicant's contribution of a cost share greater than the required minimum of 20 percent.

4.2.3 Project Delivery Approach

Applications will be evaluated on the applicant's ability and approach to deliver the planning study successfully and in a timely fashion, including consideration of:

• The applicant's financial, legal, and technical capacity to implement the project;

• The applicant's experience in administering similar grants and planning efforts;

• The soundness and thoroughness of the cost methodologies and assumptions, and estimates for the proposed planning activities;

• The reasonableness and timeliness of the milestone and completion schedule;

• The thoroughness and quality of the Statement of Work;

• The timing and amount of the project's future noncommitted investments;

• The comprehensiveness and sufficiency, at the time of application, of agreements with key partners that will be involved in conducting the planning effort; and

• The overall completeness and quality of the application, including the comprehensiveness of its supporting documentation.

4.3 Selection Criteria

4.3.1 Region/Location

• Ensuring appropriate level of regional balance across the country.

• Ensuring promotion of livable communities in urban and rural locations.

• Ensuring consistency with national transportation and rail network objectives.

• Ensuring integration with other rail services and transportation modes.

4.3.2 Innovation/Resource Development

• Advancing the state of the art in modeling techniques for assessing potential intercity passenger rail costs and benefits.

• Promoting domestic manufacturing, supply and industrial development, including U.S.-based manufacturing and supply industries.

• Developing professional railroad engineering, operating, planning and management capacity needed for sustainable high-speed intercity passenger rail development.

• Utilizing innovative planning techniques, such as new methods for engaging the public.

4.3.3 Partnerships/Participation

• Where corridors span multiple States, emphasizing those that have organized multi-State partnerships with joint planning and prioritization of investments.

• Employing creative approaches to ensure workforce diversity and use of disadvantaged and minority business enterprises.

• Engaging local communities and a variety of other stakeholder groups in the planning process.

4.3.4 Prior HSIPR Funding Decisions and/or State Investments

• Assessing how a proposed project would complement previous construction or planning grants made by the HSIPR program.

• Assessing how the proposed project would complement previous State investments in high-speed intercity passenger rail.

Section 5: Award Administration Information

5.1 Award Notices

Upon approval of an application, notification will be sent to the grant recipient through Grants.gov and via a mailed letter.

FRA will publicly announce selected projects. For projects that were not selected, FRA will notify the applicants

of the decision and provide the following:

- Suggestions on application revisions for any subsequent resubmission rounds (if desired by applicant); and
- Guidance regarding subsequent rounds of funding.

5.2 Administrative and National Policy Requirements

Grant recipients must follow all administrative and national policy requirements including: Procurement standards, compliance with Federal civil rights laws and regulations, disadvantaged business enterprises (DBE), debarment and suspension, drug-free workplace, FRA's and OMB's Assurances and Certifications, ADA, buy America, environmental protection, NEPA, and environmental justice. For additional details on these administrative and national policy requirements, please refer to FRA's HSIPR Notice of Grant Award Example under the high-speed rail link on FRA's Web page at *http://www.fra.dot.gov/Pages/2374.shmtl,* which includes a sample copy of FRA's current model grant/cooperative agreement.

5.3 Program Specific Grant Requirements

Grant recipients receiving PRIIA-authorized grants must comply with all requirements set forth in PRIIA, including adhering to: Buy America, Labor Protection, and Davis-Bacon Act. For a complete list of all PRIIA-specific grant requirements, refer to Appendix 2.1.

5.4 General Requirements

Grant recipients must comply with reporting requirements. All post-award information pertaining to reporting, auditing, monitoring, and the close-out process is detailed in Appendix 2.2.

Section 6: Questions and Clarifications

Questions about this guidance and the application process should be submitted to the HSIPR Program Manager via e-mail at *HSIPR@dot.gov.*

LIST OF ACRONYMS

Acronym	Meaning
ACF	Administration for Children and Families.
ADA	Americans with Disabilities Act.
ARRA	American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).
CAST	Custom Applications Support and Training Unit (GrantSolutions).
CCR	Central Contractor Registration database.
CE	Categorical Exclusion—a class of action for the NEPA process.
CFS report	"Commercial Feasibility Study," Federal Railroad Administration, High-Speed Ground Transportation for America, September 1997; available at: *http://www.fra.dot.gov/Pages/515*.
Department	The U.S. Department of Transportation.
DUNS	Data Universal Number System.
EA	Environmental Assessment—a NEPA document.
EIS	Environmental Impact Statement—the most extensive type of NEPA document.
FD	Final Design.
FONSI	Finding of No Significant Impact—a possible decision concluding the NEPA process.
FRA	Federal Railroad Administration—an Operating Administration of the U.S. Department of Transportation.
FTA	Federal Transit Administration.
FY	Fiscal Year.
FY 2008 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008—Title I of Division K of Public Law 110–161, December 26, 2007.
FY 2009 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009—Title I of Division I of Public Law 111–8, March 11, 2009.
FY 2010 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010—Title I of Division A of Public Law 111–117, December 16, 2009.
GS	GrantSolutions Grants Management System.
ICC	Interstate Commerce Commission.
LOI	Letter of Intent.
mph	Miles Per Hour.
NEPA	National Environmental Policy Act.
NTD	National Transit Database.
OTP	On-time performance
PE	Preliminary engineering.
PRIIA	Passenger Rail Investment and Improvement Act of 2008 (Division B of Public Law 110–432).
PTC	Positive Train Control.
ROD	Record of Decision—a possible decision concluding of the NEPA process.
RSIA	Rail Safety Improvement Act of 2008 (Division A of Pub. L. 110–432, October 16, 2008).
State DOT	State Department of Transportation.
State Capital Grant Program	Capital Assistance to States—Intercity Passenger Rail Service program—established in FY 2008 DOT Appropriations Act and continued in the FY 2009 DOT Appropriations Act.

Appendix 1: Additional Information on Eligibility

Appendix 1.1 Applicant Types

State—A State department of transportation (State DOT) which is the State-wide instrumentality or agency of a State, in the form of a department, commission, board, or official of any State, charged by its laws with the responsibility for transportation-related matters within the State, including high-speed intercity passenger rail.

Group of States—A group of two or more States in which an agreement has been established to work in coordination to build and operate rail projects within specified boundaries and within the duration of agreement. The agreement should specify the commitments (financial and otherwise) of all parties to developing and maintaining rail operations for a specified corridor. This type of agreement requires the backing of several political and administrative entities within each State. Such agreement should include but not be limited to the following: Identification of all parties involved, the duration of the agreement, governance

arrangements, commitment of partners, risk and benefits sharing arrangements, liabilities, level of service per partner or client, services to be provided, dispute resolution, substandard performance, termination, signatories. A group of States wishing to submit an application must designate one State within the group to serve as the lead State for the application. This lead State will be responsible for submitting the application and administrating any grant that is awarded to the group of States.

Interstate Compact—An entity created through an agreement between two or more States. Frequently, these compacts create a new governmental entity that is responsible for administering or improving some shared resource, such as public transportation infrastructure. In some cases, a compact serves simply as a coordination mechanism between independent authorities in the member States. Article I, Section 10 of the United States Constitution provides that no State shall enter into an agreement or compact with another State without the consent of Congress. Interstate compacts for the purpose of intercity passenger rail development have been established previously, based on the implied general consent of Congress expressed through Public Law 98–358, in which Congress explicitly granted consent to the creation of an interstate compact between the States of Ohio, Indiana, Michigan, Pennsylvania, Illinois, West Virginia, and Kentucky for the purpose of developing intercity passenger rail.

Public Agencies, established by one or more States (Having responsibility for providing intercity passenger rail service)—A publicly owned not-for-profit agency created and authorized under State law and responsible for providing intercity passenger rail service (under PRIIA Section 301) or high-speed rail service (under PRIIA Section 501).

Amtrak, in cooperation with States—The National Railroad Passenger Corporation undertaking a project subject to an agreement with one or more States (as defined above) (under PRIIA Sections 301 or 302).

Amtrak—The National Railroad Passenger Corporation undertaking a project authorized under PRIIA Section 501.

Appendix 1.2 Definition of Intercity Passenger Rail

"Intercity rail passenger transportation" is defined at 49 U.S.C. 24102(4) as "rail passenger transportation except commuter rail passenger transportation." Likewise, "commuter rail passenger transportation" is defined at 49 U.S.C. 24102(3) as "short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations." In common use, the general definition of "rail passenger transportation" excludes types of local or regional rail transit, such as light rail, streetcars, and heavy rail. Similarly, both intercity passenger rail transportation and commuter rail passenger transportation exclude single-purpose scenic or tourist railroad operations.

The since-terminated Interstate Commerce Commission (ICC) established six features to aid in classifying a service as "commuter" rather than "intercity" rail passenger transportation:[1]

- The passenger service is primarily being used by patrons traveling on a regular basis either within a metropolitan area or between a metropolitan area and its suburbs;
- The service is usually characterized by operation performed at morning and peak periods of travel;
- The service usually honors commutation or multiple-ride tickets at a fare reduced below the ordinary coach fare and carries the majority of its patrons on such a reduced fare basis;
- The service makes several stops at short intervals either within a zone or along the entire route;
- The equipment used may consist of little more than ordinary coaches; and
- The service should not extend more than 100 miles at the most, except in rare instances; although service over shorter distances may not be commuter or short haul within the meaning of this exclusion.

FTA further refined the definition of commuter rail in the glossary for its National Transit Database (NTD)[2] Reporting Manual. In particular, FTA refined the ICC's third "feature" by specifying that "predominantly commuter [rail passenger] service means that for any given trip segment (*i.e.,* distance between any two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week."

In judging the eligibility of an application under this solicitation, FRA will determine whether the rail passenger service that is primarily intended to benefit from the proposal constitutes "intercity passenger rail transportation" under the statutory definition and ICC and FTA interpretations. FRA may also take into account whether the primary intended benefiting service has been or is currently the direct or intended beneficiary of funding provided by another Federal agency (*e.g.,* FTA) for the purpose of improving commuter rail passenger transportation and whether the service in question is or will be operated by or on behalf of a local, regional, or State entity whose primary rail transportation mission is the provision of commuter or transit service.

Appendix 2: Additional Information on Award Administration and Grant Conditions

Appendix 2.1 Program Specific Grant Requirements

PRIIA established a series of grant conditions applicable to intercity passenger rail grant awards (*see* 49 U.S.C. 24405) and the FY 2010 DOT Appropriations Act applies these conditions also to congestion and high-speed rail grants. While these requirements may have limited applicability with respect to the planning activities to be funded under this solicitation, they are set out below for the information of the applicants.

Appendix 2.1.1 Buy America

Grant recipients must comply with the Buy America provisions set forth in 49 U.S.C. 24405(a), which specifically provide that the Secretary of Transportation may obligate ARRA funds for a high-speed intercity passenger rail or congestion project only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary (or the Secretary's delegate, the FRA Administrator) may waive this requirement if the Secretary finds that applying this requirement would be inconsistent with the public interest; the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material will increase the cost of the overall project by more than 25 percent. For purposes of implementing these requirements, in calculating the components' costs, labor costs involved in final assembly shall not be included in the calculation. If the Secretary determines that it is necessary to waive the application of the Buy America requirements, the Secretary is required before the date on which such finding takes effect to publish in the **Federal Register** a detailed written justification as to why the waiver is needed; and provide notice of such finding and an opportunity for public comment on such finding, for a reasonable period of time, not to exceed 15 days. The Secretary may not make a waiver for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection, and the government of that foreign country has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies. The Buy America requirements described in this section shall only apply to projects for which the costs exceed $100,000.

Appendix 2.1.2 Operators Deemed Rail Carriers

A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this program shall be considered a rail carrier, as defined in Section 49 U.S.C. 10102(5), for purposes of title 49 of the United States Code and any other statute that adopts the definition found in 49 U.S.C. 10102(5), including the Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.*); the Railway Labor Act (43 U.S.C. 151 *et seq.*); and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*) (*see* 49 U.S.C. 24405(b)).

Appendix 2.1.3 Railroad Agreements

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient

[1] *Penn Central Transportation Company Discontinuance or Change in Service of 22 Trains between Boston, Mass, and Providence R.I.,* February 10, 1971, I.C.C. 338, 318–333.

[2] In additional to serving as a reference database, the NTD captures data that serve as the basis for apportioning and allocating funding to eligible grantees under FTA's formula grant programs.

shall have in place a written agreement between the grant recipient and the railroad regarding such use and ownership, including any compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the grant recipient complies with liability requirements consistent with 49 U.S.C. 28103. Grant recipients that use rights-of-way owned by a railroad must comply with FRA guidance regarding how to establish a written agreement between the applicant and the railroad regarding use and ownership as discussed in Appendix 3.2.11. (*See* 49 U.S.C. 24405(c)).

Appendix 2.1.4 Labor Protection

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient must agree to comply with the standards of 49 U.S.C. 24312, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. 24308(a) and the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this program. (*see* 49 U.S.C. 24405(c)).

Appendix 2.1.5 Davis-Bacon Act

Projects funded through PRIIA are required to comply with the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) (*see* 49 U.S.C. 24405(c)(2)). The Davis-Bacon Act is a measure that fixes a floor under wages on Federal government projects and provides, in pertinent part, that the minimum wages to be paid for classes of workers under a contract for the construction, alteration, and/or repair of a Federal public building or public work, must be based upon wage rates determined by the Secretary of Labor to be prevailing for corresponding classes of workers employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed.

Appendix 2.1.6 Replacement of Existing Intercity Passenger Rail Service

Grant recipients providing intercity passenger rail transportation that begins operations after October 16, 2008 on a project funded in whole or in part by grants made under this program, that replaces intercity passenger rail service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity as of such date, are required to enter into a series of agreements with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider. (*see* 49 U.S.C. 24405(d)).

Appendix 2.2 General Requirements

Appendix 2.2.1 Standard Reporting Requirements

• *Progress Reports*—Progress reports are to be submitted quarterly. These reports must relate the state of completion of items in the statement of work to expenditures of the relevant budget elements. The grant recipient must furnish the quarterly progress report to the FRA on or before the 30th calendar day of the month following the end of the quarter being reported. Grantees must submit reports for the periods: January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. Each quarterly report must set forth concise statements concerning activities relevant to the project, and should include, but not be limited to, the following: (a) An account of significant progress (findings, events, trends, *etc.*) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.

• *Quarterly Federal Financial Report (SF–425)*—The Grantee must submit a quarterly Federal financial report electronically in the GrantSolutions system, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported (*e.g.,* for quarter ending March 31, the SF–425 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. The Grantee must use SF–425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

• *Interim Report(s)*—If required, interim reports will be due at intervals specified in the statement of work and must be submitted electronically in the GrantSolutions system.

• *Final Report(s)*—Within 90 days of the Project completion date or termination by FRA, the Grantee must submit a Summary Project Report in the GrantSolutions system. A final version of this report, detailing the results and benefits of the Grantee's improvement efforts, must be furnished by the expiration date of the project period.

Appendix 2.2.2 Audit Requirements

Grant recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. Government Accountability Office Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Currently, audit reports must be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, FRA and the Comptroller General of the United States must have access to any books, documents, and records of grant recipients for audit and examination purposes. The grant recipient will also give FRA or the Comptroller, through any authorized representative, access to, and the right to examine all records, books, papers or documents related to the grant. Grant recipients must require that sub-grantees comply with the audit requirements set forth in OMB Circular A–133. Grant recipients are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Appendix 2.2.3 Monitoring Requirements

Grant recipients will be monitored periodically by FRA to ensure that the project goals, objectives, performance requirements, timelines, milestones, budgets, and other related program criteria are being met. FRA will conduct monitoring activities through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, including sub-awards and sub-grantees, to provide reasonable assurance that the award is being administered in compliance with Federal requirements. Financial monitoring responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

Appendix 2.2.4 Closeout Process

Project closeout occurs when all required project work and all administrative procedures described in 49 CFR part 18, or 49 CFR part 19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout should not invalidate any continuing obligations imposed on the Grantee by an award or by the FRA's final notification or acknowledgment. Within 90 days of the project completion date or termination by FRA, Grantees agree to submit a final Federal Financial Report (SF–425), a certification or summary of project expenses, a final report, and third party audit reports, as applicable.

Appendix 2.3 Freedom of Information Act (FOIA)

As a Federal agency, the FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record

exclusions. Grant applications and related materials submitted by applicants pursuant to this guidance would become agency records and thus subject to the FOIA and to public release through individual FOIA requests. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this guidance could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions, most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (*see* National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (DC Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying their request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 CFR 209.11. As noted in the Department's FOIA implementing regulation (49 CFR part 7), the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (*see* 49 CFR 7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with the FRA.

Appendix 3: Additional Information on Application Budgets

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable and necessary for the project. At a minimum, the budget should separate total cost of the project into the following categories:

- *Personnel:* List each position by title and name of employee, if available, and show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.
- *Fringe Benefits:* Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for personnel listed in the "Personnel" budget category and only for the percentage of time devoted to the project.
- *Travel:* Itemize travel expenses of project personnel by purpose (training, interviews, and meetings). Show the basis of computation (*e.g.,* X people to Y-day training at $A airfare, $B lodging, $C subsistence).
- *Equipment:* List nonexpendable items that are to be purchased. Nonexpendable equipment is tangible property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. (Note: Organization's own capitalization policy may be used for items costing less than $5,000.) Expendable items should be included either in the "Supplies" category or in the "Other" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technical advances. Rented or leased equipment should be listed in the "Contractual" category. Explain how the equipment is necessary for the success of the project. Attach a narrative describing the procurement method to be used.
- *Supplies:* List items by type (office supplies, postage, training materials, copying paper, and expendable equipment items costing less than $5,000) and show the basis for computation. (Note: Organization's own capitalization policy may be used for items costing less than $5,000.) Generally, supplies include any materials that are expendable or consumed during the course of the project.
- *Consultants/Contracts:* Indicate whether applicant's written procurement policy (*see* 49 CFR 18.36) or the Federal Acquisition Regulations (FAR) are followed. *Consultant Fees:* For each consultant enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and the estimated time on the project. *Consultant Expenses:* List all expenses to be paid from the grant to the individual consultants in addition to their fees (travel, meals, and lodging). *Contracts:* Provide a description of the product or service to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be provided for sole source contracts in excess of $100,000.
- *Other:* List items (rent, reproduction, telephone, janitorial or security services) by major type and the basis of the computation. For example, provide the square footage and the cost per square foot for rent, or provide the monthly rental cost and how many months to rent.
- *Indirect Costs:* Indirect costs are allowed only if the applicant has a Federally approved indirect cost rate. A copy of the rate approval (a fully executed, negotiated agreement) must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant Federal agency, which will review all documentation and approve a rate for the applicant organization.

Issued in Washington, DC, on March 29, 2010.

Karen Rae,

Deputy Administrator.

[FR Doc. 2010–7336 Filed 3–31–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0109]

Petition for Waiver of the Terms of the Order Limiting Operations at LaGuardia Airport

ACTION: Notice of reopening comment period to accept rebuttal comments.

SUMMARY: On February 18, 2010, the FAA published a notice in the Federal Register seeking comment on a joint waiver request filed by Delta Air Lines and US Airways seeking a waiver from the prohibition on purchasing operating authorizations ("slots" or "slot interest") at LaGuardia Airport. The comment period closed on March 22, 2010. The FAA finds it in the public interest to reopen the comment period for seven days to give all interested parties additional time to file rebuttal comments. Any rebuttal comments filed by April 5, 2010, will be considered.

DATES: The comment period on the petition for waiver of the terms of the Order Limiting Operations at LaGuardia Airport opened on February 18, 2010, and closed on March 22, 2010, and is reopened for rebuttal comments until April 5, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0109 using any of the following methods:

■ *Federal ERulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

■ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SW., West Building Ground Floor, Room W12–140, Washington, DC 20590.

■ *Fax:* Fax comments to Docket Operations at 202–493–2251.

■ *Hand Delivery:* Bring comments to Docket Operations Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For more information on the process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment or

signing the comment for an association, business, labor union, etc. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://Dockets Info.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, by telephone at (202) 267–3073 or be electronic mail at *Rebecca.Macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION: On February 18, 2010, the FAA published a notice in the Federal Register (75 FR 7306) seeking comment on a joint waiver request filed by Delta Air Lines and US Airways seeking a waiver from the prohibition on purchasing operating authorizations ("slots" or "slot interest") at LaGuardia Airport. The comment period closed on March 22, 2010. The FAA finds it in the public interest to reopen the comment period for seven days to give all interested parties additional time to file rebuttal comments. Any rebuttal comments filed by April 5, 2010, will be considered.

Issued in Washington, DC, on March 29, 2010.

James W. Whitlow,

Acting Chief Counsel.

[FR Doc. 2010–7347 Filed 3–29–10; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Adoption of a railroad cost recovery procedures productivity adjustment.

SUMMARY: By decision served on February 1, 2010, the Board proposed to adopt 1.010 (1.0% per year) as the 2008 productivity adjustment, as measured by the average change in railroad productivity for the years 2004 through 2008. The February 1, 2010 decision provided an opportunity to file comments regarding any perceived data and computational errors in the Board's calculation. The Board's decision also stated that the proposed productivity adjustment would become effective on March 1, 2010, unless the Board issued a further order postponing the effective date.

On February 22, 2010, the Board received timely comments from the Western Coal Traffic League (WCTL) regarding the output index calculation for 2008. To allow for adequate consideration of WCTL's comments, the Board issued a decision on February 26, 2010, postponing the effective date of the 2008 productivity adjustment pending further order of the Board.

In its comments, WCTL questioned the 2008 output index as compared to the 2007 output index. In response to WCTL's comments, we reviewed the calculations for the output indices for both of those years. This review revealed the inadvertent use of masked revenues from the waybill records in both the 2007 and 2008 calculations, and the exclusion of certain waybill records in the 2007 calculations. Once these errors were discovered and corrected, we verified that the output index calculations for the entire 2004–2008 averaging period used unmasked revenues and did not improperly exclude waybill records.

Accordingly, for the corrected 2008 productivity adjustment, the Board's calculation of the output index for 2007 of 1.014 should be modified to 1.000, and the Board's calculation of the output index for 2008 of 0.967 should be modified to 0.990. As a result, the corrected 5-year geometric mean of the annual change in productivity for the 2004–2008 period is 1.012 (or 1.2% per year).

DATES: The productivity adjustment is effective on March 26, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Smith, (202) 245–0322. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.*

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

Decided: March 26, 2010.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–7270 Filed 3–31–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Economic Recovery Advisory Board (the PERAB)

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The President's Economic Recovery Advisory Board will meet on April 16, 2010, in the White House Roosevelt Room, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 1:30 p.m. Eastern Time. The meeting will be open to the public via live Webcast at *http://www.whitehouse.gov/live.*

DATES: The meeting will be held on April 16, 2010 at 1:30 p.m. Eastern Time.

ADDRESSES: The PERAB will convene its next meeting in the White House Roosevelt Room, 1600 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements to the Advisory Committee by any of the following methods:

Electronic Statements

- Send written statements to the PERAB's electronic mailbox at *PERAB@do.treas.gov;* or

Paper Statements

- Send paper statements in triplicate to Emanuel Pleitez, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Emanuel Pleitez, Designated Federal

Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, § 10(a), and the regulations thereunder, Emanuel Pleitez, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the PERAB will convene its next meeting on April 16, 2010, in the White House Roosevelt Room, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 1:30 p.m. Eastern Time. The meeting will be broadcast on the Internet via live Webcast at *http://www.whitehouse.gov/live*. The purpose of this meeting is to continue discussion of the issues impacting the strength and competitiveness of the Nation's economy. The discussion will include an update on the research and preparatory work conducted in the PERAB subcommittees and recommendations to the President. The PERAB will provide information and ideas obtained from across the country to promote exports, the growth of the American economy, establish a stable and sound financial and banking system, create jobs, and improve the long-term prosperity of the American people.

Dated: March 29, 2010.

Alastair Fitzpayne,

Acting Executive Secretary, Deputy Chief of Staff.

[FR Doc. 2010–7502 Filed 3–30–10; 4:15 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2010

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factors and reference prices for calendar year 2010 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and section 45(e)(10)(C) (26 U.S.C. 45(e)(10)(C)).

SUMMARY: The 2010 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

DATES: The 2010 inflation adjustment factors and reference prices apply to calendar year 2010 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2010 sales of refined coal and Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factors: The inflation adjustment factor for calendar year 2010 for qualified energy resources and refined coal is 1.4342. The inflation adjustment factor for Indian coal is 1.0976.

Reference Prices: The reference price for calendar year 2010 for facilities producing electricity from wind is 4.22 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $54.74 per ton for calendar year 2010. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy have not been determined for calendar year 2010.

Because the 2010 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2010. Because the 2010 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2010. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2010.

Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal: As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) and the $2.00 amount in section 45(e)(8)(D), are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2010 under section 45(a) is 2.15 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2010 under section 45(e)(8)(A) is $6.27 per ton on the sale of qualified refined coal. The credit for steel industry fuel is $2.87 per barrel-of-oil equivalent of steel industry fuel sold. The credit for Indian coal production for calendar year 2010 under section 45(e)(10)(B) is $2.2 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: Philip Tiegerman, IRS, CC:PSI:6, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3110 (not a toll-free call).

Dated: March 25, 2010.

Christopher T. Kelley,

Special Counsel (Passthroughs & Special Industries).

[FR Doc. 2010–7263 Filed 3–31–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Veterans' Illnesses Task Force

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice with request for comments.

SUMMARY: The Secretary Department of Veterans Affairs (VA) established the Gulf War Veterans' Illnesses Task Force (GWVI–TF) in August 2009 to conduct a comprehensive review of VA's approach to and programs addressing 1990–1991 Gulf War Veterans' illnesses. The Gulf War Veterans' Illnesses Task Force Draft Written Report is now complete. The VA is inviting public comments on the Gulf War Veterans' Illnesses Task Force Draft Written Report.

DATES: Written comments must be received on or before May 3, 2010.

ADDRESSES: Although VA prefers electronic submission of public comments through *http://www.regulations.gov;* written comments may be submitted through mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420 or by fax to (202) 273–9026. Please view and/or download the Gulf War Veterans' Illnesses Task Force Draft Written Report at *http://www1.va.gov/opa/vadocs/gwvi_draft_report.pdf.* Please write: "Gulf War Veterans' Illnesses Task Force Draft Written Report or GWVI–TF Report" in the subject line of your letter or e-mail. Copies of all comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. Comments may also be viewed online during the comment period, through the Federal Docket Management System (FDMS) at *http://www.regulations.gov*. You can also submit ideas on improving VA services to Gulf War Veterans at *http://yourgulfwarvoice.uservoice.com/*. Please subscribe to our quarterly Gulf War Veterans Newsletter by *including your e-mail address with your comment.*

FOR FURTHER INFORMATION CONTACT: Jeff Peters, GWVI–TF Secretary, OSVA, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 461–4814.

Approved: March 19, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–7412 Filed 3–31–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
April 1, 2010

Part II

Federal Reserve System

12 CFR Part 205
Electronic Fund Transfers; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1377]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The final rule restricts a person's ability to impose dormancy, inactivity, or service fees for certain prepaid products, primarily gift cards. The final rule also, among other things, generally prohibits the sale or issuance of such products if they have an expiration date of less than five years. The amendments implement statutory requirements set forth in the Credit Card Accountability Responsibility and Disclosure Act of 2009.

DATES: The rule is effective August 22, 2010.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Counsel, Vivian Wong or Dana Miller, Senior Attorneys, or Mandie Aubrey, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of the types of transactions covered by the EFTA and Regulation E include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for the disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) interprets the requirements of Regulation E to facilitate compliance and provides protection from liability under Sections 916 and 917 of the EFTA (as redesignated by the Credit Card Act) for financial institutions and other persons subject to the Act who act in conformity with the Board's commentary interpretations. 15 U.S.C. 1693n(d)(1). The commentary is updated periodically to address significant questions that arise.

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law.[1] Section 401 of the Credit Card Act amends the EFTA and imposes certain restrictions on a person's ability to impose dormancy, inactivity, or service fees with respect to gift certificates, store gift cards, and general-use prepaid cards. In addition, the Credit Card Act generally prohibits the sale or issuance of such products if they are subject to an expiration date earlier than five years from the date of issuance of a gift certificate or the date on which funds were last loaded to a store gift card or general-use prepaid card.

The Credit Card Act directs the Board to prescribe rules implementing EFTA Section 915 within nine months after enactment. The gift card and related provisions become effective 15 months after enactment, or on August 22, 2010. *See* EFTA Section 915(d)(3); Section 403 of the Credit Card Act.

II. Background

A gift card is a type of prepaid card that is designed to be purchased by one consumer and given to another consumer as a present or expression of appreciation or recognition. When provided in the form of a plastic card, a user of a gift card is able to access and spend the value associated with the device by swiping the card at a POS terminal, much as a person would use a debit card. Among the benefits of a gift card are the ease of purchase for the gift-giver and the recipient's ability to choose the item or items ultimately purchased using the card. According to one survey, over 95 percent of Americans have received or purchased a gift card.[2]

There are two distinct types of gift cards: Closed-loop cards and open-loop cards. Closed-loop gift cards constitute the majority of the gift card market, both in terms of the number of cards issued and the dollar value of the amounts loaded onto or spent with gift cards.[3] These cards generally are accepted or honored at a single merchant or a group of affiliated merchants (such as a chain of book stores or clothing retailers) as payment for goods or services. They have limited functionality and generally can only be used to make purchases at the merchant or group of merchants.

Closed-loop gift cards are typically issued by a merchant, or by a card program sponsor or service provider working with a merchant, and not by a financial institution. These cards may be sold in a predenominated or consumer-specified amount at the merchant itself or distributed through other retail outlets, such as at grocery stores or drug stores. Generally, closed-loop gift cards cannot be reloaded with additional value after card issuance. Further, the issuer typically does not collect any information regarding the identity of the gift card purchaser or the recipient.

For merchant-issuers, gift cards have largely replaced paper-based gift certificates as a more cost-effective and efficient means of facilitating gift-giving by consumers. In addition to reducing costs associated with the issuance of paper certificates, electronic gift cards may also be less vulnerable to fraud or counterfeiting. Merchants benefit from the sale of items purchased with gift cards, as well as from additional spending by gift card recipients beyond the face amount on the card. Some merchants may also derive revenue from fees, such as from monthly maintenance or transaction-based fees. Nonetheless,

[1] Public Law 111–24, 123 Stat. 1734 (2009).

[2] *See* Comdata, 2007 Adult Gift Card Study (available at: *http://www.comdata.com/comdata/content/surveys/2007/adult_gift_card_study_2007.pdf*).

[3] There are no consensus industry figures about the overall size of the prepaid card market. *See* Rachel Schneider, "The Industry Forecast for Prepaid Cards, 2009," Center for Financial Services Innovation (March 2009) at 4 (available at: *http://www.cfsinnovation.com/research-paper-detail.php?article_id=330539*). According to the Federal Reserve's 2007 Electronic Payments Study, $36.6 billion was spent using closed-loop prepaid cards in 2006, compared to $13.3 billion spent using open-loop prepaid cards. *See* 2007 Federal Reserve Electronic Payments Study 27–42 (March 2008). Industry studies using different methodologies suggest a larger prepaid card market, but nonetheless confirm that the closed-loop cards make up a substantial portion of the market. *See, e.g.,* Tim Sloane, "Sixth Annual Closed Loop Prepaid Market Assessment," Mercator Advisory Group (October 2009) (estimating that of the $247.7 billion total amount loaded across all prepaid segments in 2008, 75 percent, or $187.24 billion, were loaded onto closed-loop cards, including closed-loop gift cards).

most merchant-issued closed-loop gift cards today do not charge any fees or carry expiration dates.[4]

Open-loop gift cards differ in several respects from closed-loop gift cards. First, open-loop gift cards typically carry a card network brand logo (such as Visa, MasterCard, American Express, or Discover). Thus, they can be used at a wide variety of merchants that accept or honor cards displaying that brand. Second, open-loop gift cards are generally issued by financial institutions. Third, due in part to higher compliance and consumer service costs, open-loop gift cards are more likely to carry fees compared to closed-loop gift cards, including card issuance and transaction-based fees. Fourth, open-loop gift cards are more likely to offer the capability of being reloaded with additional value (reloadable) than are closed-loop gift cards.

A consumer may obtain gift cards in several ways. Gift cards can be purchased at retail locations, by telephone, or on-line for the purchaser's own purposes or received from another consumer as a gift. In addition, gift cards can be received through a loyalty, award, or promotional program. For example, a merchant may distribute its own closed-loop gift card to encourage consumers to visit the store or for customer retention purposes, such as through a frequent buyer program. Merchants and product manufacturers may also provide gift cards to consumers as a means of issuing a rebate for the consumer's purchase of a particular product instead of sending paper rebate checks. Employers may provide gift cards to their employees as a reward for good job performance.

Concerns have been raised regarding the amount of fees associated with gift cards, the expiration dates of gift cards, and the adequacy of disclosures. Consumers who do not use the value of the card within a short period of time may be surprised to find that the card has expired or that dormancy or service fees have reduced the value of the card. Even where fees or terms are disclosed on or with the card, the disclosures may not be clear and conspicuous.

At the state level, more than 40 states have enacted laws applicable to gift cards in some fashion. Most commonly, state gift card laws may restrict the circumstances under which dormancy, inactivity, or service fees may be charged and/or restrict the circumstances under which the card or funds underlying the card may expire.[5] Other state laws simply require the disclosure of fees or expiration dates. Many states have applied abandoned property or escheat laws to funds remaining on gift cards, and some states require that consumers have the option of receiving cash back when the underlying balance falls below a certain amount. However, while all state gift card laws address closed-loop gift cards in some manner, many state gift card laws do not apply to open-loop bank-issued cards.[6]

III. The Board's Proposed Revisions to Regulation E

Summary of Proposal

In November 2009, the Board published a proposal to amend Regulation E and the official staff commentary to implement the gift card provisions of the Credit Card Act (November 2009 Proposed Rule).[7] The proposal applied to gift certificates, store gift cards, and general-use prepaid cards, as these terms were defined in the proposal. The proposal also implemented statutory exclusions for certain prepaid products that are not considered gift certificates, store gift cards, or general-use prepaid cards under the rule. The proposed exclusions applied to, among other things, cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate and loyalty, award, and promotional gift cards.

Consistent with the statute, the proposal would have prohibited any person from imposing dormancy, inactivity, or service fees with respect to gift certificates, store gift cards, and general-use prepaid cards, unless certain conditions were satisfied. These conditions were that: (1) There must be at least a one-year period of inactivity with respect to the certificate or card prior to the imposition of the fee; (2) not more than one fee may be charged per month; and (3) disclosures regarding dormancy, inactivity, or service fees are stated clearly and conspicuously on the certificate or card and given prior to purchase. The Board also proposed to interpret the term "service fee" to include any fees that may be imposed from time to time, which would include transaction-based fees (such as ATM, balance inquiry, and card reload fees) as well as monthly maintenance fees.

The November 2009 Proposed Rule provided that a gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is at least five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, the proposal would have required information regarding the terms of expiration to be stated clearly and conspicuously on the certificate or card and disclosed prior to purchase.

The November 2009 Proposed Rule set forth two proposed alternative approaches regarding the sale of a certificate or card to minimize potential confusion for consumers in circumstances where the expiration date on a certificate or card and the expiration date for the underlying funds differ. The first alternative would have prohibited the sale or issuance of a certificate or card that has a printed expiration date that is less than five years from the date of purchase. The second alternative would have prohibited the sale or issuance of a certificate or card, unless a person has policies and procedures in place to ensure that a consumer has a reasonable opportunity to purchase a certificate or card that has an expiration date that is at least five years from the date of purchase. In addition, the proposed rule would have prohibited the imposition of any fees for replacing an expired certificate or card where the underlying funds remained valid, to ensure that consumers are able to access the underlying funds for the full five-year period.

In addition to requiring the disclosure of dormancy, inactivity, or service fees, the proposed rule would have required the disclosure of all other fees imposed in connection with a gift certificate, store gift card, or general-use prepaid card. These disclosures would be provided on or with the certificate or card and disclosed prior to purchase. The proposed rule also would have required the disclosure on the certificate or card of a toll-free telephone number and, if one is maintained, a Web site,

[4] *See, e.g.,* Montgomery County Office of Consumer Protection, Gift Card Report 2007 (available at: *http://www.montgomerycountymd.gov/content/ocp/giftcards2007final.pdf*) (reporting that 18 out of 22 closed-loop gift cards surveyed do not impose fees or carry expiration dates). *See also* Retail Gift Card Association, Code of Principles (available at: *http://www.thergca.org/uploads/Code_of_Principles_PDF.pdf*) (recommending the elimination of dormancy or inactivity fees and of expiration dates as a best practice).

[5] *See, e.g.,* Consumers Union, State Gift Card Consumer Protection Laws (available at: *http://www.consumersunion.org/pub/core_financial_services/003889.html*); National Conference of State Legislatures, Gift Cards and Gift Certificates Statutes and Recent Legislation (available at: *http://www.ncsl.org/programs/banking/GiftCardsandCerts.htm*).

[6] *See, e.g.,* Ark. Code section 4–88–704; Cal. Civ. Code section 1749.45; Fla. Stat. section 501.95; and Md. Comm. Code Ann. section 14–1320.

[7] 74 FR 60986 (Nov. 20, 2009).

that a consumer may use to obtain fee information or replacement certificates or cards.

Overview of Public Comments

The Board received over 230 comment letters on the proposal. The majority of the comment letters were submitted by industry commenters, including card issuers, card networks, industry trade associations, retailers, and prepaid card program managers and distributors. In addition, letters were submitted by individual consumers, consumer groups, a city government entity, and one state attorney general.

Many individual consumers urged the Board to prohibit any and all fees in connection with gift certificates, store gift cards, and general-use prepaid cards as well as the expiration of any funds added to such certificates or cards to ensure that consumers do not lose any value on certificates or cards they have purchased. The state attorney general commenter and city government entity commenter asserted that the final rule should include restrictions on the fees that may be imposed in connection with covered certificates or cards as well as stringent standards regarding the size and prominence of the prescribed disclosures. The state attorney general commenter also encouraged the Board to include rules to make clear that more stringent state protections are not preempted by Federal law.

To minimize the fees that could be imposed on a gift certificate, store gift card, and general-use prepaid card, consumer group commenters urged the Board to adopt an expansive definition of "service fee" and to broadly interpret "activity" for purposes of determining when a consumer's gift card has been used. Consumer group commenters also requested that the Board exercise its new authority under the Credit Card Act to set caps on dormancy, inactivity, and service fees and to set floor amounts above which fees could not be charged. Finally, consumer groups asked the Board to extend EFTA and Regulation E protections to all prepaid cards, including general-purpose reloadable cards that may be used as account substitutes by the unbanked.

Industry commenters asserted that the Board should limit its interpretation of the term "service fee" to monthly maintenance fees, and thus exempt activity-based fees, such as per transaction, ATM, balance inquiry, and reload fees, from the substantive restrictions regarding the imposition of service fees. In addition, industry commenters expressed concern that because of space constraints, the broad definition of "service fee" would make it impossible for issuers to comply with the requirement to disclose all such fees on the certificate or card itself.

With respect to the expiration date restrictions, industry commenters generally supported the Board's decision to apply the five-year expiration date requirement to the underlying funds, rather than the card itself. Industry commenters were divided on the appropriate alternative approach regarding the sale of certificates or cards subject to the rule. However, a slight majority favored the flexibility afforded by the proposed alternative approach that would allow certificates or cards to be sold so long as the consumer has a reasonable opportunity to purchase a certificate or card with at least five years remaining before expiration.

Industry commenters also expressed concerns regarding the proposed guidance regarding the exclusion for cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate. Industry commenters believed that the Board's proposed examples were overly restrictive in terms of whether and how general-purpose reloadable cards could be sold in the same location as gift cards. Specifically, these commenters noted that the proposed examples requiring retailers to use separate displays for gift cards and excluded prepaid cards, including general-purpose reloadable cards, may lead some retailers to decide to stop selling general-purpose reloadable cards altogether. According to these commenters, this would limit consumer choice to the detriment of unbanked consumers who may use general-purpose reloadable cards as a substitute for a traditional debit card tied to a checking or savings account. Industry commenters also urged the Board to exclude from the final rule temporary cards issued in connection with general-purpose reloadable cards, even if the temporary card was issued as a non-reloadable card.

Finally, industry commenters urged the Board to grandfather certificates or cards sold or issued prior to the effective date of the final rule of August 22, 2010 from all requirements under the rule, as well as to provide relief for certificates or cards that have been distributed, but not sold, as of August 22, 2010 to avoid significant costs associated with printing new cards and replacing old stock.

IV. Summary of Final Rule

Scope of Rule

The final rule applies to gift certificates, store gift cards, and general-use prepaid cards, as those terms are generally defined in the Credit Card Act, with certain adjustments to the statutory definitions for consistency and clarity. The scope of the final rule is generally limited to gift certificates, store gift cards, or general-use prepaid cards sold or issued to consumers primarily for personal, family, or household purposes, consistent with the general scope of the EFTA and Regulation E.[8] Thus, the rule does not apply to cards, codes, or other devices[9] where the end use is for business purposes, such as to pay for business travel expenses or office supplies. However, the fact that a person may sell cards, codes, or other devices to a business does not by itself exclude the cards, codes, or other devices from the scope of the rule. Such cards, codes, or other devices are subject to the rule if the business purchaser resells or distributes the cards, codes, or other devices to consumers primarily for personal, family, or household purposes, unless the cards, codes, or other devices are otherwise excluded under § 205.20(b).

Restrictions on Dormancy, Inactivity, or Service Fees

Under the final rule, no person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied. First, such fees may be imposed only if there has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee. Second, only one such fee may be assessed in a given calendar month. Third, disclosures regarding dormancy, inactivity, or service fees must be clearly and conspicuously stated on the certificate or card, and the person issuing or selling the certificate or card must provide these disclosures to the

[8] Loyalty, award, and promotional gift cards, as defined in § 205.20(a)(4) and discussed below, are subject to certain disclosure requirements under the final rule, but not to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates.

[9] The final rule and accompanying supplementary information generally use the term "certificate or card" to refer to a gift certificate, store gift card, or general-use prepaid card that is subject to the requirements under § 205.20. In other places, the term "card, code, or other device" is generally used to refer more broadly both to covered certificates or cards as well as other prepaid products which may fall outside the rule under an exclusion in § 205.20(b).

purchaser before the certificate or card is purchased.

As in the proposal, the final rule includes in the definition of "service fee" both account maintenance fees that are charged on a recurring basis as well as activity-based fees which may occur from time to time, such as per transaction, balance inquiry, ATM, and reload fees.

Expiration Date Restrictions

The final rule provides that a gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, information regarding whether funds underlying a certificate or card may expire must be clearly and conspicuously stated on the certificate or card and disclosed prior to purchase.

Consumers may be confused if the expiration date on a certificate or card differs from the expiration date for the underlying funds. The final rule thus provides that no person may sell or issue a certificate or card unless the person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card that has an expiration date that is at least five years from the date of purchase. A person who has established policies and procedures to prevent the sale of a certificate or card with less than five years from the date of purchase also satisfies the requirement.

The final rule also generally requires a certificate or card to include a disclosure alerting consumers to the difference between the certificate or card expiration date and the funds expiration date, if any, and that the consumer may contact the issuer for a replacement card. This disclosure must be stated with equal prominence and in close proximity to the certificate or card expiration date. Non-reloadable certificates or cards that bear an expiration date on the certificate or card that is at least seven years from the date of manufacture need not include this disclosure, however.

The final rule further prohibits the imposition of any fees for replacing an expired certificate or card if the underlying funds remain valid, to ensure that consumers are able to access the underlying funds for the full five-year period. The final rule also provides, however, that in lieu of sending a replacement certificate or card, issuers may remit, without charge, the remaining balance of funds to the consumer.

Additional Disclosure Requirements Regarding Fees

In addition to the statutory restrictions for dormancy, inactivity, or service fees, the final rule requires the disclosure of all other fees, such as initial issuance fees and cash-out fees, imposed in connection with a gift certificate, store gift card, or general-use prepaid card. These disclosures must be provided on or with the certificate or card and disclosed prior to purchase. The final rule also requires disclosure on the certificate or card of a toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information or replacement certificates or cards.

Exclusions

Consistent with the statute, the final rule excludes certain prepaid products from the definitions of gift certificate, store gift card, or general-use prepaid card. For example, cards, codes, or other devices that are issued in connection with a loyalty, award, or promotional program, or that are reloadable and not marketed or labeled as a gift card or gift certificate, are not subject to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates. The final rule provides that the exclusion for cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate applies also to temporary cards issued solely in connection with a general-purpose reloadable card, even if the temporary card is initially non-reloadable.

To mitigate potential consumer confusion, the final rule requires a loyalty, award, or promotional gift card to state on the front of the card both that it is issued for loyalty, award, or promotional purposes as well as any funds expiration date that may apply. In addition, all fees, including any dormancy, inactivity, or service fees, must be disclosed on or with the loyalty, award, or promotional gift card.

Mandatory Compliance Date

The mandatory compliance date for the rule is August 22, 2010 as set forth in the Credit Card Act. Under the final rule, certificates or cards sold on or after August 22, 2010 must fully comply with the requirements of this section, including any disclosure requirements that apply. In addition, loyalty, award, or promotional gift cards will be subject to the disclosure requirements discussed above if they are issued pursuant to a loyalty, award, or promotional program that begins on or after August 22, 2010.

V. Legal Authority

Section 401 of the Credit Card Act creates a new Section 915 of the EFTA. This provision prohibits any person from charging dormancy, inactivity, or service fees with respect to a gift certificate, store gift card, or general-use prepaid card, unless there have been at least 12 months of inactivity with respect to the certificate or card, not more than one fee is charged in any given month, and certain disclosures regarding such fees are provided to the consumer. *See* EFTA Section 915(b); 15 USC 1693m(b). *See also* § 205.20(d). In addition, Section 401 of the Credit Card Act makes it unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date, unless the expiration date is at least five years after the date on which a gift certificate is issued or five years after funds are last loaded on a store gift card or general-use prepaid card, and the terms of expiration are clearly and conspicuously disclosed. *See* EFTA Section 915(c); 15 U.S.C. 1693m(c). *See also* § 205.20(e).

Section 401(d)(1) of the Credit Card Act requires the Board to prescribe rules to carry out the new requirements. These requirements are implemented in new § 205.20 in the final rule. Sections 205.20(a) and (b) of the final rule define the products subject to the new requirements and implement statutory exclusions set forth in the Credit Card Act. The Board has also used the authority under EFTA Section 915(a)(2)(D)(iii) to adopt certain disclosure requirements for loyalty, award, and promotional gift cards in § 205.20(a)(4)(iii). *See* 15 U.S.C. 1693m(a)(2)(D)(iii).

Section 401(d)(1) of the Credit Card Act gives the Board the authority to prescribe rules addressing the amount of dormancy, inactivity, or service fees that may be imposed, and the balance below which such fees may be assessed. *See* EFTA Section 915(d)(1); 15 U.S.C. 1693m(d)(1). In addition, Section 401(d)(2) of the Credit Card Act requires the Board to determine the extent to which the individual definitions and provisions of the EFTA and Regulation E should apply to gift certificates, store gift cards, and general-use prepaid cards. *See* EFTA Section 915(d)(2); 15 U.S.C. 1693m(d)(2). The Board has used this authority under Section 401(d)(2) of the Credit Card Act to require certain additional fee-related disclosures for covered certificates or cards. *See*

§ 205.20(f)(1). Lastly, Section 402 of the Credit Card Act amends EFTA Section 920 to provide that the EFTA does not preempt any state laws that address dormancy, inactivity, or service fees or expiration dates for gift certificates, store gift cards, or general-use prepaid cards if such state laws provide greater consumer protection than the new gift card provisions. *See* § 205.12(b).

In addition to the statutory mandates set forth in the Credit Card Act, Section 904(a) of the EFTA authorizes the Board to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA are to establish "the rights, liabilities, and responsibilities of participants in electronic fund transfer systems" and to provide "individual consumer rights." *See* EFTA Section 902(b); 15 U.S.C. 1693. Section 904(c) of the EFTA further provides that regulations prescribed by the Board may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers that in the judgment of the Board are necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. The Board has exercised its authority under EFTA Sections 904(a) and 904(c) to adopt additional requirements in §§ 205.20(c), 205.20(e)(1), 205.20(e)(3)(ii)–(iii), 205.20(e)(4) and 205.20(f)(2), to make conforming changes to §§ 205.3(a) and 205.4(a)(1), and where otherwise specifically stated in the Section-by-Section analysis to effectuate the purposes of and facilitate compliance with the EFTA. The Section-by-Section analysis and Final Regulatory Flexibility Analysis serve as the economic impact analysis pursuant to EFTA Section 904(a)(2).

VI. Section-by-Section Analysis

Section 205.3 Coverage

3(a) General

Section 205.3(a) is revised to provide that the new gift card provisions in § 205.20 apply to any person. The revision reflects that the scope of the Credit Card Act's gift card provisions is not limited to financial institutions. For example, EFTA Section 915(b) prohibits "any person" from imposing a dormancy, inactivity, or service fee in connection with a gift certificate, store gift card, or general-use prepaid card unless certain conditions are met. *See* § 205.20(d). Similarly, EFTA Section 915(c) generally prohibits "any person" from selling or issuing a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date. *See* § 205.20(e). Thus, § 205.20 applies to any of the parties in a certificate or card distribution chain, including but not limited to a card issuer, a program manager, and a retailer of prepaid cards, to the extent they engage in any of the acts covered by that section with respect to gift certificates, store gift cards, or general-use prepaid cards, or to loyalty, award, or promotional gift cards.

Section 205.4 General Disclosure Requirements; Jointly Offered Services

Section 205.4 contains the general disclosure requirements under Regulation E, including provisions relating to the form of disclosure. Section 205.4(a)(1) provides that disclosures required by the regulation shall be clear and readily understandable, in writing, and in a form that the consumer may keep. The Board proposed to revise § 205.4(a)(1) to provide that for certain disclosures required by the regulation, different disclosure standards may apply. The revision to § 205.4(a)(1) is adopted as proposed.

As revised, § 205.4(a)(1) clarifies that the requirement that disclosures be clear and readily understandable, in writing, and in a form the consumer may keep is one of general application, and that different requirements apply when specified in the rule. For example, as further discussed below, the disclosures for certain prepaid cards set forth in the final rule are subject to a "clear and conspicuous" standard, consistent with Section 915 of the EFTA, rather than the "clear and readily understandable" standard that generally applies under Regulation E. *See* § 205.20, discussed below. Similarly, under current § 205.11(c), notices provided by financial institutions to satisfy the error investigation requirements of Regulation E may be provided orally or in writing. *See* comment 11(c)–1.

Two industry commenters recommended that the Board revise § 205.4(a)(1) to explicitly provide that the consumer consent provisions of the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) do not apply to gift card disclosures provided electronically. Section 205.4(a)(1) currently provides that disclosures required by the regulation may be provided electronically, subject to compliance with the consumer consent provisions of the E-Sign Act. The E-Sign Act consumer consent provisions only apply when a statute or regulation provide that the sole means of providing disclosures is in writing. The Board believes the current regulation is clear that a person need not obtain E-Sign consent to provide gift card disclosures electronically because the final rule permits gift card disclosures to be provided in writing, orally, or electronically.[10] Thus, the final rule does not contain the suggested revisions.

Section 205.12 Relation to Other Laws

EFTA Section 920 (as redesignated by the Credit Card Act) provides that the EFTA does not preempt any state laws relating to electronic fund transfers except to the extent that such laws are inconsistent with the EFTA's provisions. *See* 15 U.S.C. 1693r. Section 920 further clarifies that a state law is not inconsistent with the EFTA if the state law provides greater protection for the consumer than under the Act. Accordingly, Section 920 effectively creates a federal floor for the protections set forth in the Act (floor preemption). Section 205.12(b) of Regulation E implements this provision.

The Credit Card Act amended EFTA Section 920 to apply the EFTA's existing preemption provisions to state laws that address "dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards." *See* Section 402 of the Credit Card Act. Thus, state laws that provide greater protection for consumers than Title IV of the Credit Card Act as codified in the EFTA, are not preempted by the EFTA. The Board proposed to amend § 205.12(b) of Regulation E and comment 12(b)–1 to conform with the amendments to EFTA Section 920 made by the Credit Card Act. The final rule amends the regulation and commentary generally as proposed, with certain revisions for clarity.

One state attorney general commenter urged the Board to include additional rules to clarify that more stringent state protections are not preempted by federal law with respect to gift cards. The Board believes, however, that § 205.12(b)(1) already is clear that a state law is not preempted due to inconsistency with federal law if it is more protective of consumers.

Industry commenters did not comment on the Board's proposed revisions to § 205.12(b), but raised a separate issue relating to preemption in connection with state escheat laws. This issue is discussed later in the Section-by-Section analysis.

[10] Of course, a person providing gift card disclosures electronically must continue to satisfy the requirements under §§ 205.20(c)(3) and (c)(4).

Section 205.20 Requirements for Gift Cards and Gift Certificates

20(a) Definitions

EFTA Section 915(a)(2) generally defines the scope of gift cards and gift certificates that are subject to the Credit Card Act's restrictions on dormancy, inactivity, or service fees and the terms of expiration. Specifically, EFTA Section 915 applies to gift certificates, store gift cards, and general-use prepaid cards as those terms are defined in the statute. In addition, EFTA Section 915(a)(1) defines a dormancy fee, inactivity charge or fee, and EFTA Section 915(a)(3) defines a service fee. *See* 15 U.S.C. 1693m(a).

Section 205.20(a) of the final rule defines the following terms: Gift certificate; store gift card; general-use prepaid card; loyalty, award, or promotional gift card; dormancy or inactivity fee; service fee; and activity. Comments received regarding the definitions are generally discussed in connection with the relevant term below.

The definitions of gift certificate, store gift card, and general-use prepaid card generally track the definitions set forth in the statute. However, the final rule makes certain adjustments to the statutory definitions pursuant to the Board's authority under EFTA Section 904(c) to provide clarity and to harmonize key terms throughout the rule.

Card, Code, or Other Device

As discussed in the November 2009 Proposed Rule, EFTA Section 915 does not use consistent terminology to describe the payment devices covered by the statute. For example, the statutory definition of a general-use prepaid card refers to a "card or other payment code or device," while the statutory definition of a store gift card refers to an "electronic promise, plastic card, or other payment code or device." Distinguishing the types of products covered under the rule by, for instance, the material that is used to produce a payment card would not be consistent with the statute's overall purpose. The adoption of such distinctions would result in some gift card products being excluded from the rule altogether based on the type of material used to make the card. For example, if the definition of store gift card literally required a card to be made out of plastic, then a reloadable gift card that was made with a different material would neither be a store gift card nor fall under any of the other definitions of covered products.[11]

In addition, the exclusions in EFTA Section 915(a)(2)(D) apply to an "electronic promise, plastic card, or payment code or device" that meets certain specified criteria. *See* 15 U.S.C. 1693m(a)(2)(D). The Board does not believe that an issuer that, for example, chooses to use non-plastic biodegradable materials to create a more environmentally-friendly card product should be precluded from relying on an exclusion solely because its payment device is not made of plastic. Therefore, the proposed rule generally referred to "cards, codes, or other devices" to avoid such arbitrary distinctions and to provide consistency across the definitions. The Board did not receive any comments on this approach, and the final rule retains the proposed terminology.

Proposed comment 20(a)–1 clarified that the requirements of § 205.20 generally apply to all cards, codes, or other devices that meet the general definition of gift certificate, store gift card, or general-use prepaid card, even if they are not issued in card form. That is, the rule applies even if a physical card or certificate is not issued. The Board did not receive any comments on the proposed comment. Accordingly, it is adopted generally as proposed, with certain revisions to provide additional guidance.

Final comment 20(a)–1 clarifies that § 205.20 covers products even if they are not issued in card form, such as account numbers or bar codes that enable a consumer to access underlying funds. Similarly, § 205.20 applies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. Section 205.20 also applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued, and whether or not it may be redeemed electronically or in the merchant's store. Thus, for example, if a merchant e-mails a code that a consumer may redeem in a specified amount either on-line or in the merchant's store, that code is covered under § 205.20, unless one of the exclusions in § 205.20(b) apply. *See* comment 20(a)–1.

The final comment also provides that a card, code, or other device may meet the definition of gift certificate, store gift card, or general-use prepaid card in § 205.20(a)(1) through (3), if it is an electronic promise, *see* comment 20(a)–2, discussed below, as well as a promise that is not electronic. *But see* § 205.20(b)(5).

Electronic Promise

The term "electronic promise" is used in several places in the statute to refer to a type of payment mechanism or device. *See* EFTA Sections 915(a)(2)(B), (a)(2)(C), and (a)(2)(D). As proposed, comment 20(a)–2 clarified that the term "electronic promise" means "a person's commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer."[12] The proposed comment reflected the Board's view that an electronic promise reflects a person's commitment to pay that is itself represented by a "card, code, or other device," rather than a distinct payment mechanism. Commenters did not address the proposed comment, and it is adopted generally as proposed. Thus, for example, if a merchant issues a code that can be given as a gift and redeemed by the recipient in an on-line transaction for goods or services, that code represents an electronic promise by the merchant and is a card, code, or other device covered by § 205.20. *See* comment 20(a)–2.

Specified Amount

The statutory definitions of "gift certificate" and "store gift card" refer to products that are "issued in a *specified* amount." In contrast, the statutory definition of a "general-use prepaid card" refers to products that are "issued in a *requested* amount." *See* EFTA Sections 915(a)(2)(A), (a)(2)(B), and (a)(2)(C); 15 U.S.C. 1693m(a)(2)(A), (a)(2)(B), and (a)(2)(C). One possible interpretation of the statute's use of different terms could suggest that gift certificates and store gift cards issued in a consumer-requested amount and general-use prepaid cards issued in a predenominated (or specified) amount would be excluded from the rule. The Board does not believe that such a result would be consistent with the statute's purpose.

Accordingly, to ensure that consumers receive the same protections when purchasing gift cards or gift certificates regardless of whether the

[11] Products issued in paper form only are excluded under EFTA Section 915(a)(2)(D)(v) and § 205.20(b)(5), discussed below.

[12] *See, e.g.,* UCC 3–103(a)(12) (defining "promise" as a "written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.").

amount on the gift card is determined by the issuer or the consumer, the Board proposed to interpret the statutory definitions of gift certificate, store gift card, and general-use prepaid card broadly to cover certificates or cards whether the amounts are predenominated or consumer-designated. Therefore, the proposed rule used the term "specified" consistently across all three defined product terms to capture all certificates or cards whether they are issued in predenominated amounts or in an amount requested by a consumer in a particular transaction.

Commenters generally supported the Board's proposed reconciliation of the statutory terms, and the final rule retains this approach. Two industry commenters, however, noted that both the statute and the proposed rule appear to limit the scope of coverage to certificates or cards issued with specific currency denominations (for example, a $50 gift card or certificate). Accordingly, these commenters asked the Board to clarify that the rule does not apply to gift cards that entitle the cardholder to a specific "experience," such as a hotel stay or a golf lesson, rather than a monetary value that may be applied towards goods or services. These commenters were particularly concerned that if "experience" cards were subject to the five-year minimum expiration requirements, issuers or sponsors of such cards may have to raise prices to adjust for anticipated cost increases over a five-year period for the specified experience.

The Board agrees that such a clarification is appropriate in light of the statutory language referring to certificates or cards "issued in a specified [or requested] amount." This language suggests that the statute is intended to cover certificates or cards that are issued in a specified currency denomination.

Accordingly, new comment 20(a)–3 is added to clarify that cards, codes, or other devices redeemable for a specific good or service, or "experience," such as a spa treatment, hotel stay, or airline flight, generally are not subject to the requirements of § 205.20 because they are not issued to a consumer "in a specified amount." Similarly, a card, code, or other device that entitles the consumer to a certain percentage off the purchase of a good or service, such as a card offering 20% off of any purchase in a store, is not subject to the requirements of § 205.20 because it is not issued to a consumer in a "specified amount." Nonetheless, if the card, code, or other device is issued in a specified or predenominated amount that can be applied toward the specific good or service, or states a specific monetary value, such as "a $50 value," comment 20(a)–3 clarifies that the card, code, or other device is subject to this section, unless one of the exceptions in § 205.20(b) apply. *See, e.g.,* § 205.20(b)(3).

Personal, Family, or Household Purposes

Although the EFTA generally applies only to consumer accounts, the gift card provisions of the Credit Card Act do not expressly limit the scope of the new restrictions to certificates or cards issued primarily for personal, family, or household purposes. Accordingly, the Board solicited comment on whether it would be appropriate to limit the scope of the final rule so that it does not apply to certificates or cards issued for business purposes. The Board noted, however, that any such limitation likely would not exclude certificates or cards that are purchased by a business for the purposes of redistribution or resale to consumers primarily for personal, family, or household purposes. Given that the rule could therefore require issuers to adopt controls and potentially monitor the distribution or sale of gift cards to ensure that the end use is for business purposes, the Board also solicited comment regarding whether the rule should cover cards, codes, or other devices issued for business purposes.

Industry commenters urged the Board to exclude certificates or cards issued for business purposes from the rule, stating that such an approach would be consistent with the scope of the EFTA, which is generally limited to consumer-purpose products. Industry commenters also noted that the sophistication of commercial parties in a business-to-business transaction alleviated the need to mandate the protections set forth in the Credit Card Act for business-purpose certificates or cards. Consumer groups did not address the issue.

Industry commenters also asserted that the final rule should not require card issuers to adopt controls and monitor the distribution or sale of gift cards purchased by a business to ensure that the end use is for business purposes. Instead, industry commenters argued that it should be sufficient for issuers to rely on contractual provisions prohibiting the resale or redistribution of such products to the public. Industry commenters urged the Board to also grant a safe harbor from any liability if a certificate or card was sold or issued to consumers in violation of contractual provisions.

The final rule limits the scope of the rule to cards, codes, or other devices issued primarily for personal, family, or household purposes. Limiting the rule to cards, codes, or other devices issued primarily for personal, family, or household purposes is consistent with the scope of the EFTA. In addition, the Board understands that Title IV of the Credit Card Act was primarily intended to enable consumers to spend the full value on their gift cards within a reasonable time frame without having that value reduced by associated fees and expiration dates.[13] The Board is not aware of any similar concerns regarding business-purpose prepaid certificates or cards.

New comment 20(a)–4 clarifies that § 205.20 only applies to cards, codes, or other devices that are sold or issued to consumers primarily for personal, family, or household purposes. The comment provides, however, that a card, code, or other device may continue to be subject to the rule even if it is initially purchased by a business, if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. In addition, the new comment provides that the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not by itself mean that the card, code, or other device is outside the scope of § 205.20, if the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. *See, however,* §§ 205.20(a)(4) and (b)(3).

New comment 20(a)–4 further states that whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager's retail outlets, such gift cards are subject to the requirements of § 205.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes.

In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and therefore would fall outside the scope of § 205.20, if the purchaser of the card, code, or device is contractually

[13] *See, e.g.,* "Schumer, Mark Udall Introduce Bill to Protect Consumers from Hidden Gift Card Fees Secretly Draining Shoppers' Pockets", Press Release, Mar. 27, 2009 (available at: *http://schumer.senate.gov/new_website/record.cfm?id=310799*).

prohibited from reselling or redistributing the card, code, or device to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with § 205.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in § 205.20(b) applies.

New comment 20(a)–5 provides examples of cards issued for business purposes.

Issued on a Prepaid Basis

The definitions of "gift certificate," "store gift card," and "general-use prepaid card" have each been revised in the final rule to clarify that the card, code, or other device must be issued on a "prepaid basis" to meet the particular definition, consistent with the statute. *See, e.g.,* EFTA Section 915(a)(2)(A)(iii); *See* 15 U.S.C. 1693m(a)(2)(A)(iii). For purposes of § 205.20, a card, code, or other device may be issued on a prepaid basis whether the card, code, or other device is loaded in advance by a consumer or by another person.

20(a)(1) Gift Certificate

Section 205.20(a)(1) defines the term "gift certificate" as a card, code, or other device that is: (a) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and (b) redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services. The definition generally tracks the definition set forth in the statute, with modifications to simplify and clarify the definition. *See* EFTA Section 915(a)(2)(B); 15 U.S.C. 1693m(a)(2)(B). The definition is adopted generally as proposed, except that, as discussed above, the scope of the definition is limited to cards, codes, or other devices issued to a consumer primarily for personal, family, or household purposes. In addition, the definition has been revised for consistency with the statute to clarify that the certificate must be issued on a "prepaid basis."

The term "affiliated group of merchants"—as further discussed below under the definition of "store gift card"—includes two or more merchants or other persons that are related by common ownership or common corporate control and share the same name, mark, or logo. The term also includes two or more merchants or other persons that agree among themselves to honor any card, code, or other device that bears the same name, mark, or logo (other than the mark or logo of a payment network) for the purchase of goods or services solely at such merchants or persons. *See* comment 20(a)(2)–2.

20(a)(2) Store Gift Card

Section 205.20(a)(2) defines the term "store gift card" as a card, code, or other device that is: (a) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (b) redeemable upon presentation at a single merchant or an affiliated group of merchants for goods and services. The definition generally tracks the definition set forth in the statute, with modifications to simplify and clarify the definition. *See* EFTA Section 915(a)(2)(C); 15 U.S.C. 1693m(a)(2)(C). The definition is adopted generally as proposed, except that, as discussed above, the scope of the definition is limited to cards, codes, or other devices issued to a consumer primarily for personal, family, or household purposes. In addition, the definition has been revised for consistency with the statute to clarify that the card, code, or other device must be issued on a "prepaid basis." Under the final rule, closed-loop cards generally are considered "store gift cards" or "gift certificates," unless one of the exclusions in § 205.20(b), discussed below, applies.

A card, code, or other device that meets the requirements in § 205.20(a)(2) qualifies as a "store gift card," whether or not more funds may be added to the card, code, or other device. As proposed, the term "store gift card" included a card, code, or other device issued in a specified amount, "whether or not that amount may be increased or reloaded by a consumer." The final rule deletes the reference in proposed § 205.20(a)(2)(i) to the increasing or reloading of a card "by a consumer" to reflect that the amount on a card may be increased or reloaded by a person other than the consumer, such as the card issuer or a merchant. In addition, because "store gift card" includes non-reloadable cards, codes, or other devices that are redeemable at single merchants or affiliated groups of merchants, comment 20(a)(2)–1 clarifies and illustrates by way of example that a gift certificate as defined in § 205.20(a)(1) is a type of store gift card.

Comment 20(a)(2)–2 provides guidance on the term "affiliated group of merchants." Under EFTA Section 915(a)(2), both the definition of "gift certificate" and "store gift card" refer to certificates or cards that are redeemable at a single merchant or "an affiliated group of merchants that share the same name, mark, or logo." The term "affiliate" is not defined in the statute. The Board proposed to interpret the term "affiliate" to include both a relationship between two or more companies that is defined by some form of common ownership or common corporate control by one of the companies, consistent with the use of that term in other contexts.[14] The proposed term would also include an arrangement by which unrelated companies agree to operate a common gift card program in which cardholders may use the same certificate or card at any of the companies. No comments were received on the proposed comment, and it is adopted as proposed.

Accordingly, comment 20(a)(2)–2 provides that the term "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control, and that share the same name, mark, or logo. Thus, for example, the term covers franchisees because franchisees generally are subject to a common corporate set of policies or practices under the terms of their franchise licenses.

Comment 20(a)(2)–2 also provides that the term "affiliated group of merchants" includes arrangements under which two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo for purchases of goods or services solely at the establishments of such merchants or persons. *See also* comment 20(a)(3)–2 regarding mall cards, discussed below. For example, a movie theater chain and a restaurant chain may decide to operate a gift card program that enables cardholders to use the same gift card to pay for movie tickets or concessions at the theater, or for a meal at the restaurant. The Board believes that it is appropriate to treat such arrangements like gift card programs operated by retailers with the same parent company

[14] *See, e.g.,* 12 CFR 222.3(b) (defining "affiliate" under the Board's Regulation V (Fair Credit Reporting)); 12 CFR 223.2 (defining "affiliate" under the Board's Regulation W (Transactions Between Member Banks and Their Affiliates)).

or under common corporate control. Comment 20(a)(2)–2 clarifies, however, that merchants or other persons are not considered affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network. Thus, for example, a grocery store is not considered to be affiliated with a hardware store merely because they both agree to accept Visa or MasterCard-branded cards.

Comment 20(a)(2)–3 addresses mall cards and cross-references comment 20(a)(3)–2, discussed below.

20(a)(3) General-Use Prepaid Card

Section 205.20(a)(3) defines the term "general-use prepaid card" as a card, code, or other device that is: (a) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (b) redeemable upon presentation at multiple, unaffiliated merchants or service providers for goods or services, or usable at ATMs. The definition generally tracks the definition in the statute, with modifications to simplify and clarify the definition. *See* EFTA Section 915(a)(2)(A); 15 U.S.C. 1693m(a)(2)(A). Under the final rule, open-loop cards generally are considered to be "general-use prepaid cards," unless one of the exclusions in § 205.20(b), discussed below, applies.

The definition is adopted generally as proposed, except that, as discussed above, the scope of the definition is limited to cards, codes, or other devices issued to a consumer primarily for personal, family, or household purposes. In addition, consistent with the revision to the definition of "store gift card," the definition of "general-use prepaid card" is revised to delete the reference in proposed § 205.20(a)(3)(i) to increasing or reloading of a card "by a consumer" to reflect that the amount on a card may be increased or reloaded by a person other than the consumer, such as the card issuer or a merchant. The definition has also been revised for consistency with the statute to clarify that the card, code, or other device must be issued on a "prepaid basis."

Comment 20(a)(3)–1 clarifies that a card, code, or other device is "redeemable upon presentation at multiple, unaffiliated merchants" if, for example, the merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

One popular form of gift card is a mall gift card, which is intended to be used or redeemed at participating retailers located within the same shopping mall. In some cases, however, the mall card may also be network-branded, which permits the card to be used at any retailer that accepts that card brand, including retailers located outside the mall. Proposed comment 20(a)(3)–2 generally stated that whether a mall card is considered a store gift card or a general-use prepaid card depends on the locations in which the card may be redeemed. For example, if the use of the mall card is limited to the retailers located within the shopping mall, the card would be more likely to be considered a store gift card. In contrast, if the mall card was network-branded and could be used at any merchant that accepted that brand, the card would be considered a general-use prepaid card.

One industry commenter argued that a mall gift card should be considered a "general-use prepaid card" even if it does not carry a network brand. This commenter noted that mall cards are generally issued by a financial institution or member of a card network, and not by the mall or program sponsor, and that transactions using the mall card are authorized and settled over the payment networks just like other general-use prepaid cards. The commenter also stated that cards issued in connection with other forms of limited open-loop programs that are intended to encourage local residents to support the participating merchants within a community should similarly be viewed as "general-use prepaid cards" because such cards are generally bank-issued and carry similar costs as more traditional network-branded cards.

Comment 20(a)(3)–2 is adopted substantively as proposed. The Board does not believe that the fact that the entity issuing a particular card is a bank should be dispositive of whether the card is a general-use prepaid card. Instead, consistent with the statute, the determination turns on the degree of affiliation between the merchants honoring the card for goods or services. In general, a card, code, or other device is more likely to be considered to be a general-use prepaid card if the merchants honoring the card have no contractual relationship or agreement to redeem the card, code or other device except for the fact that they agree to honor any card, code, or other device carrying the brand of a payment network. *See* comments 20(a)(2)–2, 20(a)(3)–1. Nonetheless, the substantive and disclosure requirements of § 205.20 apply to mall cards whether they are considered store gift cards or general-use prepaid cards.

20(a)(4) Loyalty, Award, or Promotional Gift Card

EFTA Section 915(a)(2)(D)(iii) excludes an electronic promise, plastic card, or payment code or device from the definitions of "gift certificate," "store gift card," or "general-use prepaid card" if it is a loyalty, award or promotional gift card, as such term is defined by the Board. *See also* § 205.20(b)(3).

Proposed § 205.20(a)(4) generally defined the term "loyalty, award, or promotional gift card" as a card, code, or other device that: (a) Is issued in connection with a loyalty, award, or promotional program; (b) is redeemable upon presentation at one or more merchants for goods or services, or usable at ATMs; and (c) provides certain disclosures about any fees and expiration dates that may apply to the card, code, or other device. Proposed § 205.20(b)(3), discussed below, implemented the exclusion for loyalty, award, or promotional gift cards. The final rule adopts the proposed definition of loyalty, award, or promotional gift card in § 205.20(a)(4), substantially as proposed, but modifies the disclosure requirements, as discussed below. In addition, the scope of the definition is limited to cards, codes, or other devices issued on a prepaid basis primarily to a consumer for personal, family, or household purposes.

In contrast to gift cards purchased at a store, loyalty, award, and promotional gift cards typically are not funded through direct payment from the consumer, but instead are funded by the entity sponsoring the card program, such as a merchant, an employer, or a company. Cards issued through such programs may serve as cost-effective substitutes for traditional means of distributing funds through a promotion, such as rebate checks, vouchers, or cash awards.

Much like rebate checks, vouchers, and cash awards, gift cards distributed through a loyalty, award, or promotional program are typically redeemable for a limited period of time. Loyalty, award, or promotional gift cards thus generally carry shorter expiration dates compared to gift cards purchased by consumers through retail channels.

Consumers who receive a gift card redeemable at one merchant as part of a loyalty, award, or promotional program may be surprised to find that the fees and expiration date on the card differ significantly from the fees and expiration date on a substantially similar card that they may have purchased directly from that same merchant. Improved disclosure of these terms for cards subject to the exclusion

may help reduce consumer surprise or confusion.

The November 2009 Proposed Rule did not impose substantive restrictions on dormancy, inactivity, or service fees, or on expiration dates, with respect to loyalty, award, or promotional gift cards. To address potential consumer surprise or confusion, the Board proposed to impose additional disclosure requirements for loyalty, award, or promotional gift cards in § 205.20(a)(4)(iii). Specifically, in order to be deemed a "loyalty, award, or promotional gift card," and therefore qualify for the proposed exclusion in § 205.20(b)(3), the proposed rule would have required that the card, code, or other device set forth disclosures regarding any fees and expiration dates that may apply. While disclosures regarding dormancy, inactivity, or service fees, expiration dates, and a toll-free number and Web site for additional information would have been required to be on the card, code, or other device, disclosures regarding other fees could accompany the card, code, or other device.[15]

Industry commenters generally agreed that disclosures regarding the fees and expiration dates associated with a loyalty, award, or promotional gift card were appropriate. However, many industry commenters urged the Board to provide flexibility in how those disclosures could be provided. In particular, industry commenters urged the Board to permit such disclosures to be provided in accompanying terms and conditions or on a sticker affixed to the card, rather than mandate that the disclosures appear on the card itself.

A few industry commenters, however, believed that the proposed disclosures contravened Congressional intent to exclude loyalty, award, or promotional cards from *all* requirements of the gift card provisions of the Credit Card Act, including the disclosure requirements. These industry commenters also expressed concern that if loyalty, award, or promotional cards were required to carry the same or similar disclosures as those required for gift certificates, store gift cards, and general-purpose prepaid cards, consumers would be less able to clearly differentiate between the different prepaid products. Moreover, these industry commenters stated that in light of the proposed definition of "service fee" to broadly include fees other than monthly maintenance fees, requiring that such fees be stated on the card would effectively limit issuers' ability to charge such fees due to the space limitations on a card.

Some retailers that offer closed-loop gift cards may use the same card design for the gift cards they sell to the general public and cards that they sell at a discount to businesses for distribution as rewards. Likewise, card providers that offer program development and card fulfillment services for reward, promotional, or incentive card programs may offer standardized card designs to their corporate clients. The ability to standardize card designs enables businesses to attain cost savings when ordering a large volume of the same card design, and enhances the ability of the card provider to quickly produce cards to fulfill prepaid card orders. However, the standardization of card designs may also lead to consumer confusion because cards that otherwise appear to be the same may carry terms and conditions, including fees and expiration terms, that vary to a significant degree. Accordingly, the Board continues to believe that clear and conspicuous disclosures regarding the terms and conditions that may apply to loyalty, award, or promotional gift cards are necessary to help consumers avoid surprise from unexpected dormancy, inactivity, or service fees or from short expiration dates.

Based upon comments received and further analysis, the Board, pursuant to its authority under EFTA Section 915(a)(2)(D)(iii) to define "loyalty, award, or promotional gift card," is revising the disclosure requirements that must be met in order for a card, code, or other device to meet the definition of a "loyalty, award, or promotional gift card."

Specifically, the final rule in § 205.20(a)(4)(iii)(A) requires a loyalty, award, or promotional gift card to state on the card, code, or other device itself that it is issued for loyalty, award, or promotional purposes. This statement must be on the front of the card, code, or other device to enable consumers to easily identify the type of card and avoid potential consumer confusion arising from the fact that a loyalty, award, or promotional gift card may otherwise look identical to a gift card that a consumer may purchase directly from a merchant.

In addition, the final rule requires disclosure of the expiration date for the underlying funds to be stated on the front of a loyalty, award, or promotional gift card because such cards typically have shorter expiration dates than other certificates or cards subject to the rule. *See* § 205.20(a)(4)(iii)(B). Where the card and funds expiration date are the same, a single disclosure regarding the expiration dates satisfies the requirement in § 205.20(a)(4)(iii)(B).

As previously noted, loyalty, award, and promotional gift cards are intended to be usable for a limited amount of time to encourage consumers to use the card quickly, which enables the program sponsor to manage the costs of providing consumers gift cards in connection with loyalty, award, or promotional programs. In addition, loyalty, award, and promotional gift cards are typically used by the initial recipient and are not intended for gift-giving purposes. Therefore, loyalty, award, or promotional gift cards are less likely to be separated from the accompanying disclosures than a gift card or gift certificate that typically is given to and used by someone other than the original purchaser. The Board also understands that there tend to be fewer fees associated with loyalty, award, and promotional cards, because the costs associated with operating the card program are generally borne by the program sponsor. Therefore, the Board believes it is less critical that the fees imposed in connection with a loyalty, award, or promotional gift card be stated on the card itself.

Accordingly, § 205.20(a)(4)(iii)(C) in the final rule permits persons subject to the rule to disclose the amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, on or with the card, code, or device. For example, issuers and other persons subject to the rule may provide fee information in materials accompanying the card, code, or other device, such as a card carrier or a separate document containing applicable terms and conditions, or on a sticker affixed to the card. The revised disclosure requirements recognize that loyalty, award, or promotional cards are generally used by the person that initially obtained the card and are not intended to be given as a gift, thus increasing the likelihood that the user of the card can easily access the disclosures.

Nonetheless, to ensure that consumers will have a means to access fee information in connection with a loyalty, award, or promotional gift card even if they do not retain the fee disclosures, § 205.20(a)(4)(iii)(D) requires the disclosure on the card of a

[15] Proposed § 205.20(a)(4)(iii) would have required a loyalty, award, or promotional card to set forth, among other things, "the disclosures specified in paragraphs (d)(2), (e)(2), and (f)(2) of this section." Due to a scrivener's error, the proposal cross-referenced paragraph (e)(2) of the rule, rather than paragraph (e)(3) as was intended. In response to commenters' suggestions, however, the final rule states the specific disclosures that are applicable to loyalty, award, or promotional gift cards in § 205.20(a)(4)(iii) for clarity, instead of cross-referencing other disclosure requirements elsewhere in the rule.

toll-free telephone number and, if one is maintained, a Web site. The final rule does not require that this contact information appear on the front of the card, however.[16] Because many issuers already maintain toll-free telephone numbers and Web sites for consumers to use for further information and often provide this information on the cards they issue, this requirement in § 205(a)(4)(iii)(D) should not impose significant additional burden on issuers. Overall, the Board believes the revised disclosures in the final rule strike an appropriate balance between the competing considerations of limiting potential consumer confusion or surprise arising from the different terms that may apply to loyalty, award, or promotional gift cards, and avoiding unnecessary costs and burdens on companies that support or administer loyalty, award, or promotional programs.

Comment 20(a)(4)–1 provides examples of loyalty, award, or promotional programs. Under the November 2009 Proposed Rule, cards, codes, or other devices issued in connection with a loyalty, award, or promotional program would have included, for example, gift cards mailed to a consumer as a rebate on a product that a consumer has purchased in response to a sales promotion, and gift cards given by a merchant to reward frequent customers.

Industry commenters generally agreed with the proposed examples, particularly because they would apply regardless of whether the consumer has paid or provided any other value to obtain the card, as in the case of rebate cards. Industry commenters also urged the Board to include additional examples in the comment.

The final comment incorporates each of the proposed examples, with certain revisions in response to commenters' suggestions, and is amended to indicate that the list is not exclusive. Comment 20(a)(4)–1 also includes two new examples to address cards, codes, or other devices that may be distributed in connection with a sales promotion, or provided by companies to a charity or community group for the charity or group's fundraising purposes (for example, as a reward for a donation or as a prize in a charitable event).

Comment 20(a)(4)–2 provides examples of how a card, code, or other device may indicate that it is issued for loyalty, award, or promotional purposes for purposes of § 205.20(a)(4)(iii)(A). For example, the disclosure on the front of the card, code, or other device may state "Reward" or "Promotional."

Comment 20(a)(4)–3 provides that if no fees are imposed in connection with a loyalty, award, or promotional gift card, the disclosure on the card of a toll-free telephone number and Web site, if one is maintained, is not required.

20(a)(5) Dormancy or Inactivity Fee

EFTA Section 915(a)(1) defines a "dormancy fee," or an "inactivity charge or fee" as a fee, charge, or penalty for non-use or inactivity of a gift certificate, store gift card, or general-use prepaid card. *See* 15 U.S.C. 1693m(a)(1). In the November 2009 Proposed Rule, the Board proposed § 205.20(a)(5) to implement this definition with non-substantive wording modifications to improve readability. The Board did not receive any comments on proposed § 205.20(a)(5), which is adopted as proposed.

20(a)(6) Service Fee

EFTA Section 915(a)(3)(A) defines a "service fee" as a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card. *See* 15 U.S.C. 1693m(a)(3)(A). In the November 2009 Proposed Rule, the Board proposed to implement this definition in § 205.20(a)(6) using substantially the same language as the statute. Commenters did not oppose the language in § 205.20(a)(6).

The Board also proposed comment 20(a)(6)–1 to clarify that a periodic fee is a fee that may be imposed from time to time for holding or using a gift certificate, store gift card, or general-use prepaid card. The proposed comment also provided that such fees may include a monthly maintenance fee, a transaction fee, a reload fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. Proposed comment 20(a)(6)–1 also clarified that a one-time initial issuance fee is not a service fee, consistent with EFTA Section 915(a)(3)(B), and provided examples of other one-time fees that are not service fees, including cash-out fees.

The Board received numerous comments on the clarification proposed in comment 20(a)(6)–1. Consumer group commenters and one state attorney general commenter agreed with the Board's interpretation of "periodic fee." Several industry commenters, however, suggested that the Board's interpretation as set forth in the proposed definition of "service fee" is inconsistent with the statutory language, previous interpretations of the term "periodic" under other consumer financial services regulations, and state law interpretations of "service" fees. Industry commenters also noted that one consequence of the Board's interpretation is that issuers would be restricted from charging fees for certain transactions that carry network costs for the issuers, such as foreign transactions and reloads. These commenters argued that if issuers are generally not permitted to recoup the costs of providing these services, issuers may decide to limit the functionality of certificates or cards, such as by issuing domestic-use only cards or non-reloadable cards. Finally, industry commenters argued that the Board's interpretation would complicate disclosures because of the limited space on a certificate or card. Instead, industry commenters recommended that the Board interpret "periodic fee" to mean a fee that is imposed at regular intervals, which would include a monthly maintenance fee, but not transaction fees or reload fees that are triggered by consumer activity.

The Board continues to believe that the proposed interpretation of "periodic fee" as it applies to "service fee" is appropriate. As the Board noted in the November 2009 Proposed Rule, the statutory definition of "service fee" includes fees imposed for the "use" of a gift certificate, store gift card, or general-use prepaid card. *See* EFTA Section 915(a)(3)(A); 15 U.S.C. 1693m(a)(3)(A). Thus, under the statute, service fees are not limited to fees imposed for holding a certificate or card. The Board believes that the intent of the statute is to capture activity-based and other fees related to the use of the certificate or card, such as transaction fees, reload fees, and balance inquiry fees, in the definition of "service fee." In addition, the Board is concerned that a narrow interpretation of "service fee" would result in a shift in fee structures from fees imposed at regular intervals to fees that are imposed for a transaction or service associated with the certificate or card.

Industry commenters also argued that the Board's interpretation is contrary to the statute's intent because it effectively bans certain fees, instead of merely restricting how frequently such fees may be imposed. Specifically, these commenters suggested that because conducting a transaction constitutes activity, a transaction fee contingent on consumer activity could never be charged, and the Board's inclusion of such fees in the definition of "service fee" effectively prohibits such fees. *See*

[16] The toll-free telephone number and Web site may also be the same toll-free telephone number and Web site provided for customer service issues or questions relating to the loyalty, award, or promotional program.

EFTA Section 915(b)(2)(A); 15 U.S.C. 1693m(b)(2)(A).

The Board does not agree that its interpretation compels this result. The statute and the regulation permit a fee to be charged after one year of inactivity. Therefore, a fee could be charged contemporaneously with the first consumer activity after the one-year period of inactivity. For example, if an issuer charges a reload fee on a general-use prepaid card and a consumer reloads the card after one year of inactivity, the reload fee could be imposed at that time assuming no other fees have been imposed during that month.

As explained in the November 2009 Proposed Rule, the Board believes that interpreting the term "service fee" as proposed, and thus limiting when such fees may be imposed, will improve the transparency and predictability of costs to consumers. As a result, the interpretation of "periodic fee" as it applies to "service fee" is adopted as proposed, but has been moved from proposed comment 20(a)(6)–1 to § 205.20(a)(6) for clarity.

The Board also received comments requesting that the Board provide a complete list of all fees that are included in the meaning of "service fee." The list of fees in comment 20(a)(6)–1 is not meant to be an exhaustive list. Comment 20(a)(6)–1 references the most common fees associated with certificates and cards. In response to commenters' suggestions, the Board is including some additional examples in comment 20(a)(6)–1. In addition to providing that an ATM fee and a foreign currency transaction fee are included in the meaning of "service fee," the Board is providing examples of other fees that are not considered "service fees," as discussed below.

The Board recognizes that certain fees are unlikely to be imposed more than once while underlying funds are still valid, such as a supplemental card fee or a lost or stolen certificate or card replacement fee. The Board believes such fees are akin to one-time fees and should not be considered "periodic fees." Accordingly, the Board is amending comment 20(a)(6)–1 to clarify that these fees are not "service fees" for purposes of § 205.20.

20(a)(7) Activity

Under § 205.20(d), no person may impose a dormancy, inactivity, or service fee on a gift certificate, store gift card, or general-use prepaid card, unless there has been no "activity" with respect to the certificate or card, among other things. For clarity, the Board is adding a new § 205.20(a)(7) to define the term "activity" for purposes of § 205.20. Similar to the interpretation the Board previously proposed in comment 20(d)–2 in the November 2009 Proposed Rule, the Board is defining "activity" as any action that results in an increase or decrease of the funds underlying a certificate or card. The Board is also specifically providing that the imposition of a fee does not constitute activity. Furthermore, the Board is moving the guidance on "activity" from comment 20(d)–2 to new comment 20(a)(7)–1. In proposing comment 20(d)–2, the Board solicited comment on whether there were any other actions taken by a consumer that should be considered "activity."

Several industry commenters agreed that providing additional examples would be helpful. Based on the comments received, the Board is revising the language in proposed comment 20(d)–2, now comment 20(a)(7)–1, to include an example clarifying that if a consumer attempts a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction fails due to technical or other reasons, such attempt does not constitute activity with respect to the certificate or card. Also, in response to commenters' suggestions, § 205.20(a)(7) provides that "activity" does not include an adjustment due to an error or a reversal of a prior transaction. Comment 20(a)(7)–1 further provides that if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment does not constitute activity with respect to the certificate or card.

20(b) Exclusions

EFTA Section 915(a)(2)(D) states that the terms "general-use prepaid card," "gift certificate," and "store gift card" do not include an electronic promise, plastic card, or payment code or device that falls into one of six specified categories. *See* 15 U.S.C. 1593m(a)(2)(D). For example, reloadable cards that are not marketed or labeled as a gift card or gift certificate are excluded from the statutory definitions. Similarly, prepaid cards that are not marketed to the general public are excluded from the statutory definitions. Thus, under the statute, an excluded product is not subject to the substantive restrictions regarding when a dormancy, inactivity, or service fee may be imposed, or on expiration dates. These excluded products also are not subject to the statute's disclosure requirements. *See, however,* § 205.20(a)(4)(iii).

Section 205.20(b) implements the statutory exclusions and provides that the terms "gift certificate," "store gift card," and "general-use prepaid card" do not include any cards, codes, or other devices that fall under any of the six exclusions specified in the statute. As noted above, § 205.20(b) of the final rule uses the term "card, code, or other device," instead of the term "electronic promise, plastic card, or payment code or device" for clarity. No substantive difference is intended.

Proposed comment 20(b)–1 provided guidance on the effect of qualifying for any of the specified exclusions. The comment stated that an excluded card, code, or other device generally is not subject to any of the substantive restrictions or disclosure requirements of the proposed rule. *See, however,* § 205.20(a)(4)(iii) with respect to loyalty, award, or promotional gift cards. The Board did not receive any comments on the comment as proposed, and it is adopted without change.

Proposed comment 20(b)–2 clarified that a card, code, or other device may qualify for one or more exclusions and that a card, code, or other device that falls within any of the exclusions generally is not covered by the rule. The comment is adopted generally as proposed, with modifications for clarity. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes, such as to reward job performance or promote employee safety. In this case, the card, code, or other device may qualify for the exclusion in § 205.20(b)(3) for loyalty, award, or promotional gift cards, or for the exclusion in § 205.20(b)(4) for cards, codes, or other devices not marketed to the general public.

In addition, comment 20(b)–2 states that as long as any one of the exclusions apply, a card, code, or other device generally is not covered by § 205.20, even if other exclusions do not apply. In the example, if the type of gift card given by the corporation can also be purchased by a consumer directly from a merchant, the card does not qualify as a card that is not marketed to the general public because it can also be obtained through retail channels. *See* § 205.20(b)(4), discussed below. Nonetheless, the gift card would nevertheless be exempt from the substantive requirements of § 205.20 because it is still a loyalty, award, or promotional gift card (provided that certain disclosures are provided on or with the card as required under § 205.20(a)(4)(iii)). For additional clarification, the final comment includes a second example addressing

reloadable spending cards that may be targeted to teenagers. Although such cards do not qualify for the exclusion for cards not marketed to the general public, they may nonetheless be excluded from the scope of the rule if they are not marketed as gift cards or gift certificates.

The six specific exclusions are discussed below.

20(b)(1) Usable Solely for Telephone Services

Section 205.20(b)(1) implements the exclusion for cards, codes, or other devices that are usable solely for telephone services. *See* EFTA Section 915(a)(2)(D)(i); 15 U.S.C. 1693m(a)(2)(D)(i). Proposed comment 20(b)(1)–1 set forth examples of products that fall within this exclusion, such as prepaid cards for long-distance telephone services and prepaid cards for wireless telephone service. The proposed comment further clarified that this exclusion also includes prepaid products that may be used for other services analogous in function to a telephone, such as prepaid cards for voice over Internet protocol (VoIP) access time. Section 205.20(b)(1) and comment 20(b)(1)–1 are adopted substantially as proposed.

Many mobile phones today are capable of a number of different functions in addition to voice communications, including sending text messages and accessing the Internet. Accordingly, the Board solicited comment on whether it should exercise its authority under EFTA Section 904 to expand the exclusion to cover other prepaid cards that may be redeemed for similar or related technology services, such as prepaid cards used to obtain mobile broadband or Internet access time.[17]

Industry commenters agreed that the Board should expand the exclusion as described to avoid restricting the types of prepaid products that may be offered today, as well as in the future. These commenters further urged the Board to expand the exclusion to cover prepaid cards that would enable cardholders to purchase applications that could be used on mobile telephones. The final rule does not incorporate the suggested revisions.

The Board generally believes that statutory exclusions should be interpreted narrowly to ensure that consumers receive the full protections contemplated in the statute. By its terms, EFTA Section 915(a)(2)(D)(i) excludes cards, codes, or other devices that are "usable *solely* for telephone services." *See* 15 U.S.C. 1693m(a)(2)(D)(i). While a consumer that purchases a card that can be applied toward Internet access time may use that time for telecommunications-related applications, it may also be used for other applications or purposes. The Board believes that if Congress had intended to exclude cards that may be redeemed for prepaid Internet access and similar technology services from the statutory provisions, it would have specified that intent in the statute. The Board is not aware of, and commenters did not identify, any evidence that Congress meant for consumers who purchase cards that may used for other technology-related services to be denied protection against dormancy, inactivity, or service fees, and expiration dates, unlike consumers who purchase cards that may be used for other goods or services. Thus, the Board declines to expand the exclusion.[18]

20(b)(2) Reloadable and Not Marketed or Labeled as a Gift Card or Gift Certificate

Section 205.20(b)(2) implements the exclusion for cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate. *See* EFTA Section 915(a)(2)(D)(ii); 15 U.S.C. 1693m(a)(2)(D)(ii).

Consistent with the statute, the card, code, or other device generally must be both reloadable *and* not marketed or labeled as a gift card or gift certificate to qualify for the exclusion. Thus, a non-reloadable card generally is not excluded, even if it is not marketed or labeled as a gift card or gift certificate, unless a different exclusion applies.[19] Similarly, a reloadable card that is marketed as a gift card or gift certificate does not qualify for the exclusion.

"Reloadable"

Proposed comment 20(b)(2)–1 provided that a card, code, or other device is "reloadable" if it has the "capability of having more funds added by a cardholder after the initial purchase or issuance." Several industry commenters noted, however, that the proposed comment was too narrow given that many non-gift prepaid cards are reloadable, but by persons other than the cardholder. For example, many payroll cards, health savings account cards, and flexible spending account cards are reloadable solely by the employer. Similarly, university cards, teen cards, and insurance cards may also be reloadable by persons other than the cardholder. Accordingly, these commenters observed that the language of proposed comment 20(b)(2)–1 could lead to the unintended consequence of covering certain non-gift prepaid products under rules primarily intended to cover consumer gift cards.

The Board did not intend to limit the scope of the term "reloadable" in the manner suggested by commenters. Accordingly, comment 20(b)(2)–1 has been revised in the final rule to remove the limitation "by a cardholder" to take into account the fact that a card, code, or other device may be reloaded by persons other than a consumer cardholder.[20]

In addition, one industry commenter urged the Board to clarify that whether a card is reloadable should be determined by whether reloadability is permitted under the terms and conditions of the prepaid card, rather than by the technical ability of the issuer to add value to the card. This commenter was concerned that the proposed comment potentially implied that a card would be considered "reloadable" if the issuer or the processor can add functionality to the card allowing a card to be reloaded regardless of the terms and conditions of the card. The Board agrees with this suggestion. The final comment clarifies that a card, code, or other device is "reloadable" only if its terms and conditions allow for funds to be added after initial issuance or purchase, regardless of whether the card issuer or processor has the technical ability to add functionality to the card, code, or device that would permit the addition of funds.

"Marketed or Labeled as a Gift Card or Gift Certificate"

Proposed comment 20(b)(2)–2 clarified the meaning of the term "marketed or labeled as a gift card or gift certificate." The proposed comment

[17] *See, e.g.,* N.J. Rev. Stat. § 56:8–110 (excluding prepaid telecommunications and technology cards from the definitions of "gift card" and "gift certificate").

[18] The Board notes, however, that the fee and expiration date restrictions may cease to apply once a certificate or card has been fully redeemed and the funds are deducted from the certificate or card, even if the underlying funds are not used to contemporaneously purchase a specific good or service. *See, e.g.,* comment 20(e)–13, discussed below.

[19] As discussed below, a temporary non-reloadable card issued solely in connection with a general-purpose reloadable card still qualifies for the exclusion in § 205.20(b)(2), so long as the card is not marketed as a gift card or gift certificate. *See* § 205.20(b)(2) and comment 20(b)(2)–6.

[20] As discussed above, the Board has also revised the definitions of "store gift card" and "general-use prepaid card" in §§ 205.20(a)(2) and (a)(3) to remove references to increasing or reloading a card "by a consumer" to reflect that the amount on a card may be increased or reloaded by a person other than a consumer.

provided that the term means directly or indirectly offering, advertising, or otherwise suggesting the potential use of a card, code, or other device as a gift for another person. The proposed comment also stated that whether the exclusion applies does not depend on the type of entity that is making the promotional message—for example, the actions of the issuer, the retailer, the program manager, or the payment network on which a card is used could each promote the use of a card as a gift card or gift certificate and thus nullify the exclusion. Finally, the proposed comment stated that a certificate or card could be deemed to be marketed or labeled as a gift card or gift certificate even if it is primarily marketed for another purpose. Thus, for example, a reloadable network-branded card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as "the perfect gift" during the holiday season.

Two industry trade associations urged the Board to use its exemption authority to limit the scope of the marketing provision to apply only to the actions of the issuer. Specifically, these commenters suggested that the Board clarify that the exclusion in § 205.20(b)(2) applies as long as a certificate or card was "reloadable and not labeled or marketed *by the issuer* as a gift card or gift certificate." These commenters expressed concern that the proposed rule could frustrate the efforts of an issuer seeking to avoid the labeling and the marketing of their cards as gift cards if actions by other parties in the supply chain, including a retailer or a merchandiser, could nullify the application of the exception. For example, these commenters noted that a general-purpose reloadable card could be deemed to be marketed as a gift card notwithstanding the issuer's actions if a store clerk incorrectly stocked the issuer's cards in a display or combined distinctly labeled cards in a single display. Other industry commenters urged the Board to clarify that issuers would be protected from liability for improper marketing of cards if they maintained appropriate policies and procedures regarding marketing. These commenters expressed concern that access to general-purpose reloadable cards for the unbanked and the underbanked could otherwise be restricted due to compliance concerns. One industry trade association commenter representing convenience stores urged the Board to exclude retailers from the rule altogether if they do not issue gift cards.

Comment 20(b)(2)–2 is adopted generally as proposed, with certain revisions for clarity. Under the final comment, a card, code, or other device is deemed to be marketed or labeled as a gift card or gift certificate if anyone (other than the consumer-purchaser of the card [21]), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. Thus, the final rule does not limit the scope of the exclusion in § 205.20(b)(2) to the actions of the card issuer. The Board notes that the gift card provisions of the Credit Card Act broadly encompass the actions of "any person," and generally are not limited to the acts of the issuer, except in the case of disclosures that must be provided prior to purchase. *See, e.g.,* EFTA Section 915(b)(3)(B); 15 U.S.C. 1693m(b)(3)(B). Moreover, the Board believes that restricting application of the marketing provisions to issuer actions would undermine the consumer protection purposes of the statute. For example, even if an issuer of a general-purpose reloadable card were to avoid labeling or otherwise indicating on a certificate or card that it is intended for gift-giving purposes, the retailer or merchandiser may display the general-purpose reloadable card with store gift cards and gift certificates under a single sign that prominently indicated the availability of gift cards. Limiting the scope of the marketing provisions to issuer actions would not therefore sufficiently protect consumers acting reasonably under the circumstances from inadvertently purchasing the general-purpose reloadable card in the belief they were purchasing a gift card. Such consumers would then be surprised when the balance on the card is quickly drawn down by fees or short expiration dates which is contrary to the intent of the marketing provisions.

Nonetheless, the Board understands that the broad scope of the rule to also cover the actions of any party that may be involved in the distribution or promotion of a certificate or card may pose substantial compliance risks for issuers. As further discussed under comment 20(b)(2)–4, the exclusion in § 205.20(b)(2) continues to apply so long as a certificate or card is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule maintain policies and procedures reasonably designed to avoid such marketing.

In addition, in response to some commenters' concerns, comment 20(b)(2)–2 clarifies that the mere mention that gift cards or gift certificates are available in an advertisement or on a sign that also indicates the availability of other excluded prepaid cards does not by itself cause the excluded prepaid cards to be marketed as a gift card or a gift certificate. The key consideration is whether a consumer acting reasonably under the circumstances could be led to believe that all certificates or cards referenced in the advertisement or the sign are gift cards or gift certificates. For instance, a retailer could state in an advertisement "Gift Cards and Prepaid Cards Sold Here" to promote the availability of gift cards and general-purpose reloadable cards in the store without causing the general-purpose reloadable card to be marketed as a gift card or gift certificate, provided that a consumer acting reasonably under the circumstances would not be led to believe that all certificates or cards referenced in the advertisement are gift cards or gift certificates. Similarly, the posting of a sign in a store which communicates the general availability of gift cards does not by itself constitute the marketing of other excluded prepaid cards that may also be sold in the store as gift cards or gift certificates, provided that a consumer acting reasonably under the circumstances is not led to believe that the sign applies to all prepaid products sold in the store. (*See, however,* comment 20(b)(2)–4.ii.) Such determinations would depend on the facts and circumstances of an individual sign or advertisement.

Proposed comment 20(b)(2)–3 provided positive and negative examples of the term "marketed or labeled as a gift card or gift certificate." The comment is adopted generally as proposed.

Under the final comment, positive examples of marketing or labeling as a gift card or gift certificate include displaying the word "gift" or "present," displaying a congratulatory message, and incorporating gift-giving or celebratory imagery or motifs on the card, certificate or accompanying material, such as documentation, packaging and promotional displays. *See* comment 20(b)(2)–3.i. In contrast, a card, code, or other device is not marketed or labeled as a gift card or gift

[21] Thus, a card would not be deemed to be marketed or labeled as a gift card or gift certificate as a result of actions by the consumer-purchaser. For example, if the purchaser gives the card to another consumer as a "gift," or if the primary cardholder contacts the issuer and requests a secondary card to be given to another person for his or her use, such actions do not cause the card to be marketed as a gift card or gift certificate.

certificate if the issuer, seller, or other person represents that the card, code, or other device can be used as a substitute for a checking, savings, or deposit account, as a budgetary tool, or to cover emergency expenses. Similarly, a card, code, or other device is not marketed as a gift card or gift certificate if it is promoted as a substitute for travelers checks or cash for personal use, or promoted as a means of paying for a consumer's health-related expenses. *See* comment 20(b)(2)–3.ii. The final rule removes the reference to use of a certificate or card as a substitute for a travelers check or cash "by the card purchaser" to reflect the fact that someone other than the purchaser may use the certificate or card for travel expenses. *See* comment 20(b)(2)–3.ii.C.

Policies and Procedures To Avoid Marketing as a Gift Card or Gift Certificate

As discussed above, a gift card usable at a particular merchant may be purchased by a consumer directly from the merchant at the merchant's store. In this type of arrangement, the merchant is typically the primary party involved in issuing the card and operating the card program. As such, the merchant-issuer can be expected to have substantial control over all facets of the card program, including how the card is sold or marketed.

In other cases, a gift card may be sold to consumers through another merchant or retailer, such as a grocery store or a drug store, on display racks that may make retail gift cards available alongside gift cards usable at other merchants and other types of prepaid cards, including general-purpose reloadable cards and telephone cards. In this type of arrangement, multiple parties are generally involved in the card distribution process. These parties may include: an issuer (whether it is a merchant or a bank); a program manager who works with issuers to administer any or all aspects of a card program, including transaction processing, distribution, and marketing; and a seller or distributor of the card.[22] A seller or distributor of the card can be an issuer, a program manager, or another party, such as a shopping mall or a retailer. In these arrangements, responsibilities for operating the program, including compliance with applicable laws or payment network rules, are generally allocated by contract.

When multiple parties are involved in a card program, the issuer may not play a significant role in the card distribution process and thus may have less control over how the card is displayed or marketed at the locations where the card is sold. A rule that depends upon how a card is marketed therefore may pose substantial compliance risks for an issuer that cannot fully control the venues and mediums in which its prepaid cards are marketed to consumers. For example, where a card is sold in a substantial number of retail outlets, the card issuer cannot verify in every instance how the card is displayed or marketed at each retail outlet to ensure that it is not being marketed as a gift card or gift certificate through signage, advertisements, or otherwise.

To address this issue, proposed comment 20(b)(2)–4 provided that a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate if entities subject to the rule maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures would include contractual provisions prohibiting a general-purpose reloadable card from being marketed as a gift card and controls to regularly monitor or otherwise verify that the cards are not being marketed as such. The proposed comment also included positive and negative examples of the exclusion in § 205.20(b)(2).

One example of procedures in which a card, code, or other device is not marketed as a gift card or gift certificate was where the issuer or program manager sets up two physically separated displays at a retailer, one for gift cards and another for excluded products, including general-purpose reloadable cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. Under this example, the exclusion in § 205.20(b)(2) applies even if a retail clerk inadvertently stocks or places some of the general-purpose reloadable cards on the gift card display.

In a second proposed example, the issuer or program manager sets up a single display that contains a variety of prepaid cards, including gift cards subject to the rule and otherwise excluded prepaid products, such as general-purpose reloadable cards. A sign stating "Gift Cards" appears prominently on top of the display. Under the second example, any general-purpose reloadable cards sold under those circumstances does not qualify for the exclusion in § 205.20(b)(2) because the issuer or program manager does not maintain policies and procedures reasonably designed to avoid the marketing of the general purpose reloadable cards as gift cards or gift certificates.

Several industry commenters urged the Board to include additional examples of the exclusion in § 205.20(b)(2). These commenters included card issuers, program managers and distributors of prepaid cards, retailers, and industry trade associations. In particular, these commenters stated that requiring two separate displays as contemplated in the proposed examples would create significant difficulties for retailers because of space constraints. Industry commenters expressed concern that instead of providing space for additional displays, some retailers may choose to stop selling general-purpose reloadable cards altogether. As a result, industry commenters believed that access to such products for the unbanked and underbanked could be reduced.

Industry commenters suggested various additional measures that could be undertaken to permit the sale of gift cards and otherwise excluded prepaid cards in the same retail display without causing the excluded cards to be marketed as a gift card or gift certificate. These measures included segregating general-purpose reloadable cards and gift cards on different sides of a display rack with a sign at the top of each side differentiating the products; using colors, design, and/or signage to differentiate between separate products on the same display (for example, signs indicating "reloadable cards" and "gift cards," as applicable); or requiring the display to indicate a generic label such as "prepaid cards."

Industry commenters also asserted that the final rule should expand the example of a retail clerk inadvertently stocking a general-purpose reloadable card inappropriately on a gift card display to apply to consumer actions as well. These commenters further stated that the final rule should permit inadvertent or bona fide errors in the placement of signage by a retail clerk or third-party merchandiser, such that the inadvertent placement of gift card advertising in the section of a display or portion of a rack for general-purpose reloadable cards does not nullify the exclusion in § 205.20(b)(2) for the general-purpose reloadable cards.

Comment 20(b)(2)–4 is adopted in the final rule generally as proposed with certain revisions for clarity. The final

[22] In addition to these parties, a processor may work with the issuer and the program manager to process card transactions, and in some cases provide Web site and telephone customer service. For open-loop card programs, the payment network operates the network and establishes operating rules for card issuers, processors, and merchants or ATMs that accept the card. The payment network may also review and approve a card program in order for the particular card to carry the network brand.

comment provides that the exclusion in § 205.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include: contractual provisions prohibiting a card, code, or other device from being marketed or labeled as a gift card or gift certificate; merchandising guidelines or plans regarding how the product must be displayed in a retail outlet; and controls to regularly monitor or otherwise verify that the card, code, or other device is not being marketed as a gift card or gift certificate. The final comment further states that whether a person has marketed a reloadable card, code, or other device as a gift card or gift certificate will depend on the fact and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate.

The final comment also includes the two proposed examples discussed above with minor revisions. The example in comment 20(b)(2)–4.i, which sets forth the scenario where separate displays have been set up for gift cards and for other excluded prepaid cards, including general-purpose reloadable cards, has been revised to provide that the exclusion applies even if a consumer inadvertently places a general-purpose reloadable card on the gift card display. However, comment 20(b)(2)–4.i does not incorporate commenters' suggestions to apply the exclusion to circumstances where signage has been inadvertently placed on the wrong display (such as a sign stating "Gift Cards" placed on or near the general-purpose reloadable card display) because consumers acting reasonably under the circumstances would likely be led into believing that they are purchasing gift cards from the general-purpose reloadable card display.

The final comment includes two new examples to illustrate additional circumstances where a reloadable card, code, or device is not marketed or labeled as a gift card or gift certificate. The additional examples seek to strike a balance between protecting consumers from being misled regarding the type of prepaid cards that they are purchasing and the possibility that overly restrictive marketing provisions may present significant compliance challenges in retail environments where there may not be sufficient space for separate displays for covered and non-covered products.

The first new example is in comment 20(b)(2)–4.iii. In this example, the issuer or program manager sets up a single multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any other more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating "Gift Cards" at the top of the display or located near the display. The example illustrates that the exclusion in § 205.20(b)(2) applies to the general-purpose reloadable cards because of the maintenance of policies and procedures reasonably designed to avoid the marketing of the reloadable cards as gift cards or gift certificates, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card in the gift card section of the display.

Comment 20(b)(2)–4.iv., the second new example, addresses the sale of prepaid cards at a checkout lane where gift cards are sold side-by-side in the same lane along with excluded cards. In the example, the retailer does not use any signage or other indicia suggesting the general availability of gift cards on the display. In this case, the retailer has not affirmatively indicated or represented at the checkout lane that only gift cards or gift certificates are available for purchase. Accordingly, there has been no marketing of the excluded products as gift cards or gift certificates, and the exclusion in § 205.20 applies to the non-gift cards.

Several industry commenters stated that how the card and related card packaging is labeled and packaged should be the sole determining factor as to whether the card is marketed or labeled as a gift card or gift certificate. In this regard, these commenters stated that it should be sufficient to indicate clearly on packaging that an excluded card is "Not a Gift Card," "Not for Gift Giving Purposes," or similar words to that effect, to avoid marketing or labeling a prepaid product as a gift certificate or gift card. The Board believes, however, that merely labeling on outside packaging that a prepaid card product is "not a gift card" or that it is "not intended for gift purposes," is not sufficient to alert consumers that they are not buying a gift card if other indicia, including the signage used at the point of purchase or the manner in which cards are displayed, are inconsistent with the messaging on the packaging.

Given the various entities that may be involved in distributing or selling certificates or cards subject of the rule, the Board understands that several parties may be subject to the rule with respect to the same prepaid card program, including the issuer, the program manager, and the retailer. To the extent that more than one party may be liable under the final rule, those parties may contract among themselves to ensure compliance. *See, e.g.,* § 205.4(d) (stating that institutions providing EFT services jointly may contract among themselves to allocate requirements under the regulation). Thus, for example, disclosures required to be on a certificate or card by § 205.20(d)(2) and (e)(3) may be satisfied by the issuer, while disclosures that must be provided prior to purchase under § 205.20(c)(3) may be satisfied by another party, such as the retailer (assuming the issuer does not also provide the requisite disclosures on the packaging). Similarly, marketing responsibilities may be allocated by contract. Compliance by one party would satisfy the compliance obligations for any other person with respect to that certificate or card. However, if the party that has contractually agreed to satisfy a compliance obligation fails to do so, each of the parties is potentially accountable under the EFTA and the final rule. These parties could also allocate among themselves the financial obligation for any liability resulting from the failure.

A few industry commenters urged the Board to clarify that general-use reloadable cards may be offered for sale on Web sites that also sell gift cards so long as the consumer is given appropriate disclosure prior to purchase that the general-purpose reloadable card is not a gift card. These commenters believed that such a clarification is appropriate even if the Web site advertises "gift cards" or "gifting," or if its Web address incorporates a reference to gift cards or gifting.

The Board is not persuaded that the exclusion in § 205.20(b)(2) should apply in these circumstances. The Board believes that a Web site's display of a banner advertisement or a graphic on its home page that prominently displays "Gift Cards," "Gift Giving," or similar language without mention of other available products, or inclusion of the terms "gift card" or "gift certificate" in its Web address, creates the same potential for consumer confusion as a sign stating

"Gift Cards" at the top of a prepaid card display. A consumer acting reasonably under the circumstances may be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Thus, under these facts, the Web site has marketed all such products, including any general-purpose reloadable cards that may be sold on the Web site, as gift cards or gift certificates, and the exclusion in § 205.20(b)(2) does not apply. New comment 20(b)(2)–5 provides this guidance.

Temporary Cards Issued in Connection With a General-Purpose Reloadable Card

Some general-purpose reloadable cards that are not intended to be marketed as a gift card, but rather as an alternative to a bank account (or account substitute), such as for the unbanked, may be sold initially as a temporary non-reloadable card. After the card is purchased, the cardholder may call the issuer to register the card. Once the issuer has obtained the cardholder's personal information, a new personalized, reloadable card is sent to the cardholder to replace the temporary card.

Under one model, the cardholder may use the temporary non-reloadable card to engage in transactions immediately after card purchase and up until the card is registered by the consumer and replaced with the personalized, reloadable card. Under another model, the temporary non-reloadable card may not be used by the consumer for purchases until the consumer calls to register the card. Under the second model, the temporary card can be used after registration until the personalized, reloadable card is received and activated by the consumer.

The Board solicited comment on the appropriate treatment of such temporary non-reloadable cards in light of the fact that the statute appears to cover all non-reloadable cards without exception. Under one proposed approach, the restrictions limiting fees and expiration dates would not apply either to the temporary non-reloadable card or to the reloadable replacement card. Under a second approach, the restrictions would apply during the full account relationship if the card is initially issued as a non-reloadable card. Under a third approach, the restrictions limiting fees and expiration dates would apply solely to the temporary non-reloadable card, but not to the reloadable replacement card.

The majority of industry commenters urged the Board to exclude temporary non-reloadable cards from the scope of the rule altogether because such cards are issued only in conjunction with general-purpose reloadable cards and are never marketed or sold as anything other than as a reloadable product. Several industry commenters also asserted that these cards are initially issued as non-reloadable cards to control fraud and to reduce the risk of money laundering. Thus, they argued that applying the rule to the card if it was initially non-reloadable, but not if the temporary card was reloadable, would unnecessarily limit issuers' ability to control for risks as issuers would shift to issuing the temporary card as a reloadable product to avoid application of the rule. Industry commenters and one nonprofit organization commenter focused on serving the unbanked also noted that covering the temporary non-reloadable card, but not the reloadable replacement card, could lead to consumer confusion because different fee and expiration date terms would apply to the different cards depending on whether or not the card was reloadable. The nonprofit organization commenter urged the Board not to cover temporary non-reloadable cards to avoid adversely impacting the business model for general-purpose reloadable cards and thereby restricting the availability of the product for the growing number of consumers that use these cards in place of bank accounts.

In contrast, consumer groups urged the Board to cover temporary non-reloadable cards issued in conjunction with reloadable cards that serve as account substitutes. Consumer groups cited consumer confusion caused by the fact that many of these products are sold on the same racks as gift cards.

One industry marketer and distributor of prepaid products and services also expressed concern about consumer confusion associated with the marketing of general-purpose reloadable cards. In particular, this industry commenter cited its own experience and industry data indicating that more than 60% of all consumers that purchase general-purpose reloadable cards in an unassisted environment (such as from a supermarket display) subsequently either never register or reload the card. In this commenter's view, the high rate of failure for registering or reloading the card suggests a high degree of consumer confusion with many consumers who intend to purchase a gift card inadvertently purchasing a general-purpose reloadable card instead. This commenter urged the Board to adopt the third approach and cover any temporary non-reloadable card issued in conjunction with a general-purpose reloadable card until the card is registered and replaced with a reloadable card. Under this approach, a consumer that inadvertently bought a general-purpose reloadable card thinking it was a gift card would be able to avoid most fees.

The final rule does not cover temporary non-reloadable cards issued solely in connection with a general-purpose reloadable card. Section 205.20(b)(2) has been revised in the final rule to provide that for purposes of the exclusion, the term "reloadable" also includes a temporary non-reloadable card if it is issued solely in connection with a reloadable card, code, or other device. New comment 20(b)(2)–6 provides additional guidance regarding temporary non-reloadable cards issued solely in connection with a general-purpose reloadable card.

The Board is persuaded that excluding temporary non-reloadable cards as a general-purpose reloadable card under § 205.20(b)(2) is appropriate to avoid consumer confusion if they are not marketed or labeled as a gift card or gift certificate. The Board believes that consumers likely will be confused if terms of the temporary non-reloadable card differ substantially from the terms of the replacement reloadable card. The Board also believes that any consumer confusion resulting from consumers inadvertently purchasing general-purpose reloadable cards instead of gift cards is more effectively addressed through policies and procedures designed to avoid the marketing of general-purpose reloadable cards as gift cards or gift certificates, *see, e.g.,* comment 20(b)(2)–4, rather than by covering temporary non-reloadable cards under the rule.

In addition, the Board is concerned that covering the temporary non-reloadable card may create regulatory incentives that would unduly restrict issuers' ability to address potential fraud. The Board understands that some issuers today issue temporary cards in non-reloadable form to encourage consumers to register the card and provide customer identification information for Bank Secrecy Act purposes and to enable the issuer to track which cards have been registered. A rule that would apply only if the temporary card was non-reloadable would therefore limit issuers' options without significant consumer benefit because issuers would likely shift to issuing reloadable temporary cards to avoid the rule's restrictions on dormancy, inactivity, and service fees and on expiration dates.

20(b)(3) Loyalty, Award, or Promotional Gift Card

Section 205.20(b)(3) implements the exclusion for cards, codes, or other devices for loyalty, award, or promotional gift cards. *See* EFTA Section 915(a)(2)(D)(iii); 15 U.S.C. 1693m(a)(2)(D)(iii). The Board did not receive comment on the exclusion as proposed and it is adopted without change.

As discussed above, the term "loyalty, award, or promotional gift card" is defined in § 205.20(a)(4). While certain disclosures must be provided to meet the definition, a loyalty, award, or promotional gift card is not subject to the substantive restrictions in § 205.20, including the restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates. A loyalty, award, or promotional gift card also is not subject to the prohibition on charging fees to replace an expired card if funds remain valid under § 205.20(e)(4).[23]

20(b)(4) Not Marketed to the General Public

Section 205.20(b)(4) implements the exclusion for cards, codes, or other devices that are not marketed to the general public. *See* EFTA Section 915(a)(2)(D)(iv); 15 U.S.C. 1693m(a)(2)(D)(iv). As explained in proposed comment 20(b)(4)–1, whether a card is "marketed to the general public" depends on the facts and circumstances, but the term generally describes cards, codes, or other devices that are offered, advertised or otherwise promoted to the general public. The proposed rule and commentary provided guidance on factors to be considered in determining whether a card, code or device is marketed to the general public.

Commenters generally supported the proposed rule and commentary, although some industry commenters disagreed with or requested modifications to the commentary, including to certain of the examples, as discussed below. The final rule adopts § 205.20(b)(4) and the related commentary substantially as proposed, with an additional clarification regarding the posting of policies that funds will be disbursed through prepaid cards.

In the final rule, comment 20(b)(4)–1 states that a card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. In determining whether the exclusion applies to a particular card, code, or other device, comment 20(b)(4)–1 identifies a number of factors that should be considered, including the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or other device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace. The comment also makes clear that the method of distribution by itself is not dispositive in determining whether a card, code, or other device is marketed to the general public.

One commenter requested clarification that the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center that store credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. Comment 20(b)(4)–1 has been modified accordingly. The Board believes such postings do not constitute marketing to the general public because they are not intended to advertise or promote the availability of prepaid cards. Rather, they are intended to disclose company policy to consumers who might otherwise expect cash refunds.

Comment 20(b)(4)–2, which is adopted substantively as proposed except as noted below, provides six examples illustrating the application of the exclusion. For instance, a merchant may sell its gift cards at a discount to a business, either directly or indirectly through a third party. The business that purchases the cards may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card is marketed to the general public, the merchant-issuer must consider whether the card is of a type that is advertised or made available to consumers generally or can be easily obtained elsewhere. If the card may also be purchased through retail channels, the exclusion in § 205.20(b)(4) does not apply, even if the consumer obtained the card as an incentive or reward. *See* comment 20(b)(4)–2.i. Some industry commenters requested that the Board clarify that marketing to the general public does not include business-to-business advertisement of gift cards, where the business purchaser of the cards may in turn distribute such cards to consumers. The Board declines to make this revision. Consumers could be confused if they receive gift cards that appear substantially similar to those that they could have purchased directly from a merchant, but contain different terms and conditions, such as a shorter expiration date.[24]

Similarly, the Board also considered whether cards issued or sold pursuant to a marketing campaign that targets a specific subset of consumers should fall within the exclusion. Some industry commenters urged the Board to view sales of gift cards that are limited to existing customers as falling within the exclusion for cards not marketed to the general public because of the steps required to become a customer, and therefore, to become eligible to purchase a gift card from the merchant. However, the Board believes that such a broad interpretation of the exclusion for cards not marketed to the general public would create a loophole and undermine the protections afforded to consumers under the rule. Therefore, the example in comment 20(b)(4)–2.ii states that a national retail chain could decide to market its gift cards only to members of its frequent buyers' program. Similarly, a bank may decide to sell gift cards only to its customers. However, if any member of the general public may become a member of the program or a customer of the bank, the general public would still be able to obtain the cards and such cards are covered by the rule, unless another exclusion applies. *See* comment 20(b)(4)–2.ii.

Likewise, proposed comment 20(b)(4)–2.iii included reloadable cards advertised to teenagers to help them manage their everyday expenses and for emergencies, or marketed to parents to enable them to monitor their teenager's spending, as a card marketed to the general public. Some institutions argued that the example should be limited to "gift cards" advertised to teenagers in recognition that other types of cards, such as reloadable cards, marketed to teens may qualify for a different exclusion under the rule. The Board declines to so limit the example because a card's status as a gift card does not affect whether the card is marketed to the general public. However, as noted above, certificates or cards that do not qualify for one exclusion may nonetheless qualify for another exclusion. Comment 20(b)–2 has been revised, as discussed above, to address the application of other exclusions to teen cards.

In contrast to the above examples, where the availability of the certificate

[23] A card, code, or other device that qualifies for the exclusion in § 205.20(b)(3) as a loyalty, award, or promotional gift card remains exempt from the substantive restrictions of § 205.20 even if it also bears celebratory motifs or terms that would cause it to be marketed or labeled as a gift card or gift certificate under § 205.20(b)(2). *See also* comment 20(b)–2.

[24] Such cards may, however, qualify for the exclusion in § 205.20(b)(3) for loyalty, award, or promotional gift cards.

or card itself is not advertised or otherwise promoted, but rather, is merely used as the means through which funds are delivered to a consumer, the Board believes the certificate or card is not marketed to the general public. Proposed comment 20(b)(4)–2 included four additional examples of cards that may fall within the exclusion depending on the circumstances: (a) A card containing insurance proceeds provided by an insurance company to a customer to settle a claim; (b) a card containing travel expenses or per diem funds provided by a business to an employee; (c) a card containing store credit provided by a retailer to a customer following a merchandise return if the card states that it is issued for store credit; and (d) a card containing tax refunds provided by a tax preparer to a customer. *See* proposed comments 20(b)(4)–2.iv.–vii.

The final comment adopts three of the four proposed examples substantively as proposed. However, the Board is not adopting the proposed example regarding travel expense or per diem cards. Specifically, the Board had proposed as an example of a card not marketed to the general public a prepaid card provided by an employer to its employees to cover travel expenses and per diem. *See* proposed comment 20(b)(4)–2.v. These cards are intended to be used for business purposes. In light of the clarification in comment 20(a)–4 that the rule's scope is limited to cards, codes or other devices sold or issued to consumers primarily for personal, family, or household purposes, these cards would not be subject to the rule. Thus, to eliminate redundancies, the proposed per diem and travel expense example is not adopted.

While commenters generally supported the proposed examples, some industry commenters argued that the tax refund card example should be modified to specifically exclude tax refund cards that are available only by becoming a customer of the tax preparer. The Board does not believe that this fact is relevant because, although the card would only be available to consumers who become customers of a tax preparer, any member of the general public typically may become a customer. Such a scenario would be indistinguishable from the national retail chain example described in comment 20(b)(4)–2.ii. Instead, the Board believes that whether a tax refund card is marketed to the general public depends upon other facts and circumstances. For example, if a tax preparer merely provides the prepaid card as a mechanism for providing a tax refund to a consumer, and does not advertise or otherwise promote the ability to receive a tax refund through a prepaid card, the card is excluded because it is not marketed to the general public. However, if the tax preparer engages in a marketing campaign that touts the ability of a consumer to receive a prepaid card for "faster" access to their tax refund proceeds, the tax refund card is not exempt under this exclusion. *See* comment 20(b)(4)–2.vi.

20(b)(5) Issued in Paper Form Only

Section 205.20(b)(5) sets forth the exclusion for cards, codes, or other devices that are issued in paper form only. *See* EFTA Section 915(a)(2)(D)(v); 15 U.S.C. 1693m(a)(2)(D)(v). Proposed comment 20(b)(5)–1 explained that the exclusion applies where the sole means of issuing the card, code, or other device is in paper form. Examples of excluded paper gift certificates or cards included paper certificates or vouchers distributed by a merchant that are redeemable for a specified dollar amount.

A few industry commenters urged the Board to remove the proposed exclusion stating that the exclusion could adversely impact the gift card industry as some merchants may elect to revert back to using paper gift certificates to avoid the fee and expiration date restrictions set forth in the rule. Other industry commenters believed that, given the cost savings and enhanced features offered by electronic gift cards compared to paper certificates, retailers and gift card issuers would be unlikely to return to paper simply to avoid application of the rule.

The exclusion for cards, codes, or other devices that are issued in paper form only is statutory, and accordingly, § 205.20(b)(5) is adopted as proposed. Comment 20(b)(5)–1 is also adopted generally as proposed. The comment explains that the exclusion does not apply simply because a card, code, or other device is reproduced or otherwise printed on paper. For example, a bar code, card or certificate number, or certificate or coupon provided to a consumer electronically and redeemable for goods or services is not issued in paper form, even though it may be reproduced or otherwise printed on paper by the consumer.[25] In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was issued to the consumer in electronic form.

The comment does not, however, preclude a paper certificate bearing a bar code or account number from qualifying for the exclusion. For example, a retailer may generate a bar code on a paper certificate at the time of purchase that enables the retailer to scan the certificate and maintain a record of the certificate electronically, rather than enter the information in a ledger. Because the bar code is issued to the consumer solely in paper form, the certificate qualifies for the exclusion. Similarly, a consumer may prepay for an item or service and receive a paper receipt with a numerical code that can for example, be used to access a car wash or entered into an electronic parking meter. The receipt bearing the code qualifies for the exclusion for cards, codes, or other devices issued in paper form only.

New comment 20(b)(5)–2 contains positive and negative examples illustrating the exclusion for cards, codes, or other devices issued in paper form only.

20(b)(6) Redeemable Solely for Admission to Events or Venues

Section 205.20(b)(6) excludes cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services, in conjunction with such admission, at the event or venue, or at specific locations affiliated with and in geographic proximity to the event or venue. *See* EFTA Section 915(a)(2)(D)(vi); 15 U.S.C. 1693m(a)(2)(D)(vi). The Board did not receive any comments on this exclusion, and it is adopted as proposed.

As clarified in comment 20(b)(6)–1, the exclusion in § 205.20(b)(6) is generally limited to cards, codes, or other devices that do not state a specific monetary value but instead are redeemable for an admission to an event or venue, such as a ticket to a sporting event or a pass to enter an amusement park.[26] In addition, the exclusion applies to cards, codes, or other devices that entitle the consumer to obtain goods or services, in conjunction with admission to an event or venue. *See* EFTA Section 915(a)(2)(D)(vi); 15 U.S.C. 1693m(a)(2)(D)(vi). For example, the consumer might purchase a certificate or card that entitles the recipient to one

[25] An issuer may, however, replace a gift certificate that was initially issued in paper form only with a plastic card or electronic code (for example, to replace a lost paper certificate) without falling outside the exclusion in § 205.20(b)(5).

[26] Such cards, codes, or other devices are also not covered by the rule because they are not issued in a specified amount. *See* comment 20(a)–3.

ticket to an amusement park plus a dollar amount that can be spent on concessions at the park. Consistent with the statute, the exclusion in § 205.20(b)(6) also covers circumstances where the consumer may obtain goods or services at specific locations affiliated with and in geographic proximity to the event or venue in conjunction with admission. For example, a certificate or card may enable the consumer to gain admission to an amusement park and to obtain a souvenir of the occasion at a retailer affiliated with the park located within or near the park.

While the exclusion applies to cards, codes, or other devices that are redeemable *for* admission to an event or venue, and for goods or services purchased in conjunction with that admission, the exclusion does not cover cards, codes, or other devices issued in a specified monetary value that could be applied *toward* such admission. For example, a merchant affiliated with an amusement park could issue a $25 gift card to a consumer that can be redeemed by the recipient to purchase goods at any of the merchant's retail outlets and its on-line store. Under the terms of the prepaid card program, however, the merchant could also allow the card to be provided as a form of payment to purchase tickets at the amusement park.

Permitting the exclusion to apply in these circumstances would create opportunities for circumvention because an issuer could simply list the purchase of tickets at the amusement park as one of several permitted uses of a gift card to avoid the consumer protections provided by the Credit Card Act. Accordingly, the final rule does not apply the exclusion to a card that can be redeemed in a specified amount towards admission to an event or venue. This approach is consistent with the statutory exclusion, which refers to cards, codes, or other devices that are redeemable *solely* for admission to events or venues at a particular location or group of affiliated locations. *See* EFTA Section 915(a)(2)(D)(vi); 15 U.S.C. 1693m(a)(2)(D)(vi).[27]

Comment 20(b)(6)–1 explains the exclusion in § 205.20(b)(6). Comment 20(b)(6)–2 (proposed as comment 20(b)(6)–1) provides examples to illustrate the exclusion. The comment and examples contained therein have been revised to reflect changes or additions elsewhere in the final rule. In addition, the examples in proposed comment 20(b)(6)–2.iv and .v have been deleted in light of the prior discussion regarding cards, codes, or other devices that are not issued in a specified amount. *See, e.g.,* comment 20(b)–3.

20(c) Form of Disclosures

Section 205.20(c) sets forth the general disclosure requirements that apply to gift certificates, store gift cards, and general-use prepaid cards, including provisions relating to the form of disclosures.

20(c)(1) Clear and Conspicuous

Proposed § 205.20(c)(1) implemented the clear and conspicuous standard required by EFTA Sections 915(b)(3)(A) and (c)(2)(B). *See* 15 U.S.C. 1693m(b)(2)(A) and (c)(2)(B). These statutory provisions require that a dormancy fee, inactivity charge or fee, or service fee and the terms of expiration, discussed in proposed §§ 205.20(d) and (e), must be disclosed clearly and conspicuously. In addition, the Board proposed that the clear and conspicuous standard would also apply to the disclosures in proposed § 205.20(f). Commenters agreed with the requirement to apply the clear and conspicuous standard to all disclosures required under § 205.20. Accordingly, section § 205.20(c)(1) is adopted substantially as proposed.[28]

Proposed comment 20(c)(1)–1 clarified the meaning of the term "clear and conspicuous." Specifically the proposed comment explained that disclosures would be clear and conspicuous for the purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Except as otherwise required, disclosures would not need to be located on the front of the certificate or card to be considered clear and conspicuous. Under the proposed comment, disclosures would be clear and conspicuous if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen would not likely be conspicuous if obscured by a logo printed in the background. Similarly, a disclosure on the back of a card that is printed on top of indentations from embossed type on the front of the card would not likely be conspicuous if the indentations obstruct the readability of the disclosure. The proposed comment clarified that oral disclosures, to the extent permitted, would meet the clear and conspicuous standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them. Commenters generally agreed that the proposed clear and conspicuous requirements were appropriate.

The November 2009 Proposed Rule did not include a specific type size or prominence requirement, except where otherwise noted. *See* proposed § 205.20(e)(3)(iii). The Board requested comment on whether a description of the clear and conspicuous standard in the final rule should include a type size or prominence requirement for all disclosures and, if so, what standard would be appropriate. The Board also requested comment on whether there were alternatives to a type size or prominence requirement that could ensure that disclosures on a card are clear and conspicuous to a consumer.

One commenter, a city government entity, believed the Board should require on-card disclosures in a 10-point type size and also impose font and type size requirements for on-line disclosures. Industry commenters, however, objected to adding a font or type size requirement. These commenters believed that issuers should have flexibility to tailor disclosures to specific certificates or cards and that it was not necessary to impose font or type size requirements to provide clear and conspicuous disclosures.

The Board believes that applying a prominence requirement or a minimum type size standard to every disclosure on a certificate or card is impractical. The Board believes it would be difficult to determine a type size standard that would be appropriate for all certificate or card programs, because the required disclosures on a certificate or card will vary depending upon the terms of the certificate or card. Moreover, particular features of a certificate or card, and perhaps the size of the certificate or card, may affect the type size of disclosures that could fit within the limited amount of space on the certificate or card. For example, a person making disclosures on a card with embossed type on the front of the card may need to adjust the type size to prevent the indentations from obstructing the readability of the disclosures. Thus, the final rule does not include a specific type size or

[27] While the exclusion in § 205.20(b)(6) does not apply to other payment devices that are redeemable for a specified product or service, other than admission to an event or venue, such as a certificate or card that is redeemable for a spa treatment or hotel stay, the devices may nevertheless fall outside the scope of § 205.20 if they are not issued in a specified dollar amount. *See* comment 20(b)–3. Other exclusions in the rule may also apply to such devices. *See, e.g.,* § 205.20(b)(3).

[28] Because the clear and conspicuous requirement applies to all disclosures provided under this section, disclosures provided in connection with loyalty, award, or promotional gift cards under § 205.20(a)(4)(iii) must also be clear and conspicuous.

prominence requirement. Comment 20(c)(1)–1 is adopted substantively as proposed.

Proposed § 205.20(c)(1) stated that the disclosures required by this section could contain commonly accepted or readily understandable abbreviations or symbols. Proposed comment 20(c)(1)–2 provided illustrative examples, stating that the use of abbreviations and symbols such as "mo." for month or a "/" to indicate "per" would be permissible. The proposed comment noted that it is sufficient under the clear and conspicuous standard to state, for example, that a particular fee is charged "$2.50/mo. after 12 mos." Commenters generally agreed with proposed comment 20(c)(1)–2. Accordingly, comment 20(c)(1)–2 is adopted as proposed.

20(c)(2) Format

Proposed § 205.20(c)(2) stated that disclosures required by this section generally would be required to be provided to the consumer in written or electronic form. Because the disclosures would not be required to be in written form, proposed comment 20(c)(2)–1 clarified that electronic disclosures made under this section would not be subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*), which only applies when information is required to be provided to a consumer in writing. The proposed comment clarified that electronic disclosures could not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. Under the proposed rule, the Board stated that an issuer or vendor would not be required to confirm that the consumer has read the electronic disclosures.

Several industry commenters agreed with the clarification that electronic disclosures provided under § 205.20 would not be subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. One city government entity commenter believed the Board should require the issuer to confirm that the consumer has read the electronic disclosures. The Board believes requiring confirmation that a consumer has read the disclosures would be impractical. For example, it would be difficult to confirm that a consumer has read disclosures on a code or confirmation that is electronically mailed to a consumer because the transaction has already been completed.

Section 205.20(c)(2) and comment 20(c)(2)–1 are generally adopted as proposed, with revisions. Upon the Board's further analysis, the final rule requires that certain disclosures must also be in a form that a consumer could keep so consumers can retain them for later review if necessary. Therefore, section 205.20(c)(2) in the final rule provides that written and electronic disclosures must be in a retainable form. Comment 20(c)(2)–1 provides an example that clarifies how a person could fulfill this requirement in the context of electronic disclosures. The comment provides that a person may satisfy the requirement if it provides an on-line disclosure in a format that is capable of being printed. Comment 20(c)(2)–1 in the final rule also makes non-substantive wording modifications, for consistency.

Proposed § 205.20(c)(2) stated that only disclosures provided under § 205.20(c)(3) may be provided orally. The Board stated in the supplementary information to the proposal that permitting oral disclosures is necessary in limited circumstances where disclosures cannot be made prior to purchase unless made orally, such as when a certificate or card is purchased by telephone. Though disclosures required to be made prior to purchase could be made orally, the proposed rule would still require written or electronic disclosures to be provided on or with the certificate or card. *See* proposed §§ 205.20(d)(2), (e)(3), and (f).[29] Commenters generally agreed with this provision in proposed § 205.20(c)(2), and it is adopted as proposed.

Some industry commenters asked the Board to clarify how a person could fulfill the requirement in § 205.20(e)(3)(iii) to make clarifying statements regarding funds expiration "in close proximity" to the card expiration date, if such disclosures are made orally. As discussed below, the Board has clarified in comment 20(e)–7 that the "close proximity" requirement does not apply to oral disclosures made pursuant to this section.

Proposed comment 20(c)(2)–2 addressed disclosure requirements in circumstances where no physical certificate or card is issued. This comment has been removed in the final rule. Instead, the disclosure requirements applicable to non-physical certificates or cards are discussed under §§ 205.20(c)(3) and (c)(4) and their respective commentaries.

20(c)(3) Disclosures Prior to Purchase

Proposed § 205.20(c)(3) provided that disclosures for dormancy, inactivity, or service fees required under § 205.20(d)(2) must be made prior to the purchase of the certificate or card. *See* EFTA Section 915(b)(3)(B); 15 U.S.C. 1693m(b)(3)(B). The Board also proposed in § 205.20(c)(3) to apply the requirement that disclosures be made prior to purchase of the certificate or card to the disclosure of additional fees imposed in connection with a certificate or card and the terms and conditions of expiration of the funds, using its authority under EFTA Section 904. *See* proposed §§ 205.20(e)(3) and (f)(1), discussed below. Proposed comment 20(c)(3)–1 clarified that the disclosures required under this paragraph must be provided regardless of whether the certificate or card is purchased in person, on-line, by telephone, or by other means.

Some industry commenters believed that those disclosures required to be made prior to purchase would be redundant, because the same disclosures also would be required to be made on or with the card. However, a consumer group commenter and a city government entity commenter supported the requirement to provide these disclosures to consumers prior to purchase. The city government entity commenter believed that merchants that sell gift cards should also be required to post signage at the point of sale with gift cards' terms and conditions.

The Board believes that consumers contemplating the purchase of a certificate or card should be provided information about all fees and the terms and conditions of expiration before purchasing a certificate or card. Even if the purchaser is not the ultimate user of the certificate or card, a purchaser should be aware of any potential costs to the recipient and the amount of time the recipient has to use the funds underlying the certificate or card. The final rule does not separately require signage with gift cards' terms and conditions at the point of sale in addition to the disclosures provided on or with the certificate or card itself. Such a requirement could be impractical because a merchant may sell many different certificates or cards that each have different terms. Posting signage that discloses different terms for different cards could confuse consumers who may not know which disclosures apply to the certificate or card that they want to purchase.

[29] Because the requirement applies to all disclosures under this section other than those provided under § 205.20(c)(3), disclosures provided in connection with loyalty, award, or promotional gift cards under § 205.20(a)(4)(iii) must also be written or electronic.

For the foregoing reasons, § 205.20(c)(3) is adopted as proposed, with some revisions. One industry commenter requested that the Board clarify in the final rule that an issuer may modify the terms of the certificate or card after purchase, so long as the modifications are disclosed to the consumer. The Board believes permitting the modification of fees and terms and conditions of expiration for certificates or cards would be problematic because many certificates or cards are issued without obtaining the name or other information about the consumer. Moreover, the certificate or card may be given to another consumer after purchase. In such cases, it would be difficult to inform consumers that fees and terms and conditions of expiration for a certificate or card have changed, because the issuer would not have the consumer's contact information. Moreover, permitting an issuer to change the fees and terms and conditions of expiration for a certificate or card after purchase would undermine the purpose of disclosing those fees and terms of expiration prior to purchase. Consumers would be unable to rely on the fees and terms and conditions of expiration disclosed on different certificates or cards when comparing products. Therefore, § 205.20(c)(3) provides that fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase. The Board has also modified § 205.20(c)(3) to clarify that an issuer or vendor, as referenced in EFTA Section 915(b)(3)(B), is a person that issues or sells a certificate or card to a consumer.

Comment 20(c)(3)–1 is adopted substantively as proposed. The Board also added two comments in the final rule to clarify § 205.20(c)(3). Comment 20(c)(3)–2 clarifies how disclosures required under § 205.20(c)(3) may be provided electronically to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made to a consumer after the consumer has initiated an on-line purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However, electronic disclosures made available on a person's Web site that may or may not be accessed by the consumer are not provided to the consumer and therefore would not satisfy the prior-to-purchase requirement.

Comment 20(c)(3)–3 clarifies how disclosures for non-physical certificates and cards may be provided prior to purchase. If no physical certificate or card is issued, the disclosures must be provided to the consumer before the certificate or card is purchased. For example, where a gift certificate or card is a code that is provided by telephone, the required disclosures may be provided orally prior to purchase.

20(c)(4) Disclosures on the Certificate or Card

The Board proposed that certain disclosures regarding dormancy, inactivity, or service fees be provided on the certificate or card, consistent with the requirements of EFTA Section 915(b)(3)(A). *See* proposed § 205.20(d)(2). The Board also proposed that the terms and conditions of expiration of the funds must be on the certificate or card itself. *See* proposed § 205.20(e)(3)(i). In addition, the Board proposed that certain additional disclosures not specified in the statute must also be on the certificate or card itself. Specifically, under the proposal, the following disclosures would have to be on the certificate or card itself: a toll-free telephone number a consumer may call for fee information or replacement certificates or cards (§§ 205.20(e)(3)(ii) and (f)(2)); a Web site a consumer may access for fee information or replacement certificates or cards, if one is maintained (§§ 205.20(e)(3)(ii) and (f)(2)); a disclosure that the certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card (§ 205.20(e)(3)(iii)); and the fact that the consumer may contact the issuer for a replacement card, if applicable (§ 205.20(e)(3)(iii)).

Proposed § 205.20(c)(4) implemented the requirement that certain disclosures under § 205.20 be provided on the certificate or card itself. Proposed § 205.20(c)(4) stated that a disclosure made in an accompanying terms and conditions document, on packaging, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card.

Some industry commenters urged the Board to limit the number of disclosures required to be on the certificate or card itself. These commenters argued that requiring additional disclosures to be on the certificate or card itself would impede consumer comprehension because there may be numerous disclosures required to fit within a limited amount of space on the certificate or card. Some commenters suggested that the Board only require contact information where a consumer could obtain fee and other information. Commenters also suggested permitting disclosures on packaging, on a disclosure that accompanies the card, or on a sticker affixed to the certificate or card, instead of on the certificate or card itself. Several commenters requested that the Board issue model forms in card size that illustrate compliance with the "on the card" disclosure requirement.

The Board recognizes that the amount of space in which to make disclosures on a standard sized certificate or card is limited. However, the Credit Card Act requires that certain disclosures regarding dormancy, inactivity, or service fees must be provided on the certificate or card. *See* EFTA Section 915(b)(3)(A); 15 U.S.C. 1693m(b)(3)(A). In addition, the Board believes that it is necessary to make the disclosures set forth in §§ 205.20(e)(3) and (f)(2) on the certificate or card itself to provide adequate and effective disclosure of key terms. Such disclosures would not be sufficient on packaging or a sticker affixed to the certificate or card, because the purchaser of the certificate or card may not be the user of the certificate or card and packaging or a sticker may be removed before a certificate or card is given to the user. The Board believes requiring the disclosures on the certificate or card itself ensures that the gift recipient receives these additional disclosures and will always have access to them, because they cannot be separated from the certificate or card.

The Board has provided issuers flexibility to tailor disclosures so that they fit on a particular certificate or card. Issuers may comply with the requirement to make disclosures on the certificate or card in a manner appropriate to a product, so long as the disclosures are clear and conspicuous. For example, issuers may be able to adjust type size and placement of disclosures to fulfill the disclosure requirements without disrupting the placement of an existing logo or magnetic stripe. Because the type and number of required disclosures will vary depending on a particular certificate or card, the Board believes it is not possible to provide a model certificate or card that would apply to every certificate and card subject to the final rule.

Therefore, § 205.20(c)(4) is adopted as proposed, with some revisions. The Board has added language to § 205.20(c)(4) to reflect the fact that the provision also applies to disclosures that must appear on a loyalty, award, or promotional gift card under § 205.20(a)(4)(iii). The paragraph also clarifies how disclosures required on the certificate or card may be provided for certificates and cards provided electronically or orally. The final rule provides that, for an electronic certificate or card, disclosures must be

provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation. The final rule further clarifies the treatment of non-physical certificates and cards by adding comment 20(c)(4)–1. The comment clarifies that if no physical certificate or card is issued, the disclosures required by § 205.20(c)(4) must be disclosed on the code, confirmation, or other written or electronic document provided to the consumer. For example, where a gift certificate or card is a code or confirmation that is provided to a consumer on-line or sent to a consumer's e-mail address, the required disclosures may be provided electronically on the same document as the code or confirmation.

Some industry commenters also suggested that the Board exclude any non-plastic cards, codes, or devices from the requirement to provide disclosures on the certificate or card. These commenters believed that disclosure on such devices, such as contactless stickers that can be placed on objects such as mobile phones, would be impossible and that the Board should instead permit the disclosures to be made on the packaging. Other industry commenters believed that the required disclosures could not fit on certain small form devices, such as plastic cards that are smaller than the standard gift card.

The Board believes that consumers of gift certificates, store gift cards or general-use prepaid cards should be given the protections provided under the Act, regardless of the form of the certificate or card. The Board agrees that certain devices may be issued in a form that is not conducive to providing fully compliant disclosures. Therefore, in the final rule, the Board has added comment 20(c)(4)–2 to clarify that a person may issue or sell a supplemental gift card that is smaller than a standard size and that does not bear the applicable disclosures if it is accompanied by a fully compliant certificate or card.

20(d) Prohibition on Imposition of Fees or Charges

Section 205.20(d) implements the statute's restrictions on imposing dormancy, inactivity, or service fees. *See* EFTA Sections 915(b)(1), (b)(2), and (b)(3); 15 U.S.C. 1693m(b)(1), (2), and (3). Proposed § 205.20(d) generally followed the statutory language with non-substantive wording and organizational changes, and is adopted as proposed.

Proposed § 205.20(d) prohibited the imposition of a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card or general-use prepaid card unless: (a) There has been no activity for the one-year period ending on the day the charge is imposed; (b) certain disclosure requirements have been met; and (c) only one such fee is charged in any given calendar month. Regarding disclosures, proposed § 205.20(d) provided that before a dormancy, inactivity, or service fee may be imposed, a certificate or card must clearly and conspicuously disclose: (a) That a dormancy, inactivity, or service fee may be charged; (b) the amount of the fee; (c) how often such fee or charge may be assessed; and (d) that such fee or charge may be assessed for inactivity.

Most commenters did not object to the text of proposed § 205.20(d). A few industry commenters suggested, however, that the restriction in § 205.20(d)(3) should apply to one *type* of fee per month. These commenters argued that this interpretation would be consistent with the legislative history of the Credit Card Act and certain state laws. The Board disagrees. The statute specifically provides that "not more than one [dormancy, inactivity, or service] fee may be charged in any given month." *See* EFTA Section 915(b)(2)(C); 15 U.S.C. 1693m(b)(2)(C). The Board believes that the better reading of this statutory provision is that only one fee may be charged in a given month and not that only one of each type of fee may be charged in a given month.

Some industry commenters recommended that the Board provide alternatives for disclosing service fees on a gift certificate, store gift card, or general-use prepaid card under § 205.20(d)(2). For example, one industry commenter suggested that the Board permit disclosure of a range of all fees that could be imposed, rather than listing the amounts for each fee. However, the Board believes that permitting such alternative disclosures would not be consistent with the statute and would not provide clear disclosures to consumers. Accordingly, § 205.20(d) is adopted as proposed.[30]

The Board proposed several comments to clarify the provisions in § 205.20(d). Proposed comment 20(d)–1 provided examples of how to determine when a dormancy, inactivity, or service fee may be imposed. The Board did not receive any comments on proposed comment 20(d)–1, and the comment is adopted largely as proposed, with minor clarifying amendments. The Board has also eliminated the proposed example concerning the determination of a one-year period when a fee is charged on February 29 of a leap year. The Board believes the other examples are sufficient to provide guidance to issuers.

Proposed comment 20(d)–2 elaborated on the meaning of "activity" for purposes of proposed § 205.20(d)(1). For organizational purposes, the Board has moved the substance of this comment to § 205.20(a)(7) and comment 20(a)(7)–1, discussed above. Consequently, the Board is renumbering proposed comments 20(d)–3 through 20(d)–5.

Proposed comment 20(d)–3 clarified the interaction between the disclosure requirements of proposed §§ 205.20(d)(2) and (c)(3). Specifically, the proposed comment provided that depending on the context, a single disclosure regarding dormancy, inactivity, or service fees that meets the clear and conspicuous requirement may satisfy both the requirement in § 205.20(d)(2) that the disclosures be provided on the certificate or card and the requirement in § 205.20(c)(3) that the disclosures be provided prior to purchase. For example, if the disclosures on a certificate or card, required by § 205.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certificate or card for a purchase made in person, the disclosures would also meet the requirements of § 205.20(c)(3). If, however, the disclosure would not meet the requirements of both §§ 205.20(d)(2) and (c)(3), proposed comment 20(d)–3 stated that a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of proposed §§ 205.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by § 205.20(d)(2), are obstructed by packaging sold with the certificate or card for a purchase made in person, they would also be required to be disclosed on the packaging sold with the certificate or card to meet the requirements of § 205.20(c)(3).

[30] As discussed in the November 2009 Proposed Rule, the Board did not propose to separately implement the statutory exclusion from the dormancy, inactivity, or service fee restrictions for gift certificates distributed pursuant to an award, loyalty, or promotional program and with respect to which there is no money or other value exchanged. *See* EFTA Section 915(b)(4). The Board believes this exclusion is effectively implemented through the definition of "gift certificate" in § 205.20(a)(1)(i) and the exclusion in § 205.20(b)(3) for loyalty, award, or promotional gift cards.

The city government entity commenter asserted that disclosures on a certificate or card that are visible to the consumer prior to purchase should not be deemed disclosed prior to purchase, because disclosures on a card may be smaller than disclosures displayed on signage or packaging. The Board continues to believe that so long as disclosures on a certificate or card are clear and conspicuous, the requirement to make disclosures prior to purchase is satisfied if the disclosures are visible to the consumer. Therefore, proposed comment 20(d)–3, renumbered as comment 20(d)–2 in the final rule, is adopted substantively as proposed, with minor revisions for clarity.

Proposed comment 20(d)–4 clarified that in addition to the disclosures required under § 205.20(d)(2), any applicable disclosures under §§ 205.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card. As discussed above, the Board believes that it is appropriate to require fee disclosures on the certificate or card itself, in addition to other applicable disclosures. Proposed comment 20(d)–4, renumbered as comment 20(d)–3 in the final rule, is therefore adopted as proposed.

Proposed comment 20(d)–5 clarified the prohibition in § 205.20(d)(3) against charging more than one dormancy, inactivity, or service fee in any given calendar month, with examples. The Board did not receive comment on proposed comment 20(d)–5, which is adopted as comment 20(d)–4 in the final rule with minor clarifying amendments.

Finally, the Board is adding a new comment 20(d)–5 to clarify that § 205.20(d) prohibits any person from accumulating or combining dormancy, inactivity, or service fees for previous periods into a single fee because such a practice would circumvent the limitation in § 205.20(d)(3) that only one fee may be charged per month. Specifically, this comment provides that an issuer may not retroactively impose fees on a consumer for prior months through a single fee assessed following a one-year period of inactivity. *See, e.g.,* U.S. Federal Trade Commission Complaint, In the Matter of Kmart Corporation, *et al.,* Docket No. C–4197. (Aug. 14, 2007). Comment 20(d)–5 contains an example to illustrate this prohibition.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

EFTA Section 915(c) prohibits the sale of a gift certificate, store gift card, or general-use prepaid card subject to an expiration date unless: (a) the expiration date is not earlier than five years after the date on which a gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and (b) the terms of expiration are clearly and conspicuously stated. *See* 15 U.S.C. 1693m(c). The Board proposed § 205.20(e) to implement EFTA Section 915(c).

Application of EFTA Section 915(c) to Funds Expiration

As the Board discussed in the November 2009 Proposed Rule, EFTA Section 915(c) does not specify whether the restrictions apply to the expiration of the certificate or card itself or the underlying funds. *See* 15 U.S.C. 1693m(c). Proposed § 205.20(e)(2) would have required that the expiration date of the underlying funds be at least the later of: (a) Five years from the date the gift certificate was issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or (b) the certificate or card expiration date.

Both consumer group and industry commenters agreed that the Board should apply the protections of EFTA Section 915(c) to the underlying funds. One industry commenter noted that if a certificate or card were replaced because the certificate or card had expired but the underlying funds were still valid, the funds should not be required to be valid from the date the replacement certificate or card is issued. Instead, the commenter believed that the five years should be measured from the date the certificate was first issued or the card was last loaded. The Board believes that this commenter's observation is consistent with the statute.

Accordingly, the Board is amending § 205.20(e)(2) with respect to gift certificates to state that the expiration date of the underlying funds must be at least the later of: (a) Five years from the date the gift certificate was *initially* issued, or (b) the certificate expiration date. In addition, with respect to store gift cards and general-use prepaid cards, the Board is adding a new comment 20(e)–2 in part to clarify that for purposes of determining the minimum expiration date under § 205.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use. As a result, issuers are not required to restart the five-year period in § 205.20(e)(2) when a replacement card is issued or activated.

Certificate or Card Expiration

Consumers may be confused about expiration dates because the expiration date for the certificate or card will differ from the expiration date for the underlying funds for many general-use prepaid cards, and perhaps some gift certificates and store gift cards. The Board proposed two alternative approaches in § 205.20(e)(1) to address potential consumer confusion about the certificate or card expiration date and the funds expiration date.

Under proposed Alternative A, a person could not sell a gift certificate, store gift card, or general-use prepaid card subject to an expiration date unless the certificate or card expiration date is at least five years after the date the certificate or card is sold or issued to a consumer. Under proposed Alternative B, persons that issue or sell a certificate or card would be required to adopt policies and procedures to ensure that a consumer will have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. The Board solicited comment on whether it should consider adopting Alternative B for a transitional period and adopt Alternative A as of a subsequent date in order to provide more time to implement Alternative A.

Commenters were divided on whether the Board should adopt Alternative A or Alternative B. Consumer group commenters and some industry commenters recommended that the Board adopt Alternative A because it is a precise and straightforward rule with less risk of misinterpretation or misapplication than Alternative B. Some of these commenters further suggested that if Alternative A were adopted, the need for disclosures to distinguish the certificate or card expiration date from the funds expiration date would no longer be necessary.

Several industry commenters supported Alternative B either as a transitional rule or as a permanent solution. Other industry commenters suggested that Alternative B should be provided as an option in addition to Alternative A. Commenters that generally favored Alternative B believed that Alternative B would provide for greater flexibility. In addition, several issuers commented that because the ability to comply with Alternative A relies almost exclusively on the sellers' ability to prevent the sale of a certificate or card that has less than five years remaining on the certificate or card expiration date, issuers may not have any control over these procedures.

Furthermore, commenters noted that the costs of implementing a more precise rule under Alternative A may not be warranted given that the vast majority of certificate and card users fully expend the underlying funds within a few years.

The Board believes that given the various entities involved in distributing a gift certificate, store gift card, or general-use prepaid card for sale and the operational challenges associated with implementing Alternative A, flexibility is warranted with respect to making certificates and cards available for sale with expiration dates that are closely aligned with, but not necessarily identical to, the funds expiration date. Therefore, the Board is adopting Alternative B of § 205.20(e)(1) substantively as proposed, with minor wording changes. However, persons that follow Alternative A are deemed to have adopted policies and procedures consistent with Alternative B. *See* comment 20(e)–1.i.

In adopting Alternative B, the Board recognizes that not all sellers, issuers, and distributors may be in a position to implement Alternative A without considerable costs and systems changes. For example, Alternative A may require programming and perhaps hardware changes at point-of-sale, to prevent a certificate or card from being sold with less than five years remaining before the certificate or card expiration date. Furthermore, the Board understands that a significant number of consumers spend down the funds underlying gift certificates, store gift cards, and general-use prepaid cards within a few years. Therefore, the Board believes that Alternative A is not necessary to ensure that the vast majority of certificate or cards will not be prematurely discarded while funds still remain valid. For the small number of consumers who retain certificates or cards that expire before their funds, the Board believes the other requirements in § 205.20(e) will be sufficient to ensure these consumers have the benefit of the funds for the minimum time the statute requires.

Proposed comment 20(e)–1 under Alternative B set forth both positive and negative examples of providing consumers a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. The Board did not receive any significant comment on these examples. However, the Board is amending comment 20(e)–1 for clarity by eliminating the examples and by specifying two ways in which the reasonable opportunity standard may be met. Specifically, comment 20(e)–1 provides that consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if the certificate or card is available for purchase by a consumer with at least five years and six months before the certificate or card expiration date. Furthermore, as discussed above, the Board believes that compliance with Alternative A is a means of complying with Alternative B. Therefore, comment 20(e)–1 states that consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if there are policies and procedures in place to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or issued to a consumer.

Although Alternative B may adequately address potential consumer confusion regarding expiration dates with respect to non-reloadable cards, such protections may not be sufficient for reloadable cards where the funds expiration date changes each time the card is reloaded. The Board is addressing this issue by requiring certain disclosures related to the expiration of the underlying funds, as discussed more fully below in the supplementary information to § 205.20(e)(3). However, the Board requested comment on whether it should require issuers to automatically issue a replacement card to consumers prior to the card expiration date of a reloadable card if the underlying funds will not expire until after the card expiration date.

Several industry commenters opposed such a requirement, noting that since the rule is intended to cover gift cards, the person that purchases the card often is not the person ultimately using the card. Therefore, it may not be practical for issuers or sellers of reloadable cards to collect the name and address of the ultimate user at point of sale because the purchaser may not be in a position to provide this information. Furthermore, commenters stated that if a consumer does not notify the gift card issuer of a change in address, the issuer may not have a reliable current address to which it could send a replacement card. Given these operational complexities, the final rule does not require issuers to automatically replace expired reloadable cards.

Finally, the Board is adopting new comment 20(e)–2, in part, to incorporate a suggestion from an industry commenter regarding replacement certificates or cards, which are generally subject to all provisions in § 205.20, including disclosure requirements. This comment explains that because § 205.20(e)(1) requires issuers and sellers to have reasonable policies and procedures in place to provide a reasonable opportunity for a consumer to *purchase* a certificate or card with at least five years before the certificate or card expiration date, the provision does not apply to the issuance of a replacement certificate or card. Replacement certificates or cards may therefore have shorter expiration dates. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in § 205.20(e)(2)(i), then pursuant to § 205.20(e)(2), the expiration date for the underlying funds at the time the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card.

For example, if a consumer purchases a non-reloadable general-use prepaid card with five years before the card expires and seven years before the underlying funds expire, the replacement card may have a card expiration date that is less than five years to correspond to the expiration date of the underlying funds. However, if the replacement card expiration date is later than the original seven-year expiration date of the underlying funds, the underlying funds expiration date must at a minimum match the replacement card expiration date.

Disclosures Related to Certificate or Card Expiration and Funds Expiration

Proposed § 205.20(e)(3) provided that three disclosures were required to be stated on the certificate or card, as applicable. First, proposed § 205.20(e)(3)(i) provided that the disclosures must state the expiration date for the underlying funds or, if the underlying funds do not expire, that fact. In some instances, the exact expiration date of the underlying funds may not be able to be determined. For example, in the case of reloadable cards, the funds expiration date is determined by the date the consumer last loaded funds onto the card. As a result, the funds expiration date adjusts each time the consumer reloads the card. For example, if a consumer purchases a reloadable card on January 15, 2012, the funds may expire on or after January 15, 2017. However, if a consumer loads more funds onto the card on July 15, 2014, the funds may not expire until on or after July 15, 2019. To accommodate this circumstance, proposed comment 20(e)–2 under Alternative B clarified that § 205.20(e) does not require disclosure of the precise date the funds

will expire. Under the proposed comment, it would be sufficient to disclose, for example, "Funds expire 5 years from the date funds last loaded to the card."; "Funds can be used 5 years from the date money was last added to the card."; or "Funds do not expire."

The Board continues to believe that a consumer should be informed when the funds on a certificate or card expire. Therefore, § 205.20(e)(3)(i) is adopted as proposed, and proposed comment 20(e)–2 under Alternative B is adopted as comment 20(e)–3 in the final rule.

Proposed comment 20(e)–3 under Alternative B clarified that if the certificate or card and the underlying funds do not expire, that fact need not be disclosed. The Board explained in the proposal that disclosing the fact that the underlying funds do not expire was not necessary in these situations because there is no risk of consumers confusing the expiration date of the certificate or card with that of the underlying funds.

The Board did not receive comments on the proposed comment. However, upon further analysis, the Board has added one further clarification to the comment to provide that if the certificate or card and the underlying funds expire at the same time, only one expiration date must be disclosed on the certificate or card. Because there is no risk that consumers would confuse the expiration date of the certificate or card with the expiration date of the underlying funds when those two dates are the same, distinguishing between the funds expiration date and the expiration date of the certificate or card is not necessary. Therefore, proposed comment 20(e)–3 under Alternative B is adopted as comment 20(e)–4, with the additional clarification.

Second, proposed § 205.20(e)(3)(ii) provided that the disclosures must include a toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires, if the underlying funds may still be available. The Board believed that requiring maintenance of a toll-free telephone number for purposes of obtaining a replacement card would be appropriate because, as discussed above, a certificate or card expiration date may be earlier than the funds expiration date.[31] Although the proposed rule did not similarly require maintenance of a Web site for such purposes, if one is maintained, that Web site would also have to be disclosed under § 205.20(e)(3)(ii). By requiring contact information to be on the certificate or card itself, the Board believed that consumers would be able to obtain a replacement certificate or card more easily if the certificate or card expires before the underlying funds.

Commenters did not object to the proposed paragraph. Thus, § 205.20(e)(3)(ii) is adopted as proposed, pursuant to the Board's authority under EFTA Section 904.

Proposed comment 20(e)–4 under Alternative B clarified that if a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, a toll-free telephone number and, if maintained, a Web site address would not need to be stated on the certificate or card. However, a toll-free telephone number and a Web site would still be required to be disclosed if the certificate or card has fees. *See* proposed § 205.20(f)(2). Proposed comment 20(e)–5 under Alternative B clarified that the same toll-free telephone number and Web site could be used to comply with the requirements of proposed §§ 205.20(e)(3)(ii) and (f)(2).[32] In addition, proposed comment 20(e)–5 provided that neither a toll-free number nor a Web site must be maintained or disclosed on a certificate or card if no fees are imposed in connection with the certificate or card, and the certificate or card and underlying funds do not expire. The Board received no comments on the proposed comments 20(e)–4 and 20(e)–5 under Alternative B, which are adopted as comments 20(e)–5 and 20(e)–6, respectively, in the final rule.

Finally, proposed § 205.20(e)(3)(iii) would have required, if applicable, a statement that the certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. This requirement was designed to alert consumers to any difference between the certificate or card expiration date and the funds expiration date so that they would not mistakenly believe the funds were no longer available if the certificate or card expired during the minimum five-year period set forth in the statute.

Proposed § 205.20(e)(3)(iii) also provided that the statement must be disclosed with equal prominence and in close proximity to the certificate or card expiration date. Typically, the expiration date for a certificate or card is printed on the certificate or card in a prominent location and type size. Thus, the Board was concerned that the prominence of the expiration date on the certificate or card, without any additional disclosures, could lead consumers to assume that once the certificate or card itself expires, the underlying funds would be unavailable.

Proposed comment 20(e)–6 under Alternative B clarified the meaning of close proximity in this context. Under the proposed rule, close proximity meant that the disclosure must appear on the same side as the certificate or card expiration date so that consumers would not automatically assume funds are not available after the certificate or card expiration date. The proposed comment also clarified in an example that if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Under the proposal, the disclosure did not need to be embossed on the certificate or card to be deemed equally prominent, even if the expiration date was embossed on the certificate or card. The Board believed these format standards would sufficiently ensure that most consumers could determine whether an expiration date for a certificate or card is different from the funds expiration date.

One consumer group commenter agreed that consumers should be made aware of the distinction between the funds expiration date and the certificate or card expiration date, even if the Board adopted Alternative A and required that a certificate or card must not expire prior to five years from the date it was sold or issued to a consumer. This commenter noted that consumers still needed to be made aware of the discrepancy in instances, for example, where the funds expiration date changes when a consumer reloads a card. The city government entity commenter believed that the Board should prohibit certificates or cards from expiring before the funds, so that only one expiration date would be provided.

Many industry commenters believed that requiring the disclosures under proposed § 205.20(e)(3)(iii) would be burdensome. These commenters asserted that even the Board's proposed short disclosures would take up too much space on the front of the card, where expiration dates are typically printed. They believed that the

[31] As discussed below under § 205.20(f), the requirement that the telephone number be toll-free recognizes that the end user of a certificate or card may not reside in the area where the certificate or card was initially purchased.

[32] The toll-free telephone number and Web site may also be the same toll-free telephone number and Web site provided for customer service issues or questions relating to the certificate or card.

disclosures would have to be in a small font size to fit with equal prominence and in close proximity to the expiration date. Industry commenters thus urged the Board to eliminate the prominence and proximity requirement and to permit the disclosures to be made on the back of the card or with materials that accompany the card. Some industry commenters stated that changing the "Valid thru" verbiage on the front of the card to read "Expiration date" would sufficiently alert consumers the distinction between the funds expiration date and the date that the certificate or card expires. Other industry commenters stated that the requirement was unnecessary for most consumers of certificates or cards because most consumers use the entire balance of a gift card long before the funds expire.

The Board continues to believe that the prominence and proximity requirements are appropriate and necessary for the disclosures required under proposed § 205.20(e)(3)(iii). The disclosures are intended not only to inform consumers of their rights, but also to reduce potential consumer confusion that may occur if an expiration date for a certificate or card differs from the funds expiration date. The Board believes disclosures regarding the expiration of the funds require more specific format requirements than other disclosures that are required to be on the certificate or card, because they must counteract the disclosure of the certificate or card expiration date that a consumer may mistake for a funds expiration date. If the disclosure is in close proximity to the card expiration date, the consumer may be more likely to notice it and seek additional information regarding how the consumer could continue to use the card after the card expiration date. Moreover, the Board does not believe that the subtle changes to verbiage suggested by some commenters is sufficient for consumers to distinguish between the funds expiration date and the expiration date of the certificate or card.

For the foregoing reasons, the general format requirements are retained in the final rule, pursuant to the Board's authority under EFTA Section 904. Proposed comment 20(e)–6 is adopted substantially as proposed in comment 20(e)–7. Comment 20(e)–7 in the final rule clarifies, however, that the close proximity requirement does not apply to oral disclosures. *See* § 205.20(c)(3).

Proposed comment 20(e)–6 under Alternative B provided examples regarding how a disclosure may inform a consumer of the distinction between the certificate or card expiration and the funds expiration under proposed § 205.20(e)(3)(iii). Under the proposed comment, the disclosure could state on the front of the card, for example, "Valid thru 09/2016. Call for new card."; "Active thru 09/2016. Call for replacement card."; or "Call for new card after 09/2016." The Board believed these disclosures, in conjunction with other disclosures required to be on the card, such as a toll-free number that a consumer could call for a replacement card, would provide sufficient information to inform consumers that they may be able to continue using their funds after the certificate or card itself has expired.

The Board received no comments regarding the proposed sample disclosures, other than general concerns regarding how the disclosures would fit on the card if required to be made with equal prominence and in close proximity to the certificate or card expiration date. Upon further analysis, the Board has determined that some of the proposed sample disclosures may not sufficiently alert consumers to the distinction between the funds expiration date and the certificate or card expiration date. Therefore, in the final rule, comment 20(e)–7 has been revised to provide different sample disclosure language that more explicitly alerts consumers to the reason that they should contact the issuer for a new card. The disclosure may state, for example, "Funds expire after card. Call for replacement card." or "Funds do not expire. Call for new card after 09/2016."

Comment 20(e)–7 also clarifies that disclosures made pursuant to § 205.20(e)(3)(iii)(A) may also fulfill the requirements of § 205.20(e)(3)(i). For example, making a disclosure that "Funds do not expire." to comply with § 205.20(e)(3)(iii) would also fulfill the requirements of § 205.20(e)(3)(i).

The Board recognizes that the amount of space available for disclosures near the certificate or card expiration date is limited. The Board also understands that some disclosures could be difficult to provide clearly and conspicuously, if the disclosures are required to be in close proximity to the certificate or card expiration date. To address this concern, § 205.20(e)(3)(iii) has been revised to provide relief from these disclosures for a non-reloadable certificate or card that bears an expiration date that is at least seven years from the date of manufacture. The Board believes that the seven-year safe harbor for the disclosures under § 205.20(e)(3)(iii) for non-reloadable certificates and cards will provide the vast majority of consumers ample time to use the funds available on the certificate or card, thus making the disclosures under § 205.20(e)(3)(iii) unnecessary. For purposes of this safe harbor, new comment 20(e)–8 states that the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

Notwithstanding this safe harbor provision with respect to the disclosures in § 205.20(e)(3)(iii), § 205.20(e)(1) would still prohibit the sale or issuance of such certificate or card unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under § 205.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years at the date of purchase. *See* comment 20(e)–8.

In the event that a certificate or card bearing an expiration date of seven years or more at the time the certificate or card was manufactured is purchased with a certificate or card expiration date with less than five years remaining, the consumer would still have access to the funds for at least five years from the date of purchase, and the certificate or card would state the disclosures required under § 205.20(e)(3)(i) and (ii) alerting the consumer to the funds expiration date and contact information for obtaining a replacement card. Nonetheless, the Board expects that, based on its understanding of current industry practice, most consumers will purchase certificates or cards with more than five years remaining before the certificate or card expires.

Finally, the Board noted in proposed comment 20(e)–7 under Alternative B that proposed §§ 205.20(d)(2), (e)(3), and (f)(2) (as discussed below) would require certain disclosures to be made on the certificate or card itself, as applicable. The proposed comment thus clarified that in addition to any disclosures required under § 205.20(e)(3), any applicable disclosures under §§ 205.20(d)(2) and (f)(2) of this section must also be provided on the certificate or card. The Board received no comments on the proposed comment, which is adopted as comment 20(e)–9 in the final rule.

Other Protections and Clarifications

In the November 2009 Proposed Rule, the Board proposed § 205.20(e)(4) to prohibit the imposition of fees to replace an expired certificate or card if the funds loaded on the certificate or card have not expired. Proposed

§ 205.20(e)(4), however, contained an exception for certificates or cards that have been lost or stolen. Proposed comment 20(e)–8 under Alternative B clarified that although a fee would be permitted to be charged to replace a lost or stolen certificate or card under proposed § 205.20(e)(4), the rule did not create a substantive requirement that issuers replace a lost or stolen certificate or card.

Several commenters supported the Board's proposal to prohibit fees to replace an expired certificate or card if the underlying funds have not expired. Some industry commenters, however, opposed the Board's proposal, noting that the Credit Card Act did not specifically provide for this right. The Board believes that EFTA Section 904(c) provides the Board with the authority to enact regulations to carry out the purposes of the statutory protections. *See* 15 U.S.C. 1693b(c). Proposed § 205.20(e)(4) was meant to ensure that consumers would have full use of the funds loaded on a certificate or card for the minimum five-year period set forth in the statute by providing consumers with a cost-free means to access funds if a certificate or card expired before the underlying funds. The Board continues to believe this provision is integral to effectuating the protections afforded by the statute.

Consumer group commenters also suggested that the Board provide consumers with the right to one cost-free replacement for a lost or stolen certificate or card. Imposing a fee restriction for the replacement of a lost or stolen certificate or card goes beyond the protections afforded by the statute, and is not related to the expiration date of the card or certificate. Furthermore, the Board recognizes that there are costs to issuing a replacement certificate or card. Therefore, the final rule does not prohibit issuers from charging fees to replace a lost or stolen certificate or card.

Other industry commenters suggested that if a certificate or card expires but the underlying funds have not yet expired, an issuer should be permitted to return the balance of funds to the consumer instead of providing a replacement certificate or card. If the remaining amount on a certificate or card is small or if there is little time remaining before the expiration of the funds, an issuer may find it more cost-effective to return the balance of funds to the consumer, for example, by check, rather than issuing another certificate or card. Furthermore, certain state laws require an issuer to return the balance of funds to a consumer upon the occurrence of a triggering event with a certain remaining amount.

The Board notes that neither the statute nor the regulation specifically requires that a replacement certificate or card be issued. Therefore, issuers may, at their option in accordance with applicable state law, return the balance of funds to a consumer instead of issuing a replacement for an expired certificate or card. However, the Board believes that just as a fee may not be charged for replacing the certificate or card, similarly, no fee may be charged for refunding the balance of the funds. Consequently, the Board is amending § 205.20(e)(4) to provide that no fee may be charged for providing a certificate or card holder with the remaining balance prior to the funds expiration date, unless such certificate or card has been lost or stolen. A new comment 20(e)–10 is adopted to clarify this point. In addition, proposed comment 20(e)–8 under Alternative B is adopted in final as comment 20(e)–11.

Proposed comment 20(e)–9 under Alternative B clarified that a certificate or card is not considered to be issued or loaded with funds until it has been activated for use. As explained in the November 2009 Proposed Rule, issuers often produce gift cards for display on retail shelves and racks or for mailing to consumers, but, for security reasons, these cards cannot be used until the card has been activated by a retail employee or by telephone. The proposed comment was meant to clarify that although a certificate or card may have been produced, it is not considered to have been "issued" or to have had funds "loaded" for purposes of § 205.20(e) until that card has been activated for use. The Board did not receive comment on this issue. Therefore, proposed comment 20(e)–9 under Alternative B has been adopted in final, with one minor clarifying amendment, as comment 20(e)–12.

Finally, some industry commenters asked the Board to clarify how the expiration date restrictions may apply to certain gift cards that are redeemable for songs, media, or virtual goods.[33] The Board understands that for these types of cards, it is a common practice that once a consumer redeems the card, the full value is debited from the card and credited to another "account"[34] that is used specifically to buy such goods or services, even if the consumer does not purchase the goods or services at that time. The Board concludes that once a certificate or card has been fully redeemed, the five-year minimum expiration term no longer applies to the underlying funds. New comment 20(e)–13 sets forth this clarification. In addition, the comment provides that if the consumer only partially redeems the value of a certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

EFTA Section 905(a)(4) and § 205.7(b)(5) of Regulation E require the disclosure of any fees imposed by a financial institution for electronic fund transfers or for the right to make such transfers. *See* 15 U.S.C. 1693c(a)(4). The Board has the authority under EFTA Section 915(d)(2) to apply the requirements of Regulation E to gift cards, store gift cards, and general-use prepaid cards. *See* 15 U.S.C. 1693m(d)(2). Using this authority, the Board proposed § 205.20(f) to require additional fee-related disclosures for gift certificates, store gift cards, and general-use prepaid cards.

20(f)(1) Fee Disclosures

Proposed § 205.20(f)(1) would have required certain disclosures to be provided on or with the certificate or card for each type of fee (other than dormancy, inactivity, or service fees) that may be imposed in connection with a gift certificate, store gift card, or general-use prepaid card. Specifically, the type of fee, the amount of the fee (or an explanation of how the fee will be determined), and the conditions under which the fee may be imposed would be required to be disclosed under the proposal. The proposed provision did not apply to dormancy, inactivity, and service fees because those fees were required to be disclosed under proposed § 205.20(d)(2). Therefore, proposed § 205.20(f)(1) would have required the disclosure of fees such as a one-time initial issuance fee and cash-out fee. The proposal permitted these fee disclosures to be provided either on or with the certificate or card in light of the limited space availability on a certificate or card and other disclosure requirements. In addition, the Board proposed to require the disclosure of these fees prior to purchase, as discussed above in the supplementary information to § 205.20(c)(3).

[33] Virtual goods are intangible digital items that can be purchased for use in on-line communities or on-line games. *See* Claire Cain Miller & Brad Stone, "Virtual Goods Start Bringing Real Paydays," *New York Times,* November 7, 2009, at A1.

[34] An "account" established by a merchant to purchase virtual goods would not be an account for purposes of Regulation E.

Commenters generally agreed that any fees that may be imposed should be disclosed to consumers. Industry commenters agreed that the fee disclosures under § 205.20(f)(1) should be permitted to be provided along with, rather than on, a certificate or card due to the limited amount of space on certificates and cards. Accordingly, § 205.20(f)(1) is adopted as proposed.

20(f)(2) Telephone Number for Fee Information

The Board also proposed § 205.20(f)(2) to require the clear and conspicuous disclosure of a toll-free telephone number and, if one is maintained, a Web site, for consumers to obtain information about fees. This disclosure had to be provided on a gift certificate, store gift card, or general-use prepaid card. Proposed § 205.20(f)(2) also required maintenance of a toll-free telephone number to provide information on the fees required to be disclosed under proposed §§ 205.20(d)(2) and (f)(1). The proposed rule did not require that a Web site be maintained for such purposes. However, if a Web site that provides information about fees is already maintained, proposed § 205.20(f)(2) would have required that the Web site must also be disclosed.

Given the limited space on a certificate or card, the Board anticipated that issuers would opt to disclose some fee information on materials accompanying the certificate or card, as opposed to on the certificate or card itself. In such cases, the disclosures accompanying the certificate or card could become separated from the actual certificate or card. By requiring the reference to the toll-free telephone number and, if one is maintained, the Web site, on the certificate or card, the Board sought to ensure that consumers would have an easy and cost-free means of obtaining fee information related to the certificate or card, even if the consumer no longer has the original disclosure.

One consumer group commenter agreed that a telephone number where consumers could obtain fee and other information should be available to consumers. This commenter believed that information should not be provided solely through a Web site because some consumers may not have access to the Internet.

Pursuant to the Board's authority under EFTA Sections 915(c)(2) and 915(d)(1)(A) and EFTA Section 904, § 205.20(f)(2) is adopted substantially as proposed. The Board believes it is appropriate to require maintenance of a toll-free telephone number, because it will provide consumers with a means to access important information about the certificate or card at no cost no matter where in the United States the consumer may use the certificate or card. Moreover, the Board understands that many issuers already maintain toll-free telephone numbers and Web sites for consumers to contact for further information and often provide this information directly on the certificates or cards they issue. As a result, the requirement should not impose additional burdens on many issuers.

The proposal contained several comments to clarify proposed § 205.20(f). The Board received no comments on the proposed comments to § 205.20(f), each of which is adopted substantially as proposed.

Comment 20(f)–1 clarifies that if a certificate or card does not have any fees, the § 205.20(f)(2) disclosure is not required on the certificate or card. However, a telephone number and a Web site may still have to be disclosed pursuant to § 205.20(e)(3)(ii) if funds underlying a certificate or card may be available after the certificate or card expires.

Comment 20(f)–2 clarifies that the same toll-free number and Web site may be used to fulfill the requirements of §§ 205.20(e)(3)(ii) and (f)(2).[35] The comment also clarifies that neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and the certificate or card and underlying funds do not expire.

Sections 205.20(d)(2), (e)(3), and (f)(2) require certain disclosures to be provided on the certificate or card itself, as applicable. Comment 20(f)–3 clarifies that in addition to any disclosures required pursuant to § 205.20(f)(2), any applicable disclosures under §§ 205.20(d)(2) and (e)(3) of this section must be provided on the certificate or card.

20(g) Compliance Dates

As discussed above, the Credit Card Act provides that the final rules implementing the statutory gift card provisions must become effective August 22, 2010. Section 205.20(g) has been added to the final rule to address transition issues associated with implementing the rule by the August 22, 2010 effective date.

The Board solicited comment on the potential costs that would be incurred if issuers and other persons subject to the rule were required to remove and replace card stock, including cards that have already been placed into store inventory, to ensure that all products sold on or after August 22, 2010 fully comply with the new requirements. The Board also solicited comment on whether it should consider rules to provide relief for gift certificates, store gift cards, and general-use prepaid cards in distribution as of August 22, 2010 from some or all of the new requirements. For example, the final rule could require all such certificates or cards to comply with the substantive restrictions on imposing dormancy, inactivity, or service fees, and expiration dates, but otherwise permit such certificates or cards to be sold even if they do not contain the required disclosures. Finally, the Board solicited comment on an appropriate transition period after which all certificates or cards must fully comply with the new rules.

Industry commenters urged the Board to grandfather all physical cards already in the marketplace and in distribution, including cards that are sold on-line or via telephone, for a certain period of time, ranging from 180 days to 24 months. In particular, industry commenters noted that the short implementation period between the issuance of final rules and the statutory compliance date of August 22, 2010 would leave insufficient time for the industry to review the new rule requirements; design, produce, and merchandise new stock; and remove and replace old stock. In addition, industry commenters observed that the final rule could require the possible manufacture and installation of new displays and signage, each of which would require additional time.

Several industry commenters also questioned whether there would be adequate industry resources available either to produce sufficient compliant cards or to replace non-compliant cards prior to the effective date. As a result, some issuers and retailers may not have their orders filled in an amount sufficient to meet consumer demand, which could significantly reduce sales, especially if stock could not be replaced by the holiday season when the bulk of sales occur.

Some industry commenters estimated that replacing all card stock in inventory could cost an estimated $20 to $50 million per card issuer and/or distributor, including the costs of destroying existing card stock. One issuer of promotional and reward cards stated that it typically holds several million customized cards in inventory at any given point in time for

[35] The toll-free telephone number and Web site may also be the same toll-free telephone number and Web site provided for customer service issues or questions relating to the certificate or card.

promotional programs that may run a year or longer, and thus estimated that it would cost several hundred thousands of dollars to destroy current card inventory and order replacement inventory. Industry commenters further noted the adverse environmental impact from destroying large quantities of plastic card stock, which are only rarely made from recyclable or biodegradable materials.

In the interim, industry commenters noted that consumers would remain adequately protected if the Board required card issuers to comply with the substantive fee and expiration date restrictions in the Credit Card Act, and to provide adequate signage, displays, and/or customer service messaging apprising consumers of their new rights. In contrast, one state attorney general commenter urged the Board to prohibit the sale of "grandfathered" gift certificates and cards that do not contain the prescribed disclosures after the effective date of the Credit Card Act.

Industry commenters also urged the Board to confirm that § 205.20 does not apply to gift certificates and gift cards purchased by consumers prior to August 22, 2010 to avoid retroactive application of the rule. Industry commenters further noted that card issuers were unlikely to have contact information of consumers who have either purchased or received the cards, and therefore would be unable to provide those consumers with new disclosures.

Under Section 403 of the Credit Card Act, the gift card provisions must become effective 15 months after the date of enactment, or by August 22, 2010. Accordingly, the Board believes that the purpose and intent of these new provisions would be most effectively carried out by requiring full compliance with the final rule, including each of the substantive and disclosure requirements, by August 22, 2010. In this regard, the Board believes that there could be significant consumer confusion if gift cards sold after August 22, 2010 carried disclosures that were inconsistent with the substantive protections afforded by the Credit Card Act. In particular, consumers relying on a card expiration date that is shorter than five years from the date of issuance may elect to discard an expired gift card notwithstanding the fact that the underlying funds may remain valid after card expiration, and thus be denied the protections under the Credit Card Act.

Some industry commenters asserted that consumers could be apprised of their new rights through signage at the point of sale, or through communications via an issuer's toll-free telephone number or Web site, thereby mitigating any adverse effect from inconsistent card disclosures. However, the Board believes that such measures would not by themselves provide adequate protection. In the first instance, signage at the point-of-sale would be ineffective for the vast majority of gift card recipients as they would not be the consumers initially purchasing the cards. With respect to other proposed methods of communication, a consumer that had no reason to call the telephone number or visit the Web site would not receive the necessary disclosures. For example, a recipient may receive a card with an expiration date printed on it which may no longer apply after the effective date of the rule, and then dispose of the expired card without first calling the telephone number on the card.

Accordingly, new § 205.20(g)(1) provides that § 205.20 applies to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to the consumer as a replacement for such certificate or card. However, the final rule does not apply the new requirements, including the restrictions on imposing dormancy, inactivity, or service fees and on expiration dates, or the disclosure requirements set forth in the Credit Card Act or the regulation, to certificates or cards sold or provided to a consumer prior to that date.

Section 205.20(g)(2) sets forth a transition rule for loyalty, award, and promotional gift cards, which are otherwise only subject to the disclosure requirements under § 205.20. Specifically, the final rule does not apply to any gift cards provided to a consumer through a loyalty, award, or promotional program where the period of eligibility for the program began prior to August 22, 2010. For these cards, the same concerns regarding the inconsistency of disclosures and substantive practices do not apply. Gift cards issued through a loyalty, award, or promotional program that begins on or after August 22, 2010 must comply with the disclosure requirements in § 205.20(a)(4)(iii) in order to qualify for the exclusion in § 205.20(b)(3). New comment 20(g)–1 provides additional guidance regarding the period of eligibility for a loyalty, award, or promotional program.

Additional Issues

Authority To Adopt Additional EFTA Protections

EFTA Section 915(d)(2) gives the Board the authority to determine the extent to which the individual definitions and provisions of the EFTA or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards. *See* 15 U.S.C. 1693m(d)(2). In the November 2009 Proposed Rule, the Board proposed to exercise this authority to require the disclosure of any fees that may apply, and the conditions under which such fee may be imposed. *See, e.g.,* proposed § 205.20(f). However, the Board did not otherwise seek to apply any other provisions in the EFTA or Regulation E to gift certificates, store gift cards, or general-use prepaid cards. For example, the Board did not propose to apply the periodic statement disclosures or error resolution obligations under the EFTA or Regulation E to gift certificates, store gift cards, or general-use prepaid cards.

Industry commenters agreed that broader application of Regulation E requirements to gift certificates, store gift cards, and general-use prepaid cards was not appropriate, because it would lead to inconsistent treatment of the gift certificates or cards addressed by this rule and other prepaid card products, such as general-purpose reloadable cards that are used as account substitutes. One industry commenter observed that applying periodic statement requirements to non-reloadable gift cards, for example, would be problematic because such cards are typically issued anonymously and therefore customer information would generally not be available for providing statements.

Consumer groups, however, urged the Board to exercise the authority provided by EFTA Section 915(d)(1) to clarify that Regulation E covers general-use prepaid cards that consumers may use as a substitute for traditional bank accounts. *See* 15 U.S.C. 1693m(d)(1). While many of these cards currently carry voluntary protections that resemble Regulation E protections, consumer groups observed that such voluntary provisions could be rescinded at any time, unlike regulatory and statutory requirements such as those provided for debit cards under the EFTA and Regulation E. In particular, consumer groups believed that general-use prepaid cardholders should have the same protections against unauthorized transactions and be able to recover missing funds due to lost or stolen cards.

As stated in the proposal, the Board believes that it is more appropriate to make any determination whether to impose periodic statement requirements, error resolution obligations, and other protections set forth in the EFTA and Regulation E with respect to prepaid cards in the context of a separate rulemaking to avoid any regulatory gaps or inconsistencies. For

example, a requirement to impose some form of periodic statement or error resolution obligations for reloadable gift cards could lead to inconsistent treatment if similar requirements were not simultaneously adopted for general-purpose reloadable cards, which may serve as substitutes for accounts subject to the EFTA and Regulation E.

The Credit Card Act also granted the Board authority to limit the amount of dormancy, inactivity, or service fees, or the balance below which such fees or charges may be assessed. *See* EFTA Section 915(d)(1); 15 U.S.C. 1693m(d)(1). The Board did not propose to exercise this authority in light of downward trends in the amount of dormancy and inactivity fees in connection with retail gift cards over time.[36]

Consumer groups urged the Board to use its authority in order to restrict the size of dormancy, inactivity, and service fees to only cover the costs to maintain a gift card or gift certificate so as to ensure cards do not lose their entire value within a short period of time once the one-year inactivity period has run. Consumer groups also stated that the Board should limit the size and amount of other one-time fees, such as issuance and cash-out fees, to ensure that such fees are reasonable and proportional to a gift card's value. Finally, consumer groups believed the Board should establish a balance above which fees could not be assessed on gift cards and gift certificates so that consumers would not be penalized and lose most of their gift card's remaining value. Industry commenters supported the Board's decision not to impose any dollar caps on fees, or to establish a balance above which fees could not be assessed, in connection with gift certificates, store gift cards, and general-use prepaid cards.

The Board continues to believe that the need for additional restrictions on fees is not clear in light of the general downward trend in dormancy and inactivity fees for gift cards and gift certificates.[37] In addition, the statute only permits one such fee per month if there has been no activity over the preceding 12-month period, which may put downward pressure on the amount of fees assessed in connection with gift cards. The Board will continue to monitor the development of the gift card market as it adjusts to the new rules and could take action to impose other restrictions on dormancy, inactivity, or service fees at a later time, if appropriate.

Preemption

Several industry commenters urged the Board to clarify whether the new protections regarding funds expiration dates supersede state laws requiring the escheat of funds underlying gift cards and gift certificates. For example, certain state laws require issuers of unused gift cards to remit the remaining funds to the state where the cardholder resides or where the issuer is incorporated after a certain period of time—typically three to five years after the card is sold or last used. Industry commenters expressed concern that state escheat requirements could mean that in some states, issuers would be required to remit funds to the state after three years, while still remaining obligated to honor the funds under the gift card rules for up to two additional years, consistent with the requirement that funds remain valid for five years from the date of issuance or last load. Some commenters acknowledged that if a consumer used a certificate or card after the issuer had remitted funds to the state, but prior to the funds' expiration date, issuers could recover from the state the funds that already had been remitted. However, the commenters argued that this process was administratively burdensome and costly for the issuer. Thus, industry commenters asserted that the Board should preempt such state escheat laws for inconsistency with the final rule requirements to avoid putting card providers in a position where they would be unable to comply with both the final rule and state escheat laws.

Under the revised preemption provisions in § 205.12, discussed above, the Board may determine whether a state law relating to, among other things, expiration dates of gift certificates, store gift cards, or general-use prepaid cards is preempted by a provision of the regulation. However, a provision can only preempt a state law that is inconsistent with the provision and only to the extent of its inconsistency. Moreover, the regulation provides that a state law is not inconsistent with any provision if it is more protective of consumers.

State escheat laws vary significantly. For example, the number of years that may elapse before an issuer must remit funds to the state differs among the states. Moreover, some state laws do not require an issuer of gift certificates or gift cards to remit remaining funds to the state in certain circumstances. Some states may also provide a process through which an issuer may recover funds previously escheated to the state in the event the issuer subsequently honors a consumer's claim to funds. As such, the Board believes it is not feasible or prudent to make a preemption determination that applies generally to all states.

Upon request for a preemption determination with respect to a particular state's escheat law, the Board would apply the standards set forth in § 205.12(b)(2) to determine whether such a law is inconsistent with § 205.20. The Board's analysis would be published for notice and comment, and, if the Board determines the state law is preempted, the final determination would be published in the commentary to § 205.12.

VII. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this final rule is not likely to have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the rule.* The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act]." 15 U.S.C. 1693b(c).

[36] For example, the most recent survey by one government agency indicates the median inactivity fee has decreased from $1.73 per month in 2003 to $1.38 per month in 2007. *See* Montgomery County Office of Consumer Protection, Gift Card Reports, 2003–2007 (available at: *http://www.montgomerycountymd.gov/ocptmpl.asp?url=/content/ocp/consumer/a-zgiftcardreports.asp*).

[37] One major issuer of network-branded gift cards recently announced plans to eliminate monthly fees altogether. *See* Andrew Martin, "American Express to End Monthly Fees on Gift Cards," *New York Times,* Oct. 1, 2009, at B2.

The Board is adopting revisions to Regulation E to implement Title IV of the Credit Card Act, which generally restricts a person's ability to impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card. Title IV also generally provides that a gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date is no less than five years from the date a gift certificate is issued or five years from the date funds were last loaded to a store gift card or general-use prepaid card.

In addition, the final rule requires the disclosure of all other fees imposed in connection with a gift certificate, store gift card, or general-use prepaid card. The certificate or card must also disclose a toll-free telephone number and, if one is maintained, a Web site that a consumer may access to obtain fee information or replacement certificates or cards.

The Board believes that the revisions to Regulation E discussed above are consistent with the Act, as amended by Title IV of the Credit Card Act, and within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Small entities affected by the final rule.* The number of small entities affected by this proposal is unknown. Under the final rule, a person is prohibited from imposing a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied. First, a dormancy, inactivity, or service fee may be imposed only if there has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee. Second, only one such fee may be assessed in a given calendar month. Third, disclosures regarding dormancy, inactivity, or service fees must be clearly and conspicuously stated on the certificate or card, and the issuer or seller must provide these disclosures to the purchaser before the certificate or card is purchased. The final rule is limited in scope to certificates or cards sold or issued to consumers primarily for personal, family, or household purposes.

The final rule also provides that a gift certificate, store gift card, or general-use prepaid card may not be sold or issued, unless the expiration date of the funds underlying the certificate or card is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, information about whether funds underlying a certificate or card may expire must be clearly and conspicuously disclosed both on the certificate or card and prior to purchase.

Under the final rule, persons subject to the rule are required to maintain policies or procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with an expiration date that is at least five years from the date of purchase. The final rule also prohibits the imposition of any fees for replacing an expired certificate or card to ensure that consumers are able to access the underlying funds for the full five-year period.

In addition to the statutory fee restrictions described above, the final rule requires the disclosure of all other fees imposed in connection with a gift certificate, store gift card, or general-use prepaid card. These disclosures must be provided prior to purchase and on or with the certificate or card. The final rule also requires the disclosure on the certificate or card of a toll-free telephone number and, if one is maintained, a Web site that a consumer may access to obtain fee information or replacement certificates or cards.

For loyalty, award, or promotional gift cards, the final rule requires three disclosures on the card, as applicable: (1) A statement indicating that the certificate or card is issued for loyalty, award, or promotional purposes; (2) the expiration date of the underlying funds; and (3) a toll-free telephone number and, if one is maintained, a Web site that a consumer may access to obtain fee information. Fees imposed in connection with a loyalty, award, or promotional card must be disclosed on or with the card. A loyalty, award, or promotional gift card is not, however, subject to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates.

Overall, to comply with the final rule, all persons involved in issuing, distributing or selling gift cards and certificates (or loyalty, award, or promotional gift cards) may need to review and potentially revise disclosures that appear on or with the certificates or cards. In addition, issuers, sellers, and distributors of gift certificates, store gift cards, and general-use prepaid cards may have to review and potentially revise their inventory distribution and management policies and controls in order to provide consumers with a reasonable opportunity to purchase certificates or cards with an expiration date with at least than five years from the date of purchase.

The Small Business Administration (SBA) has defined a small business as one whose average annual receipts do not exceed $7 million or who have fewer than 500 employees.[38] The Board expects that well over 90% of all businesses qualify as small businesses under the SBA's standards.[39] Consequently, a very large number of small entities could be subject to the final rules to the extent that they issue or sell gift certificates, store gift cards, or general-use prepaid cards. The Board is unaware, however, of any industry data regarding the number of merchants that issue gift certificates or gift cards.

Nonetheless, the final requirements apply only to the extent that a certificate or card program imposes dormancy, inactivity, or service fees or establishes an expiration date with respect to the underlying funds. In this regard, the Board understands that the vast majority of gift certificates and store gift cards issued by merchants or retailers today do not carry such fees or expiration dates.[40] Moreover, smaller merchants are more likely to issue gift certificates in paper form only, and such certificates are not covered by the final rule. *See* § 205.20(b)(5). Thus, the Board believes the final rule would not impact a significant number of merchants that issue store gift cards or gift certificates. Similarly, the Board believes the final rule also would not significantly impact the entities that distribute or sell such cards or certificates on behalf of merchants. Moreover, the Board understands that given their size, such entities are unlikely to be "small businesses" as defined by the SBA.

In addition, the final rule potentially covers issuers of general-use prepaid cards, primarily financial institutions, card program managers that issue or distribute general-use prepaid cards, and distributors or retailers of such

[38] *See* SBA, Summary of Size Standards by Industry (available at: *http://www.sba.gov/contractingopportunities/officials/size/summaryofssi/index.html*).

[39] *See* Small Business Administration, Office of the Advocacy, Frequently Asked Questions (available at: http://web.sba.gov/faqs/faqindex.cfm?areaID=24); Employer Firms, & Employment by Employment Size of Firm by NAICS Codes, 2006 (available at: *http://www.sba.gov/advo/research/us06_n6.pdf*).

[40] *See* Montgomery County Office of Consumer Protection, Gift Cards 2007 (available at: *http://www.montgomerycountymd.gov/ocptmpl.asp?url=/content/ocp/consumer/a-zgiftcardreports.asp*) (reporting that 18 of 22 retail gift cards surveyed do not carry any fees or expiration dates). *See also* Retail Gift Card Association, Code of Principles (available at: *http://www.thergca.org/uploads/Code_of_Principles_PDF.pdf*) (recommending as a best practice for retail gift card programs that no fees or expiration dates should apply).

cards. General-use prepaid cards may be more likely to carry dormancy, inactivity, or service fees and expiration dates compared to gift certificates and store gift cards. Consequently, entities that issue, distribute or sell general-use prepaid cards will be more likely to be impacted by the final rule.

In the proposed regulatory flexibility analysis, the Board stated that the proposal would be unlikely to impact a substantial number of small entities with respect to the issuance or sale of general-use prepaid cards. In response, one industry trade association commenter representing convenience stores observed that many of its constituents, comprised of small, independent convenience stores, sold a variety of prepaid products, including store gift cards and general-purpose reloadable cards. Thus, because such retailers would have to adopt new controls to ensure that general-purpose reloadable cards are not marketed as a gift card or gift certificate, this commenter asserted the rule could have a significant impact on small businesses overall.

As an initial matter, the Board notes that cards that would otherwise be considered general-use prepaid cards may in many cases be exempt from the statute and proposed rule if they are reloadable and not marketed or labeled as a gift card or gift certificate. In addition, as discussed above, open-loop cards, which include general-use prepaid cards, make up a relatively small portion of the total prepaid card market in terms of the number of cards issued and the dollar value of the amounts loaded.

To the extent that a retailer may sell covered gift cards alongside general-purpose reloadable cards, the rule may require new signage or reorganization of product displays to avoid the marketing of the general-purpose reloadable cards as a gift card. Nonetheless, the Board understands that in many cases, a merchandiser working on behalf of a distributor of prepaid cards, rather than the retailer itself, may set up the prepaid card display, thereby mitigating the retailer's compliance burden. The Board has also provided additional examples in the final rule to illustrate how excluded cards, including general-purpose reloadable cards, may be sold alongside gift certificates or cards covered by the rule to further facilitate compliance.

For these reasons, although the Board is not aware of any data regarding entities that issue or otherwise sell general-use prepaid cards, the Board believes that, overall, the rule is not likely to have a significant impact on a substantial number of small entities with respect to the issuance or sale of general-use prepaid cards.

3. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the revisions to Regulation E.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this final rule is found in 12 CFR part 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200.

This information collection is required to provide benefits for consumers and is mandatory. *See* 15 U.S.C. 1693 *et seq.* Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

Title IV of the Credit Card Act prohibits any person from imposing a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied. First, such fees may be imposed only if there has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee or charge. Second, only one such fee may be assessed in a given month. Third, disclosures regarding dormancy, inactivity, or service fees must be clearly and conspicuously stated on the certificate or card, and the issuer or vendor must provide these disclosures before the certificate or card is purchased.

The Credit Card Act also provides that a gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, the statute requires that the terms of expiration must be clearly and conspicuously stated on the certificate or card.

Any entities involved in the issuance, distribution, or sale of gift certificates, store gift cards, or general-use prepaid cards (or the issuance or distribution of loyalty, award, or promotional gift cards) potentially are affected by this collection of information because these entities will be required to provide disclosures regarding the fees imposed in connection with these certificates or cards and when the funds underlying a certificate or card expire. Under the final rule, gift certificates, store gift cards, and general-use prepaid cards must state certain disclosures about dormancy, inactivity, or service fees; expiration dates; and a telephone number and Web site, if one is maintained, for additional information. Disclosures about other fees must be provided on or with the certificate or card. In addition, disclosures about fees and expiration dates must be provided to the consumer prior to purchase. Consumers receiving loyalty, award, and promotional gift cards also must be given disclosures regarding applicable fees and expiration dates.

Entities subject to the final rule will have to review and revise disclosures that are currently provided on or with a certificate or card to ensure that they accurately state any fees and expiration dates that may apply.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the final rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking includes the burden addressing overdrafts to Regulation E, as announced in a separate final November 2009 final rulemaking (Docket No. R–1343).

As discussed above, on November 20, 2009, a notice of proposed rulemaking was published in the **Federal Register** (74 FR 60986). The comment period for this notice expired on December 21, 2009. No comments specifically addressing the paperwork burden estimates were received. One comment referenced PRA; however the Federal Reserve believes the points raised were related to regulatory burden (beyond the scope of PRA). The estimates therefore will remain unchanged as published in the proposed rule.

Section 205.20(b)(2) implements the exclusion for cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift

certificate. As noted in comment 20(b)(2)–4, institutions will qualify for this exclusion so long as they establish and maintain policies and procedures reasonably designed to avoid the marketing of a prepaid card not otherwise subject to the rule, such as a general-purpose reloadable card, as a gift card or gift certificate. The Federal Reserve estimates that the 1,205 respondents regulated by the Federal Reserve will take, on average, 40 hours (one-business week) to review and implement written policies and procedures and provide training associated with § 205.20(b)(2). The Federal Reserve estimates the annual one-time burden for respondents to be 48,200 hours and believes that, on a continuing basis, respondents will take an average of 8 hours annually to maintain their policies and procedures.

Under § 205.20(e)(1), institutions involved in issuing and selling certificates or cards are required to adopt policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. The Federal Reserve estimates that the 1,205 respondents regulated by the Federal Reserve will take, on average, 40 hours (one-business week) to implement or modify written policies and procedures and provide training associated with § 205.20(e)(1). The Federal Reserve estimates the annual one-time burden for respondents to be 48,200 hours and believes that, on a continuing basis, respondents would take an average of 8 hours annually to maintain their policies and procedures.

Under § 205.20(e)(3), three disclosures must be stated on the certificate or card, as applicable: (1) The terms of expiration of the underlying funds or, if the underlying funds do not expire, that fact; (2) a toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires, if the underlying funds may be available; (3) a statement that the certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card.

For loyalty, award, or promotional gift cards, § 205.20(a)(4)(iii) requires three disclosures on the certificate or card, as applicable: (1) A statement indicating that the certificate or card is issued for loyalty, award, or promotional purposes; (2) the expiration date of the underlying funds; and (3) a toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain fee information.

The Federal Reserve estimates that the 1,205 respondents regulated by the Federal Reserve will take, on average, 80 hours (two-business weeks) to update their systems to revise disclosures and redesign certificates or cards to comply with the proposed disclosure requirements in § 205.20(e)(3). The Federal Reserve estimates the annual one-time burden for respondents to be 96,400 hours and believes that, on a continuing basis, there would be no additional increase in burden.

The number of respondents regulated by the Federal Reserve that sell or issue certificates or cards subject to the final rule is unknown. Accordingly, for purposes of this final Paperwork Reduction Act analysis, it is assumed that all of the respondents regulated by the Federal Reserve will be impacted by the new rule. The Federal Reserve estimates the final rule will impose a one-time increase in the annual burden under Regulation E for all respondents regulated by the Federal Reserve by 192,800 hours, from 526,520 to 719,320 hours. In addition, the Federal Reserve estimates that, on a continuing basis, the proposed requirements would increase the annual burden by 19,280 hours from 526,520 to 545,800 hours. The total annual burden would increase by 212,080 hours, from 526,520 to 738,600 hours.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the current total estimated annual burden for all persons subject to Regulation E, including Federal Reserve-supervised institutions would be approximately 1,403,459 hours. The above estimates represent an average across all respondents and reflect variations between persons based on their size, complexity, and practices. All covered persons, including depository institutions (of which there are approximately 17,200), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA. The final rule imposes a one-time increase in the estimated annual burden for such institutions by 2,752,000 hours. On a continuing basis the rule will increase in the estimated annual burden for such institutions by 275,200 hours. The total annual burden for the respondents regulated by the Federal financial agencies is estimated to be 4,430,659 hours.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 205.3(a) is revised to read as follows:

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 205.3(b)(2) and (b)(3), 205.10(b), (d), and (e), 205.13, and 205.20, this part applies to any person.

* * * * *

■ 3. Section 205.4(a)(1) is revised to read as follows:

§ 205.4 General disclosure requirements; jointly offered services.

(a)(1) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

* * * * *

■ 4. Section 205.12(b)(1) is revised to read as follows:

§ 205.12 Relation to other laws.

* * * * *

(b) *Preemption of inconsistent state laws.*—(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the act and this part preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards.

* * * * *

■ 5. Section 205.20 is added as follows:

§ 205.20 Requirements for gift cards and gift certificates.

(a) *Definitions.* For purposes of this section, except as excluded under paragraph (b), the following definitions apply:

(1) *Gift certificate* means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and

(ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) *Store gift card* means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(3) *General-use prepaid card* means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(4) *Loyalty, award, or promotional gift card* means a card, code, or other device that:

(i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;

(ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and

(iii) Sets forth the following disclosures, as applicable:

(A) A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;

(B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;

(C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and

(D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

(5) *Dormancy or inactivity fee.* The terms "dormancy fee" and "inactivity fee" mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card.

(6) *Service fee.* The term "service fee" means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card.

(7) *Activity.* The term "activity" means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction.

(b) *Exclusions.* The terms "gift certificate," "store gift card," and "general-use prepaid card", as defined in paragraph (a) of this section, do not include any card, code, or other device that is:

(1) Useable solely for telephone services;

(2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term "reloadable" includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;

(3) A loyalty, award, or promotional gift card;

(4) Not marketed to the general public;

(5) Issued in paper form only; or

(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

(c) *Form of disclosures*—(1) *Clear and conspicuous.* Disclosures made under this section must be clear and conspicuous. The disclosures may contain commonly accepted or readily understandable abbreviations or symbols.

(2) *Format.* Disclosures made under this section generally must be provided to the consumer in written or electronic form. Written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraph (c)(3) of this section may be given orally.

(3) *Disclosures prior to purchase.* Before a gift certificate, store gift card, or general-use prepaid card is purchased, a person that issues or sells such certificate or card must disclose to the consumer the information required by paragraphs (d)(2), (e)(3), and (f)(1) of this section. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

(4) *Disclosures on the certificate or card.* Disclosures required by paragraphs (a)(4)(iii), (d)(2), (e)(3), and (f)(2) of this section must be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card. For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

(d) *Prohibition on imposition of fees or charges.* No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless:

(1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;

(2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

(i) The amount of any dormancy, inactivity, or service fee that may be charged;

(ii) How often such fee may be assessed; and

(iii) That such fee may be assessed for inactivity; and

(3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(e) *Prohibition on sale of gift certificates or cards with expiration dates.* No person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:

(1) The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;

(2) The expiration date for the underlying funds is at least the later of:

(i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or

(ii) The certificate or card expiration date, if any;

(3) The following disclosures are provided on the certificate or card, as applicable:

(i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

(ii) A toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

(iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:

(A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

(4) No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(f) *Additional disclosure requirements for gift certificates or cards.* The following disclosures must be provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:

(1) *Fee disclosures.* For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under paragraph (d)(2) of this section), the following information must be provided on or with the certificate or card:

(i) The type of fee;

(ii) The amount of the fee (or an explanation of how the fee will be determined); and

(iii) The conditions under which the fee may be imposed.

(2) *Telephone number for fee information.* A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about fees described in paragraphs (d)(2) and (f)(1) of this section must be disclosed on the certificate or card.

(g) *Compliance dates.*—(1) *Effective date for gift certificates, store gift cards, and general-use prepaid cards.* The requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to the consumer as a replacement for such certificate or card.

(2) *Effective date for loyalty, award, or promotional gift cards.* The requirements in paragraph (a)(4)(iii) apply to any card, code, or other device provided to a consumer in connection with a loyalty, award, or promotional program if the period of eligibility for such program began on or after August 22, 2010.

■ 6. In Supplement I to part 205,

■ a. Under Section 205.12 Relation to other laws, under *12(b) Preemption of inconsistent state laws,* paragraph 1. is revised.

■ b. Section 205.20—Requirements for Gift Cards and Gift Certificates is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.12—Relation to Other Laws

* * * * *

(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs, and state laws regarding gift certificates, store gift cards, or general-use prepaid cards that govern dormancy, inactivity, or service fees, or expiration dates, are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in § 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

* * * * *

Section 205.20—Requirements for Gift Cards and Gift Certificates

20(a) Definitions

1. *Form of card, code, or device.* Section 205.20 applies to any card, code, or other device that meets one of the definitions in § 205.20(a)(1) through (a)(3) (and is not otherwise excluded by § 205.20(b)), even if it is not issued in card form. Section 205.20 applies, for example, to an account number or bar code that can be used to access underlying funds. Similarly, § 205.20 applies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. A card, code, or other device that meets the definition in § 205.20(a)(1) through (a)(3) includes an electronic promise (*see* comment 20(a)-2) as well as a promise that is not electronic. *See, however,* § 205.20(b)(5). In addition, § 205.20 applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued (*see, however,* § 205.20(b)(5)), and whether or not it may be redeemed electronically or in the merchant's store. Thus, for example, if a merchant e-mails a code that a consumer may redeem in a specified amount either on-line or in the merchant's store, that code is covered under § 205.20, unless one of the exclusions in § 205.20(b) apply.

2. *Electronic promise.* The term "electronic promise" as used in EFTA Sections 915(a)(2)(B), (a)(2)(C), and (a)(2)(D) means a person's commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer. The electronic promise is itself represented by a card, code or other device that is issued or honored by the person, reflecting the person's commitment or obligation to pay. For example, if a merchant issues a code that can be given as a gift and that entitles the recipient to redeem the code in an on-line transaction for goods or services, that code represents an electronic promise by the merchant and is a card, code, or other device covered by § 205.20.

3. *Cards, codes, or other devices redeemable for specific goods or services.* Certain cards, codes, or other devices may be redeemable upon presentation for a specific good or service, or "experience," such as a spa treatment, hotel stay, or airline flight. In other cases, a card, code, or other device may entitle the consumer to a certain percentage off the purchase of a good or service, such as 20% off of any purchase in a store. Such cards, codes, or other devices generally are not subject to the requirements of this section because they are not issued to a consumer "in a specified amount" as required under the

definitions of "gift certificate," "store gift card," or "general-use prepaid card." However, if the card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to $50, the card, code, or other device is subject to this section, unless one of the exceptions in § 205.20(b) apply. *See, e.g.,* § 205.20(b)(3). Similarly, if the card, code, or other device states a specific monetary value, such as "a $50 value," the card, code, or other device is subject to this section, unless an exclusion in § 205.20(b) applies.

4. *Issued primarily for personal, family, or household purposes.* Section 205.20 only applies to cards, codes, or other devices that are sold or issued to a consumer primarily for personal, family, or household purposes. A card, code, or other device initially purchased by a business is subject to this section if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. Moreover, the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not mean the card, code, or other device is outside the scope of § 205.20, if the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. *But see* § 205.20(b)(3). Whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager's retail outlets, such gift cards are subject to the requirements of § 205.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes. In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and therefore would fall outside the scope of § 205.20, if the purchaser of the card, code, or device is contractually prohibited from reselling or redistributing the card, code, or device to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with § 205.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in § 205.20(b) applies.

5. *Examples of cards, codes, or other devices issued for business purposes.* Examples of cards, codes, or other devices that are issued and used for business purposes and therefore excluded from the definitions of "gift certificate," "store gift card," or "general-use prepaid card" include:

i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.

ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.

Paragraph 20(a)(2)—Store Gift Card

1. *Relationship between "gift certificate" and "store gift card".* The term "store gift card" in § 205.20(a)(2) includes "gift certificate" as defined in § 205.20(a)(1). For example, a numeric or alphanumeric code representing a specified dollar amount or value that is electronically sent to a consumer as a gift which can be redeemed or exchanged by the recipient to obtain goods or services may be both a "gift certificate" and a "store gift card" if the specified amount or value cannot be increased.

2. *Affiliated group of merchants.* The term "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control (*see, e.g.,* 12 CFR 227.3(b) and 12 CFR 223.2) and that share the same name, mark, or logo. For example, the term includes franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, assume a movie theatre chain and a restaurant chain jointly agree to issue cards that share the same "Flix and Food" logo that can be redeemed solely towards the purchase of movie tickets or concessions at any of the participating movie theatres, or towards the purchase of food or beverages at any of the participating restaurants. For purposes of § 205.20, the movie theatre chain and the restaurant chain would be considered to be an affiliated group of merchants, and the cards are considered to be "store gift cards." However, merchants or other persons are not considered to be affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network.

3. *Mall gift cards.* See comment 20(a)(3)–2.

Paragraph 20(a)(3)—General-Use Prepaid Card

1. *Redeemable upon presentation at multiple, unaffiliated merchants.* A card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

2. *Mall gift cards.* Mall gift cards that are intended to be used or redeemed for goods or services at participating retailers within a shopping mall may be considered store gift cards or general-use prepaid cards depending on the merchants with which the cards may be redeemed. For example, if a mall card may only be redeemed at merchants within the mall itself, the card is more likely to be redeemable at an affiliated group of merchants and considered a store gift card. However, certain mall cards also carry the brand of a payment network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall. Such cards are considered general-use prepaid cards.

Paragraph 20(a)(4)—Loyalty, Award, or Promotional Gift Card

1. *Examples of loyalty, award, or promotional programs.* Examples of loyalty, award or promotional programs under § 205.20(a)(4) include, but are not limited to:

i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant;

ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.

iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer's purchase of a product or service and the consumer's completion of the rebate submission process.

iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.

v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.

vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2. *Issued for loyalty, award, or promotional purposes.* To indicate that a card, code, or other device is issued for loyalty, award, or promotional purposes as required by § 205.20(a)(4)(iii), it is sufficient for the card, code, or other device to state on the front, for example, "Reward" or "Promotional."

3. *Reference to toll-free number and Web site.* If a card, code, or other device issued in connection with a loyalty, award, or promotional program does not have any fees, the disclosure under § 205.20(a)(4)(iii)(D) is not required on the card, code, or other device.

Paragraph 20(a)(6)—Service Fee

1. *Service fees.* Under § 205.20(a)(6), a service fee includes a periodic fee for holding

or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card, such as a monthly maintenance fee, a transaction fee, an ATM fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. A service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee.

Paragraph 20(a)(7)—Activity

1. *Activity.* Under § 205.20(a)(7), any action that results in an increase or decrease of the funds underlying a gift certificate, store gift card, or general-use prepaid card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction, constitutes activity for purposes of § 205.20. For example, the purchase and activation of a certificate or card, the use of the certificate or card to purchase a good or service, or the reloading of funds onto a store gift card or general-use prepaid card constitutes activity. However, the imposition of a fee, the replacement of an expired, lost, or stolen certificate or card, and a balance inquiry do not constitute activity. In addition, if a consumer attempts to engage in a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction cannot be completed due to technical or other reasons, such attempt does not constitute activity. Furthermore, if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment also does not constitute activity with respect to the certificate or card.

20(b) Exclusions

1. *Application of exclusion.* A card, code, or other device is excluded from the definition of "gift certificate," "store gift card," or "general-use prepaid card" if it meets any of the exclusions in § 205.20(b). An excluded card, code, or other device generally is not subject to any of the requirements of this section. (*See, however,* § 205.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.)

2. *Eligibility for multiple exclusions.* A card, code, or other device may qualify for one or more exclusions. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes, such as to reward job performance or promote employee safety. In this case, the card may qualify for the exclusion for loyalty, award, or promotional gift cards under § 205.20(b)(3), or for the exclusion for cards, codes, or other devices not marketed to the general public under § 205.20(b)(4). In addition, as long as any one of the exclusions applies, a card, code, or other device is not covered by § 205.20, even if other exclusions do not apply. In the above example, the corporation may give its employees a type of gift card that can also be purchased by a consumer directly from a merchant. Under these circumstances, while the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under § 205.20(b)(4) because the card can also be obtained through retail channels, it is nevertheless exempt from the substantive requirements of § 205.20 because it is a loyalty, award, or promotional gift card. (*See, however,* § 205.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.) Similarly, a person may market a reloadable card to teenagers for occasional expenses that enables parents to monitor spending. Although the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under § 205.20(b)(4), it may nevertheless be exempt from the requirements of § 205.20 under § 205.20(b)(2) if it is reloadable and not marketed or labeled as a gift card or gift certificate.

Paragraph 20(b)(1)—Usable Solely for Telephone Services

1. *Examples of excluded products.* The exclusion for products usable solely for telephone services applies to prepaid cards for long-distance telephone service, prepaid cards for wireless telephone service and prepaid cards for other services that function similar to telephone services, such as prepaid cards for voice over internet protocol (VoIP) access time.

Paragraph 20(b)(2)—Reloadable and Not Marketed or Labeled as a Gift Card or Gift Certificate

1. *Reloadable.* A card, code, or other device is "reloadable" if the terms and conditions of the agreement permit funds to be added to the card, code, or other device after the initial purchase or issuance. A card, code, or other device is not "reloadable" merely because the issuer or processor is technically able to add functionality that would otherwise enable the card, code, or other device to be reloaded.

2. *Marketed or labeled as a gift card or gift certificate.* The term "marketed or labeled as a gift card or gift certificate" means directly or indirectly offering, advertising or otherwise suggesting the potential use of a card, code or other device, as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A card, code, or other device, including a general-purpose reloadable card, is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as "the perfect gift" during the holiday season. However, the mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of other excluded prepaid cards does not by itself cause the excluded prepaid cards to be marketed as a gift card or a gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise excluded prepaid cards that may also be sold in the store as gift cards or gift certificates, provided that a consumer acting reasonably under the circumstances would not be led to believe that the sign applies to all prepaid cards sold in the store. (*See, however,* comment 20(b)(2)–4.ii.)

3. *Examples of marketed or labeled as a gift card or gift certificate.*

i. Examples of marketed or labeled as a gift card or gift certificate include:

A. Using the word "gift" or "present" on a card, certificate, or accompanying material, including documentation, packaging and promotional displays;

B. Representing or suggesting that a certificate or card can be given to another person, for example, as a "token of appreciation" or a "stocking stuffer," or displaying a congratulatory message on the card, certificate or accompanying material;

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or congratulatory message, on a card, certificate, accompanying documentation, or promotional material;

ii. The term does not include:

A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account;

B. Representing that a card or certificate can be used to pay for a consumer's health-related expenses—for example, a card tied to a health savings account;

C. Representing that a card or certificate can be used as a substitute for travelers checks or cash;

D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. *Reasonable policies and procedures to avoid marketing as a gift card.* The exclusion for a card, code, or other device that is reloadable and not marketed or labeled as a gift card or gift certificate in § 205.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable card, code, or other device from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the card, code or other device is not being marketed as a gift card. Whether a reloadable card, code, or other device has been marketed as a gift card or gift

certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate. The following examples illustrate the application of § 205.20(b)(2):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under § 205.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in § 205.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating "Gift Cards" appears prominently at the top of the display. The exclusion in § 205.20(b)(2) does not apply with respect to the general-purpose reloadable cards because policies and procedures reasonably designed to avoid the marketing of excluded cards as gift cards or gift certificates are not maintained.

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating "Gift Cards" at the top of the display or located near the display. The exclusion in § 205.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in § 205.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

5. *On-line sales of prepaid cards.* Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on the home page that prominently states "Gift Cards," "Gift Giving," or similar language without mention of other available products, or use a Web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Under these facts, the Web site has marketed all such products, including general-purpose reloadable cards, as gift cards or gift certificates, and the exclusion in § 205.20(b)(2) does not apply.

6. *Temporary non-reloadable cards issued in connection with a general-purpose reloadable card.* Certain general-purpose reloadable cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the general-purpose reloadable card, the exclusion in § 205.20(b)(2) applies so long as the card is not marketed as a gift card or gift certificate.

Paragraph 20(b)(4)—Not Marketed to the General Public

1. *Marketed to the general public.* A card, code, or other device is marketed to the general public if the potential use of the card, code, or other device is directly or indirectly offered, advertised, or otherwise promoted to the general public. A card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center stating that store credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. In addition, the method of distribution by itself is not dispositive in determining whether a card, code, or other device is marketed to the general public. Factors that may be considered in determining whether the exclusion applies to a particular card, code, or other device include the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace.

2. *Examples.* The following examples illustrate the application of the exclusion in § 205.20(b)(4):

i. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in § 205.20(b)(4), the merchant must consider whether the card is of a type that is advertised or made available to consumers generally or can be obtained elsewhere. If the card can also be purchased through retail channels, the exclusion in § 205.20(b)(4) does not apply, even if the consumer obtained the card from the business as an incentive or reward. *See, however,* § 205.20(b)(3).

ii. A national retail chain decides to market its gift cards only to members of its frequent buyer program. Similarly, a bank may decide to sell gift cards only to its customers. If a member of the general public may become a member of the program or a customer of the bank, the card does not fall within the exclusion in § 205.20(b)(4) because the general public has the ability to obtain the cards. *See, however,* § 205.20(b)(3).

iii. A card issuer advertises a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, schoolbooks and emergencies and by parents to monitor spending. Because the card is marketed to and may be sold to any member of the general public, the exclusion in § 205.20(b)(4) does not apply. *See, however,* § 205.20(b)(2).

iv. An insurance company settles a policyholder's claim and distributes the insurance proceeds to the consumer by means of a prepaid card. Because the prepaid card is simply the means for providing the insurance proceeds to the consumer and the availability of the card is not advertised to the general public, the exclusion in § 205.20(b)(4) applies.

v. A merchant provides store credit to a consumer following a merchandise return by issuing a prepaid card that clearly indicates that the card contains funds for store credit. Because the prepaid card is issued for the stated purpose of providing store credit to the consumer and the ability to receive refunds by a prepaid card is not advertised to the general public, the exclusion in § 205.20(b)(4) applies.

vi. A tax preparation company elects to distribute tax refunds to its clients by issuing prepaid cards, but does not advertise or otherwise promote the ability to receive proceeds in this manner. Because the prepaid card is simply the mechanism for providing the tax refund to the consumer, and the tax preparer does not advertise the ability to obtain tax refunds by a prepaid card, the exclusion in § 205.20(b)(4) applies. However,

if the tax preparer promotes the ability to receive tax refund proceeds through a prepaid card as a way to obtain "faster" access to the proceeds, the exclusion in § 205.20(b)(4) does not apply.

Paragraph 20(b)(5)—Issued in Paper Form Only

1. *Exclusion explained.* To qualify for the exclusion in § 205.20(b)(5), the sole means of issuing the card, code, or other device must be in a paper form. Thus, the exclusion generally applies to certificates issued in paper form where solely the paper itself may be used to purchase goods or services. A card, code or other device is not issued solely in paper form simply because it may be reproduced or printed on paper. For example, a bar code, card or certificate number, or certificate or coupon electronically provided to a consumer and redeemable for goods and services is not issued in paper form, even if it may be reproduced or otherwise printed on paper by the consumer. In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was initially issued in electronic form. A paper certificate is within the exclusion regardless of whether it may be redeemed electronically. For example, a paper certificate or receipt that bears a bar code, code, or account number falls within the exclusion in § 205.20(b)(5) if the bar code, code, or account number is not issued in any form other than on the paper. In addition, the exclusion in § 205.20(b)(5) continues to apply in circumstances where an issuer replaces a gift certificate that was initially issued in paper form with a card or electronic code (for example, to replace a lost paper certificate).

2. *Examples.* The following examples illustrate the application of the exclusion in § 205.20(b)(5):

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in § 205.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in § 205.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant's system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by the merchant in any form other than paper. The exclusion in § 205.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An on-line merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in § 205.20(b)(5) does not apply because the bar code or card or certificate number was issued to the consumer in electronic form, even though it can be reproduced or otherwise printed on paper by the consumer.

Paragraph 20(b)(6)—Redeemable Solely for Admission to Events or Venues

1. *Exclusion explained.* The exclusion for cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations generally applies to cards, codes, or other devices that are not redeemed for a specified monetary value, but rather solely for admission or entry to an event or venue. The exclusion also covers a card, code, or other device that is usable to purchase goods or services in addition to entry into the event or the venue, either at the event or venue or at an affiliated location or location in geographic proximity to the event or venue.

2. *Examples.* The following examples illustrate the application of the exclusion in § 205.20(b)(6):

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in § 205.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not "issued in a specified amount," the card does not meet the definitions of "gift certificate," "store gift card," or "general-use prepaid card" in § 205.20(a). *See* comment 20(a)–3.

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in § 205.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a $25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant's affiliated amusement park. The card is not eligible for the exclusion in § 205.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of "store gift card" and is therefore subject to § 205.20, unless a different exclusion applies.

20(c) Form of Disclosures

Paragraph 20(c)(1)—Clear and Conspicuous

1. *Clear and conspicuous standard.* All disclosures required by this section must be clear and conspicuous. Disclosures are clear and conspicuous for purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Disclosures need not be located on the front of the certificate or card, except where otherwise required, to be considered clear and conspicuous. Disclosures are clear and conspicuous for the purposes of this section if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen are not likely to be conspicuous if obscured by a logo printed in the background. Similarly, disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if the indentations obstruct the readability of the disclosures. To the extent permitted, oral disclosures meet the standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as "mo." for month or a "/" to indicate "per." Under the clear and conspicuous standard, it is sufficient to state, for example, that a particular fee is charged "$2.50/mo. after 12 mos."

Paragraph 20(c)(2)—Format

1. *Electronic disclosures.* Disclosures provided electronically pursuant to this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 et seq.). Electronic disclosures must be in a retainable form. For example, a person may satisfy the requirement if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. A person is not required to confirm that the consumer has read the electronic disclosures.

Paragraph 20(c)(3)—Disclosure Prior to Purchase

1. *Method of purchase.* The disclosures required by this paragraph must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, online, by telephone, or by other means.

2. *Electronic disclosures.* Section 205.20(c)(3) provides that the disclosures required by this section must be provided to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made to the consumer after a consumer has initiated an online purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However, electronic disclosures made available on a person's Web site that may or may not be accessed by the consumer are not provided to the consumer and therefore would not satisfy the prior-to-purchase requirement.

3. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures must be provided to the consumer before the certificate or card is purchased. For example, where a gift certificate or card is a code that is provided

by telephone, the required disclosures may be provided orally prior to purchase. *See also* § 205.20(c)(2).

Paragraph 20(c)(4)—Disclosures on the Certificate or Card

1. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures required by this paragraph must be disclosed on the code, confirmation, or other written or electronic document provided to the consumer. For example, where a gift certificate or card is a code or confirmation that is provided to a consumer on-line or sent to a consumer's e-mail address, the required disclosures may be provided electronically on the same document as the code or confirmation.

2. *No disclosures on a certificate or card.* Disclosures required by § 205.20(c)(4) need not be made on a certificate or card if it is accompanied by a certificate or card that complies with this section. For example, a person may issue or sell a supplemental gift card that is smaller than a standard size and that does not bear the applicable disclosures if it is accompanied by a fully compliant certificate or card. *See also* comment 20(c)(2)–2.

20(d) Prohibition on Imposition of Fees or Charges

1. *One-year period.* Section 205.20(d) provides that a person may impose a dormancy, inactivity, or service fee only if there has been no activity with respect to a certificate or card for one year. The following examples illustrate this rule:

i. A certificate or card is purchased on January 15 of year one. If there has been no activity on the certificate or card since the certificate or card was purchased, a dormancy, inactivity, or service fee may be imposed on the certificate or card on January 15 of year two.

ii. Same facts as i., and a fee was imposed on January 15 of year two. Because no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month, the earliest date that another dormancy, inactivity, or service fee may be imposed, assuming there continues to be no activity on the certificate or card, is February 1 of year two. A dormancy, inactivity, or service fee is permitted to be imposed on February 1 of year two because there has been no activity on the certificate or card for the preceding year (February 1 of year one through January 31 of year two), and February is a new calendar month. The imposition of a fee on January 15 of year two is not activity for purposes of § 205.20(d). *See* comment 20(a)(7)–1.

iii. Same facts as i., and a fee was imposed on January 15 of year two. On January 31 of year two, the consumer uses the card to make a purchase. Another dormancy, inactivity, or service fee could not be imposed until January 31 of year three, assuming there has been no activity on the certificate or card since January 31 of year two.

2. *Relationship between §§ 205.20(d)(2) and (c)(3).* Sections 205.20(d)(2) and (c)(3) contain similar, but not identical, disclosure requirements. Section 205.20(d)(2) requires the disclosure of dormancy, inactivity, and service fees on a certificate or card. Section 205.20(c)(3) requires that vendor person that issues or sells such certificate or card disclose to a consumer any dormancy, inactivity, and service fees associated with the certificate or card before such certificate or card may be purchased. Depending on the context, a single disclosure that meets the clear and conspicuous requirements of both §§ 205.20(d)(2) and (c)(3) may be used to disclose a dormancy, inactivity, or service fee. For example, if the disclosures on a certificate or card, required by § 205.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certificate or card, for a purchase made in person, the disclosures also meet the requirements of § 205.20(c)(3). Otherwise, a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of §§ 205.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by § 205.20(d)(2), are obstructed by packaging sold with the certificate or card, for a purchase made in person, they also must be disclosed on the packaging sold with the certificate or card to meet the requirements of § 205.20(c)(3).

3. *Relationship between §§ 205.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required under § 205.20(d)(2), any applicable disclosures under §§ 205.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card.

4. *One fee per month.* Under § 205.20(d)(3), no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month. For example, if a dormancy fee is imposed on January 1, following a year of inactivity, and a consumer makes a balance inquiry on January 15, a balance inquiry fee may not be imposed at that time because a dormancy fee was already imposed earlier that month and a balance inquiry fee is a type of service fee. If, however, the dormancy fee could be imposed on January 1, following a year of inactivity, and the consumer makes a balance inquiry on the same date, the person assessing the fees may choose whether to impose the dormancy fee or the balance inquiry fee on January 1. The restriction in § 205.20(d)(3) does not apply to any fee that is not a dormancy, inactivity, or service fee. For example, assume a service fee is imposed on a general-use prepaid card on January 1, following a year of inactivity. If a consumer cashes out the remaining funds by check on January 15, a cash-out fee, to the extent such cash-out fee is permitted under § 205.20(e)(4), may be imposed at that time because a cash-out fee is not a dormancy, inactivity, or service fee.

5. *Accumulation of fees.* Section 205.20(d) prohibits the accumulation of dormancy, inactivity, or service fees for previous periods into a single fee because such a practice would circumvent the limitation in § 205.20(d)(3) that only one fee may be charged per month. For example, if a consumer purchases and activates a store gift card on January 1 but never uses the card, a monthly maintenance fee of $2.00 a month may not be accumulated such that a fee of $24 is imposed on January 1 the following year.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

1. *Reasonable opportunity.* Under § 205.20(e)(1), no person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if:

i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or

ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2. *Applicability to replacement certificates or cards.* Section 205.20(e)(1) applies solely to the *purchase* of a certificate or card. Therefore, § 205.20(e)(1) does not apply to the replacement of such certificates or cards. Certificates or cards issued as a replacement may bear a certificate or card expiration date of less than five years from the date of issuance of the replacement certificate or card. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in § 205.20(e)(2)(i), then pursuant to § 205.20(e)(2), the expiration date for the underlying funds at the time the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card. For purposes of § 205.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use.

3. *Disclosure of funds expiration—date not required.* Section 205.20(e)(3)(i) does not require disclosure of the precise date the funds will expire. It is sufficient to disclose, for example, "Funds expire 5 years from the date funds last loaded to the card."; "Funds can be used 5 years from the date money was last added to the card."; or "Funds do not expire."

4. *Disclosure not required if no expiration date.* If the certificate or card and underlying funds do not expire, the disclosure required by § 205.20(e)(3)(i) need not be stated on the certificate or card. If the certificate or card and underlying funds expire at the same time, only one expiration date need be disclosed on the certificate or card.

5. *Reference to toll-free telephone number and Web site.* If a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, the disclosure required by § 205.20(e)(3)(ii) need not be stated on the certificate or card. *See, however,* § 205.20(f)(2).

6. *Relationship to § 226.20(f)(2).* The same toll-free telephone number and Web site may be used to comply with §§ 226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if

no fees are imposed in connection with a certificate or card, and the certificate or card and the underlying funds do not expire.

7. *Distinguishing between certificate or card expiration and funds expiration.* If applicable, a disclosure must be made on the certificate or card that notifies a consumer that the certificate or card expires, but the funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. The disclosure must be made with equal prominence and in close proximity to the certificate or card expiration date. The close proximity requirement does not apply to oral disclosures. In the case of a certificate or card, close proximity means that the disclosure must be on the same side as the certificate or card expiration date. For example, if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. The disclosure need not be embossed on the certificate or card to be deemed equally prominent, even if the expiration date is embossed on the certificate or card. The disclosure may state on the front of the card, for example, "Funds expire after card. Call for replacement card." or "Funds do not expire. Call for new card after 09/2016." Disclosures made pursuant to § 205.20(e)(3)(iii)(A) may also fulfill the requirements of § 205.20(e)(3)(i). For example, making a disclosure that "Funds do not expire" to comply with § 205.20(e)(3)(iii)(A) also fulfills the requirements of § 205.20(e)(3)(i).

8. *Expiration date safe harbor.* A non-reloadable certificate or card that bears an expiration date that is at least seven years from the date of manufacture need not state the disclosure required by § 205.20(e)(3)(iii). However, § 205.20(e)(1) still prohibits the sale or issuance of such certificate or card unless there are policies and procedures in place to provide a consumer with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under § 205.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years at the date of purchase. For purposes of this safe harbor, the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

9. *Relationship between §§ 205.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required to be made under § 205.20(e)(3), any applicable disclosures under §§ 205.20(d)(2) and (f)(2) must also be provided on the certificate or card.

10. *Replacement or remaining balance of an expired certificate or card.* When a certificate or card expires, but the underlying funds have not expired, an issuer, at its option in accordance with applicable state law, may provide either a replacement certificate or card or otherwise provide the certificate or card holder, for example, by check, with the remaining balance on the certificate or card. In either case, the issuer may not charge a fee for the service.

11. *Replacement of a lost or stolen certificate or card not required.* Section 205.20(e)(4) does not require the replacement of a certificate or card that has been lost or stolen.

12. *Date of issuance or loading.* For purposes of § 205.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.

13. *Application of expiration date provisions after redemption of certificate or card.* The requirement that funds underlying a certificate or card must not expire for at least five years from the date of issuance or date of last load ceases to apply once the certificate or card has been fully redeemed, even if the underlying funds are not used to contemporaneously purchase a specific good or service. For example, some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another "account" established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that "account" either at the time the value is transferred from the certificate or card or at a later time. Under these circumstances, once the card has been fully redeemed and the "account" credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds. However, if the consumer only partially redeems the value of the certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1. *Reference to toll-free telephone number and Web site.* If a certificate or card does not have any fees, the disclosure under § 205.20(f)(2) is not required on the certificate or card. *See, however,* § 205.20(e)(3)(ii).

2. *Relationship to § 226.20(e)(3)(ii).* The same toll-free telephone number and Web site may be used to comply with §§ 226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and both the certificate or card and underlying funds do not expire.

3. *Relationship between §§ 205.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required pursuant to § 205.20(f)(2), any applicable disclosures under §§ 205.20(d)(2) and (e)(3) must also be provided on the certificate or card.

20(g) Compliance Dates

1. *Period of eligibility for loyalty, award, or promotional programs.* For purposes of § 205.20(g)(2), the period of eligibility is the time period during which a consumer must engage in a certain action or actions to meet the terms of eligibility for a loyalty, award, or promotional program and obtain the card, code, or other device. Under § 205.20(g)(2), a gift card issued pursuant to a loyalty, award, or promotional program that began prior to August 22, 2010 need not state the disclosures in § 205.20(a)(4)(iii) regardless of whether the consumer became eligible to receive the gift card prior to August 22, 2010, or after that date. For example, a product manufacturer may provide a $20 rebate card to a consumer if the consumer purchases a particular product and submits a fully completed entry between January 1, 2010 and December 31, 2010. Similarly, a merchant may provide a $20 gift card to a consumer if the consumer makes $200 worth of qualifying purchases between June 1, 2010 and October 30, 2010. Under both examples, gift cards provided pursuant to these loyalty, award, or promotional programs need not state the disclosures in § 205.20(a)(4)(iii) to qualify for the exclusion in § 205.20(b)(3) for loyalty, award, or promotional gift cards because the period of eligibility for each program began prior to August 22, 2010.

By order of the Board of Governors of the Federal Reserve System, March 23, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–6759 Filed 3–31–10; 8:45 am]

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Federal Register

Thursday,
April 1, 2010

Part III

Department of Education

Emergency Management for Higher Education Grant Program; Notices

DEPARTMENT OF EDUCATION

Emergency Management for Higher Education Grant Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184T.

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final priorities and requirements.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools announces priorities and requirements for the Emergency Management for Higher Education (EMHE) grant program. The Assistant Deputy Secretary may use one or more of these priorities and requirements for competitions in fiscal year (FY) 2010 and later years.

We intend these priorities and requirements to provide Federal financial assistance to institutions of higher education (IHEs) to develop, or review and improve, and fully integrate their campus-based all-hazards emergency management planning efforts. We intend grant awards under these priorities and requirements to increase the capacity of IHEs to prevent/mitigate, prepare for, respond to, and recover from the full range of emergency events.

DATES: *Effective Date:* These priorities and requirements are effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Tara Hill, U.S. Department of Education, 400 Maryland Avenue, SW., room 10088, PCP, Washington, DC 20202–6450. *Telephone:* (202) 245–7860 or by *e-mail: tara.hill@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: EMHE grants support efforts by IHEs to develop, or review and improve, and fully integrate campus-based all-hazards emergency management planning efforts within the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery).

Congress appropriated initial funding for the EMHE grant competition in FY 2008 following the tragic shooting at Virginia Polytechnic Institute and State University in 2007. That and other past emergencies, such as the events of September 11, 2001, Hurricanes Katrina and Rita, and the tragic shooting at Northern Illinois University, reinforce the need for colleges and universities to prepare for the full range of emergency events that may affect their campus communities. The EMHE grant program provides funds to IHEs to establish or enhance an emergency management planning process that integrates the various components and departments of each IHE; focuses on reviewing, strengthening, and institutionalizing all-hazards emergency management plans; fosters partnerships with local and State community partners; supports vulnerability assessments; encourages training and drilling on the emergency management plan across the campus community; and requires IHEs to develop a written plan for preventing violence on campus by assessing and addressing the mental health needs of students, faculty, and staff who may be at risk of causing campus violence by harming themselves or others.

Program Authority: 20 U.S.C. 7131.

We published a notice of proposed priorities and requirements in the **Federal Register** on December 4, 2009 (74 FR 63740). That notice contained background information and our reasons for proposing the particular priorities and requirements.

Except for minor editorial and technical revisions, there is only one significant difference between the proposed priorities and requirements and these final priorities and requirements. Specifically, based on public comment, we have added an element to the priority that will require applicants to develop or update a written campus-wide continuity of operations plan that would enable the campus to maintain and/or restore key educational, business, and other essential functions following an emergency.

Public Comment: In response to our invitation in the notice of proposed priorities and requirements, four parties submitted comments on proposed priority 1 and on the proposed requirements. No comments were received on proposed priority 2.

Generally, we do not address technical and other minor changes, or suggested changes we are not authorized to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priorities or requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities and requirements since publication of the notice of proposed priorities and requirements follows.

Priority 1—Institutions of Higher Education (IHE) Projects Designed to Develop, or Review and Improve, and Fully Integrate Campus-Based All-Hazards Emergency Management Planning Efforts

Comment: One commenter observed that the EMHE notice of proposed priorities and requirements was published in the **Federal Register** in advance of the enactment of the FY 2010 appropriation for the Department. The commenter referenced language in the Appropriations Committee Reports filed in the U.S. House of Representatives and the U.S. Senate concerning the funding provided for emergency management for institutions of higher education, including examples of activities (such as risk assessment, training, and the purchase of hardware and software) that might be funded with these appropriated funds. The commenter requested that the Department consider the language in these Congressional reports in establishing the final priorities and requirements for this competition.

Discussion: We have reviewed the language in the Conference Report accompanying the Department's 2010 appropriations act, as well as the language included in the related House and Senate Appropriations Committee reports (House Report 111–220 and Senate Report 111–66, accompanying H.R. 3293, respectively). We believe that the EMHE grant priorities and requirements are consistent with the guidance provided by both the House and the Senate in these documents. Activities such as risk assessments, training, and the purchase of hardware and software are all considered allowable activities under the EMHE program. Accordingly, we believe that the final priorities and requirements are consistent with Congressional guidance, while offering applicants the flexibility to design and propose projects that incorporate a wide range of activities to address their institutions' needs.

Changes: None.

Comment: One commenter expressed concern that the proposed priority would not permit applicants to receive support for addressing any violent activity occurring on campuses. The commenter recommended adding a priority that would broaden the scope of the program to address any risks and threats that come under the jurisdiction of campus law enforcement and emergency managers, and that the program provide support for training and activities designed to address a broad range of campus problems including sexual assault, arson, robbery, harassment, simple assault, binge drinking, and drug use.

Discussion: We agree with the commenter that IHEs face significant challenges in dealing with many forms of violent activity that occur on their campuses. However, the EMHE grant program is designed to provide support for initiatives in emergency preparedness for IHEs, and is not intended to address or prevent all discrete acts of violence. Mitigating violent activity may certainly be an outcome of an all-hazards approach to emergency management; however, the primary focus of EMHE is to assist campuses with planning for, responding to, and recovering from major emergencies and disasters.

Given the relatively small amount of available funding for this program and the limited number of grants awarded under the EMHE program to date, providing a significantly broader focus for the program at this time would significantly reduce the ability of the program to meet its primary purpose of assisting IHEs in developing or enhancing their emergency preparedness capacity.

We note that the Department also administers another discretionary grant competition that is intended to respond more directly to the concerns of violent behavior on campus. Specifically, the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students (CFDA Number 84.184H) provides funds to develop, enhance, implement, and evaluate campus-based and/or community-based prevention strategies to reduce high-risk drinking or violent behavior among college students. For additional information on this program please visit: *http://www2.ed.gov/programs/dvphighrisk/index.html.*

Changes: None.

Comment: One commenter noted that element (7) in the proposed priority identifies students, faculty, and staff as individuals who pose a risk of violent behavior, but that others, including visitors to campus, also pose such a risk. The commenter suggested adding a priority addressing violence that is not related to mental health issues of on-campus individuals.

Discussion: We acknowledge that violent acts can be caused by any number of different factors in addition to mental illness or other mental health issues. However, House Report 110–231, issued on July 13, 2007, in conjunction with the FY 2008 appropriations bill for the Department that initially included funding for the EMHE program, explicitly stated that funds for new awards for IHEs should be used to develop and implement emergency management plans for preventing campus violence (including assessing and addressing the mental health needs of students) and for responding to threats and incidents of violence or natural disaster in a manner that ensures the safety of the campus community. The language in the proposed priority is not intended to limit the ability of campuses to consider a broader range of causes of violent behavior; rather, we intend it to ensure that, at a minimum, all EMHE grant recipients consider the potential role of mental health issues in campus violence. The language in the priority links the issue of identifying and addressing mental health issues with students, staff, and faculty because there are members of a campus community who may be able to observe warning signs and symptoms of mental health issues in these populations and use systems established by the IHE to initiate assessments or other appropriate procedures. IHEs cannot be expected to develop and maintain similarly comprehensive procedures for all short-term visitors to the campus setting.

Changes: None.

Comment: One commenter requested that funding under this program be available to establish a police agency on campus.

Discussion: While we recognize that many IHEs need to establish or support police or security forces on their campuses, we believe that this activity is outside the scope of this grant program. This program is designed to provide support for emergency management and overall preparedness initiatives for IHEs.

Changes: None.

Comment: One commenter suggested that rather than requiring applicants to respond to a prescriptive list of priorities and requirements, the Department should allow applicants to submit applications that propose individual approaches consistent with their institution's unique needs and emergency management challenges. In particular, the commenter recommended that the language related to infectious disease planning (proposed priority element number (6)) and mental health needs of campuses (proposed priority element number (7)) be modified to allow institutions to propose individual solutions based on differing institutional needs and capacities.

Discussion: We agree with the commenter that applicants should have the flexibility to design EMHE projects that respond to the unique needs of each campus. We believe the priorities are written in a way that will provide applicants with a significant amount of flexibility in identifying and addressing specific vulnerabilities and hazards that may be unique to each institution.

However, in administering this program, we seek to balance this needed flexibility with the need to ensure that IHEs receiving support under the program are addressing at least a core set of hazards that we have identified as important to the Federal interest. The core list of hazards includes those related to infectious diseases and the mental health needs of students, staff, and faculty who may be at risk of causing violence on campus.

Under this priority, IHEs still retain the flexibility to identify and address any unique emergency management issues or hazards identified as part of their vulnerability assessment. Further, eligibility for an EMHE grant is not affected for IHEs that have already addressed the required hazards or vulnerabilities identified by the Department before receiving a grant. Those entities need only commit to review emergency management plans for these required vulnerabilities during the grant period and to updating those plans as dictated by any relevant advances in the field or changes in local needs or concerns.

Changes: None.

Comment: One commenter suggested that we revisit our method for categorizing applicant institutions based on size. The commenter suggested that the categories used in the 2008 EMHE application enabled many relatively small institutions to be included in the "large" category, thereby enabling "small" institutions to request the same estimated funding level the Department identified for "large" institutions. The commenter recommended that additional funding tiers be established and that a specific category for very large institutions be created.

Discussion: We agree that changing the method for categorizing institutions by size would help to better align recommended funding amounts with institutional needs. We considered this comment, and our experience in implementing this program over the past two years, and for the FY 2010 competition we will change the method for establishing recommended grant award amounts. The new approach relies on student enrollment information (instead of number of facilities per campus) and establishes a category for very large institutions.

Because IHEs are diverse entities that face a broad range of different challenges in the emergency management arena, we have elected not to establish through this notice of final priorities and requirements enforceable

maximum grant award amounts for categories of IHEs. Instead, we are including revised recommended grant award amounts in the notice inviting applications (NIA) for the EMHE program. We believe that this approach will provide appropriate flexibility for IHEs to develop projects that are of a scope that meets their unique emergency management needs while still providing helpful information for applicants about the approximate project scope and grant award sizes that we anticipate supporting.

Changes: No changes are being made to the final priorities and requirements. The change in the categorization of institutions described in the preceding paragraphs is reflected in the notice inviting applications for this competition, published elsewhere in this issue of the **Federal Register.**

Comment: One commenter recommended two changes to the proposed priority that would further emphasize the importance of continuity planning and the restoration of a learning environment following an emergency. The commenter requested that language be added to both proposed priority elements (1) and (4) to specifically emphasize the importance of continuity planning.

Discussion: We agree that ensuring that institutions have a plan for continuing to provide key services (for example education, payroll, health support, and food services) following an emergency is a critical concern for the higher education community. The Department has worked with local school districts and IHE campuses over the past several years to help them strategize on ways to restore the learning environment following an emergency. Particularly following Hurricanes Katrina and Rita, and given the recent influenza pandemic, we have been actively involved in developing resources to assist educational institutions at all levels in their continuity planning efforts.

We agree with the commenter that planning for the continuation of educational and other services following an emergency should be included as a component in an IHE's emergency management planning efforts, and will revise the priority to reflect this emphasis.

Changes: We have revised the priority by adding an additional element that will require applicants to develop or update a written campus-wide continuity of operations plan that would enable the campus to maintain and/or restore key educational, business, and other essential functions as quickly as possible following an emergency.

Requirements for Partner Agreements and Completed Memoranda of Agreements

Comment: One commenter observed that the capacity of law enforcement and mental health entities varies greatly from one community and one institution to another. For example, in one community the IHE law enforcement agency may be the primary emergency services provider for the community-at-large, whereas in another community the IHE may be largely or completely dependent on the local or State police departments for emergency services. The commenter observed that it may not always be appropriate for an IHE to have a partner agreement with the local law enforcement agency or a local mental health provider, particularly when the campus itself is the primary provider of emergency law enforcement or mental health services. The commenter recommended that an IHE not be required to enter into agreements with community-based law enforcement and mental health entities if the IHE is responsible for furnishing its own services in these areas.

Discussion: We agree with the commenter that there is tremendous diversity in the size and location of IHEs across the country and that IHEs have various levels of institutional capacity to respond to emergencies within their communities. We also acknowledge that in some situations it is an employee or agent of the IHE who is the lead incident commander and who ultimately assists local or State partners in their response activities.

The EMHE requirements are not intended to prescribe what the appropriate role and relationships should be between an IHE and its community partners. Instead, the requirements are designed to help foster communication and the establishment of relationships between the various potential responders to any incident, and to ensure that those relationships are established and solidified before any emergency event occurs. We expect that the roles and responsibilities articulated in both the partner agreements and the memoranda of agreements will vary greatly based on the relationship between each applicant IHE and its surrounding community. Our intent in proposing the requirement is to ensure that IHEs and their surrounding community partners are communicating with each other and coordinating their efforts, and not to prescribe what those efforts or relationships should entail.

Further, the requirements to establish partner agreements and memoranda of understanding are not intended to limit the roles an IHE may perform in a community response. Rather, the requirements are intended to ensure that all grantees ultimately establish solid working relationships with their key partners and that they know what the various roles and responsibilities of each partner (including the IHE) might be in the event of an emergency. An application from a campus where the applicant IHE serves as the primary emergency services provider for the local community should indicate that in its partner agreements. It is the demonstration and documentation of an established and ongoing relationship that is key to these requirements.

Changes: None.

Comment: One commenter identified the recovery of indirect costs from EMHE grants as a concern because these costs do not support direct project activities. The commenter also expressed concern that peer reviewers might find indirect cost rates for research institutions inappropriately high, which may have limited the number of research institutions that have been successful in receiving EMHE grants. The commenter suggested that we should include a requirement that would limit the percentage of indirect costs that may be recovered from an EMHE grant.

Discussion: Generally, the Federal Government permits grant recipients to recover indirect costs for costs associated with their federally funded grant projects. This recovery is typically based on a rate determined by a cognizant agency that takes into account the indirect costs involved in implementing grant activities. Costs in an indirect cost pool may include such items as utility costs, building maintenance services, general insurance costs, and the cost of staff who assist with administrative functions such as hiring, payroll services, or other similar activities. The indirect cost rate is determined through a process of negotiation with the institution's cognizant agency and is designed to be an accurate reflection of the actual indirect costs associated with conducting programming at that institution. IHEs frequently are assigned several indirect cost rates as a result of the negotiation process; these rates reflect differences in indirect costs associated with different kinds of project activities. For example, IHEs may be assigned a rate for research grants, a rate for grants implemented at a facility other than a campus facility (for example, at a hospital or research laboratory), or a rate for other sponsored projects.

While recovery of indirect costs reduces the amount of funding that can be used to support direct grant activities, establishing a cap on indirect cost recovery that is lower than that permitted by an IHE's negotiated rate means that the IHE will need to identify other grant or institutional resources to help pay for the indirect costs consumed by implementing an EMHE project. Establishing an arbitrary cap for indirect costs could affect an IHE's ability to implement its EMHE project if the IHE does not have institutional or other resources to pay these indirect costs, and may make it impossible for some IHEs to compete for or accept an EMHE grant.

Because EMHE projects are not research projects, we do not permit EMHE grantees to recover indirect costs at the higher established research project rate. Typically, applicants for the EMHE program request recovery of costs based on the indirect cost rate for other on-campus programs, or other sponsored programs, at their IHE.

The issue of indirect costs is not an issue that peer reviewers evaluate when they read and score an application. The selection criteria used for the EMHE competition do not include any criteria that require peer reviewers to evaluate the adequacy or reasonableness of the grant budget proposed by the applicant.

Changes: None.

Final Priorities:

These priorities are:

Priority 1—Institutions of Higher Education (IHE) Projects Designed to Develop, or Review and Improve, and Fully Integrate Campus-Based All-Hazards Emergency Management Planning Efforts

The Assistant Deputy Secretary for Safe and Drug-Free Schools establishes a priority that supports IHE projects designed to develop, or review and improve, and fully integrate campus-based all-hazards emergency management planning efforts. A program funded under this priority must use the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) to:

(1) Develop, or review and improve, and fully integrate a campus-wide all-hazards emergency management plan that takes into account threats that may be unique to the campus;

(2) Train campus staff, faculty, and students in emergency management procedures;

(3) Coordinate with local and State government emergency management efforts;

(4) Ensure coordination of planning and communication across all relevant components, offices, and departments of the campus;

(5) Develop a written plan with emergency protocols that include the medical, mental health, communication, mobility, and emergency needs of persons with disabilities, as well as for those individuals with temporary special needs or other unique needs (including those arising from language barriers or cultural differences);

(6) Develop or update a written plan that prepares the campus for infectious disease outbreaks with both short-term implications for planning (*e.g.,* outbreaks caused by methicillin-resistant *Staphylococcus aureus* (MRSA) or food-borne illnesses) and long-term implications for planning (*e.g.,* pandemic influenza);

(7) Develop or enhance a written plan for preventing violence on campus by assessing and addressing the mental health needs of students, staff, and faculty who may be at risk of causing violence by harming themselves or others; and

(8) Develop or update a written campus-wide continuity of operations plan that would enable the campus to maintain and/or restore key educational, business, and other essential functions following an emergency.

Priority 2—Priority for Applicants That Have Not Previously Received a Grant Under The EMHE Program (CFDA Number 84.184T)

Under this priority we give priority to applications from IHEs that have not previously received a grant under this program (CFDA Number 84.184T). An applicant that has received services under this program directly, or as a partner in a consortium application under this program, would not meet this priority. Under a consortium application, all members of the IHE consortium must meet this criterion in order for the applicant to meet this priority.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements:

Partner Agreements: To be considered for a grant award, an applicant must include in its application two partner agreements. One partner agreement must detail coordination with, and participation of, a representative of the appropriate level of local or State government for the locality in which the IHE to be served by the project is located (for example, the mayor, city manager, or county executive). The second partner agreement must detail coordination with, and participation of, a representative from a local or State emergency management coordinating body (for example, the head of the local emergency planning council that would be involved in coordinating a large-scale emergency response effort in the campus community). Both agreements must include the name of the partner organization, an indication of whether the partner represents the local or State government or the local or State emergency management coordinating body, and a description of the respective partner as well as a description of the partner's roles and responsibilities in supporting the EMHE grant and in strengthening emergency management planning efforts for the IHE. Each partner agreement must also include a description of the roles and responsibilities of the IHE in grant implementation and partner coordination. A signature from an authorized representative of the IHE and each of the two required partners acknowledging the relationship and the agreements must be included in the application. If either or both of the two required partners is not present in an applicant's community, or cannot feasibly participate, the agreements must explain the absence of each missing partner.

Applications that fail to include either of the two required partner agreement forms, including information on partners' roles and responsibilities (or an explanation documenting that partner's absence in the community), along with the required signatures, will not be considered for funding.

Each consortium applicant (an applicant submitting on behalf of

multiple IHEs) and any applicant applying on behalf of multiple campuses (including one or more satellite or extension campuses within its own institution or its consortium of IHEs) must submit a complete set of partner agreements with appropriate signatures from the authorized representative and the two required partners noted earlier for each campus proposed to be receiving services under its EMHE project.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the IHE.

Completed Memoranda of Agreements: All IHEs supported by the EMHE program must use the grant period to create, or review and update, and sign, a memorandum of agreement (MOA) with each of the following four partners: local or State emergency management coordinating body, local government, primary off-campus public health provider, and primary off-campus mental health services provider. Each applicant under the EMHE program must include an assurance with its application that the IHE will establish these MOAs during the project period. MOAs must be completed for each campus to be served by the EMHE project. Completed MOAs will be requested at the end of the project period with the Final Report submission.

Coordination with State or Local Homeland Security Plan: All emergency management plans created or enhanced using funding under this program must be coordinated with the Homeland Security Plan of the State or locality in which the IHE is located. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, an applicant must include in its application an assurance that the IHE will coordinate with, and follow, the requirements of its State or local Homeland Security Plan for emergency services and initiatives.

Implementation of the National Incident Management System (NIMS): Each applicant must agree to implement its grant in a manner consistent with the implementation of the NIMS in its community. An applicant must include in its application an assurance that it has met, or will complete, all current NIMS requirements by the end of the grant period.

Implementation of the NIMS is a dynamic process that will continue to evolve over time. In order to receive Federal preparedness funding under the EMHE program, each IHE must cooperate with the efforts of its community to meet the minimum NIMS requirements established for each fiscal year. Because the Department of Homeland Security's (DHS) determination of NIMS requirements may change from year to year, an applicant must refer to the most recent list of NIMS requirements published by DHS when submitting its application. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements.

Note: The responsibilities and procedures of any campus-based security office or law enforcement agency and the elements of the campus emergency management plan must be considered in conjunction with the local community's emergency operations plan (EOP) and the capacity and responsibility of local fire and rescue departments, emergency medical service providers, crisis center/hotlines, and law enforcement agencies that may be called to assist the IHE in a large-scale disaster. IHEs' participation in the NIMS preparedness program of the local government is essential in ensuring that first-responder services are delivered in a timely and effective manner. Additional information about NIMS and NIMS implementation is available at: *http://www.fema.gov/emergency/nims/ImplementationGuidanceStakeholders.shtm* and *http://www.fema.gov/emergency/nims/index.shtm.*

IHEs that have previously received Federal preparedness funding and are, therefore, already NIMS-compliant should indicate that in the assurance form.

Eligibility: To be considered for an award under this competition, an applicant must be considered an IHE, or a consortia thereof. An IHE, for the purposes of this competition, is defined as: an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate or persons who meet the requirements of section 484(d)(3) of the Higher Education Act of 1965, as amended;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities and requirements, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities and requirements justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits:

We fully discussed the costs and benefits of this regulatory action in the notice of proposed priorities and requirements. After review, we determined that there will be no substantial additional costs to the grantee as a result of the addition of the new priority element related to continuity planning. An ultimate goal of the EMHE program is to decrease the resulting costs to IHEs in terms of lost resources, facilities, time, and causalities that may result from an actual emergency and the new priority element directly supports this goal. Further, the costs to support this activity may be included in an applicant's proposed EMHE budget. Accordingly, the addition of this element to this final priority is determined to have no additional costs to the grantees.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 29, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–7421 Filed 3–31–10; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools Overview Information; Emergency Management for Higher Education Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184T.

Dates:

Applications Available: April 1, 2010.

Deadline for Transmittal of Applications: May 12, 2010.

Deadline for Intergovernmental Review: July 12, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: EMHE grants support efforts by institutions of higher education (IHEs) to develop, or review and improve, and fully integrate, campus-based all-hazards emergency management planning efforts within the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery).

Priorities: These priorities are from the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Priority 1—Institutions of Higher Education (IHE) Projects Designed To Develop, or Review and Improve, and Fully Integrate Campus-Based All-Hazards Emergency Management Planning Efforts.

Under this priority, we support IHE projects designed to develop, or review and improve, and fully integrate campus-based all-hazards emergency management planning efforts. A program funded under this priority must use the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) to:

(1) Develop, or review and improve, and fully integrate a campus-wide all-hazards emergency management plan that takes into account threats that may be unique to the campus;

(2) Train campus staff, faculty, and students in emergency management procedures;

(3) Coordinate with local and State government emergency management efforts;

(4) Ensure coordination of planning and communication across all relevant components, offices, and departments of the campus;

(5) Develop a written plan with emergency protocols that include the medical, mental health, communication, mobility, and emergency needs of persons with disabilities, as well as for those individuals with temporary special needs or other unique needs (including those arising from language barriers or cultural differences);

(6) Develop or update a written plan that prepares the campus for infectious disease outbreaks with both short-term implications for planning (*e.g.,* outbreaks caused by methicillin-resistant *Staphylococcus aureus* (MRSA) or food-borne illnesses) and long-term implications for planning (*e.g.,* pandemic influenza);

(7) Develop or enhance a written plan for preventing violence on campus by assessing and addressing the mental health needs of students, staff, and faculty who may be at risk of causing violence by harming themselves or others; and

(8) Develop or update a written campus-wide continuity of operations plan that would enable the campus to maintain and/or restore key educational, business, and other essential functions following an emergency.

Priority 2—Priority for Applicants That Have Not Previously Received a Grant Under The EMHE Program (CFDA 84.184T).

Under this priority we give priority to applications from IHEs that have not previously received a grant under this program (CFDA number 84.184T). An applicant that has received services under this program directly, or as a partner in a consortium application under this program, would not meet this priority. Under a consortium application, all members of the IHE consortium must meet this criterion in order for the applicant to meet this priority.

Final Requirements: These requirements are from the notice of final priorities and requirements published elsewhere in this issue of the **Federal Register.** The following requirements apply to all applications submitted under this competition:

1. *Partner Agreements:* To be considered for a grant award, an applicant must include in its application two partner agreements. One partner agreement must detail coordination with, and participation of, a representative of the appropriate level of local or State government for the locality in which the IHE to be served by the project is located (for example, the mayor, city manager, or county executive). The second partner agreement must detail coordination with, and participation of, a representative from a local or State emergency management coordinating body (for example, the head of the local emergency planning council that would be involved in coordinating a large-scale emergency response effort in the campus community). Both agreements must include the name of the partner organization, an indication of whether the partner represents the local or State government or the local or State emergency management coordinating body, and a description of the respective partner as well as a description of the partner's roles and responsibilities in supporting the EMHE grant and in

strengthening emergency management planning efforts for the IHE. Each partner agreement must also include a description of the roles and responsibilities of the IHE in grant implementation and partner coordination. A signature from an authorized representative of the IHE and each of the two required partners acknowledging the relationship and the agreements must be included in the application. If either or both of the two required partners is not present in an applicant's community, or cannot feasibly participate, the agreements must explain the absence of each missing partner.

Applications that fail to include either of the two required partner agreement forms, including information on partners' roles and responsibilities (or an explanation documenting that partner's absence in the community) along with the required signatures, will not be considered for funding.

Each consortium applicant (an applicant submitting on behalf of multiple IHEs) and any applicant applying on behalf of multiple campuses (including one or more satellite or extension campuses within its own institution or its consortium of IHEs) must submit a complete set of partner agreements with appropriate signatures from the authorized representative and the two required partners noted earlier for each campus proposed to be receiving services under its EMHE project.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the IHE.

2. *Completed Memoranda of Agreements:* All IHEs supported by the EMHE program must use the grant period to create, or review and update, and sign, a memorandum of agreement (MOA) with each of the following four partners: local or State emergency management coordinating body, local government, primary off-campus public health provider, and primary off-campus mental health services provider. Each applicant under the EMHE program must include an assurance with its application that the IHE will establish these MOAs during the project period. MOAs must be completed for each campus to be served by the EMHE project. Completed MOAs will be requested at the end of the project period with the Final Report submission.

3. *Coordination with State or Local Homeland Security Plan:* All emergency management plans created or enhanced using funding under this program must be coordinated with the Homeland Security Plan of the State or locality in which the IHE is located. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, an applicant must include in its application an assurance that the IHE will coordinate with, and follow, the requirements of its State or local Homeland Security Plan for emergency services and initiatives.

4. *Implementation of the National Incident Management System (NIMS):* Each applicant must agree to implement its grant in a manner consistent with the implementation of the NIMS in its community. An applicant must include in its application an assurance that it has met, or will complete, all current NIMS requirements by the end of the grant period.

Implementation of the NIMS is a dynamic process that will continue to evolve over time. In order to receive Federal preparedness funding under the EMHE program, each IHE must cooperate with the efforts of its community to meet the minimum NIMS requirements established for each fiscal year. Because the Department of Homeland Security's (DHS) determination of NIMS requirements may change from year to year, an applicant must refer to the most recent list of NIMS requirements published by DHS when submitting its application. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements.

Note: The responsibilities and procedures of any campus-based security office or law enforcement agency and the elements of the campus emergency management plan must be considered in conjunction with the local community's emergency operations plan (EOP) and the capacity and responsibility of local fire and rescue departments, emergency medical service providers, crisis center/hotlines, and law enforcement agencies that may be called to assist the IHE in a large-scale disaster. IHEs' participation in the NIMS preparedness program of the local government is essential in ensuring that first-responder services are delivered in a timely and effective manner. Additional information about NIMS and NIMS implementation is available at: *http://www.fema.gov/emergency/nims/ImplementationGuidance Stakeholders.shtm* and *http://www.fema.gov/emergency/nims/index.shtm.*

IHEs that have previously received Federal preparedness funding and are, therefore, already NIMS-compliant should indicate that in the assurance form.

5. *Eligibility:* To be considered for an award under this competition, an applicant must be considered an IHE, or a consortia thereof. An IHE, for the purposes of this competition, is defined as: an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate or persons who meet the requirements of section 484(d)(3) of the Higher Education Act of 1965, as amended;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 299. (c) The notice of final priorities and requirements, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $9,067,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$750,000.

Estimated Average Size of Awards: We estimate that IHEs with student enrollment between 1–999 students will need up to $200,000 to implement their projects; IHEs with enrollment between 1,000–4,999 students will need up to $300,000 to implement their projects; IHEs with enrollment between 5,000 and 19,999 will need up to $500,000 to implement their projects; and IHEs with enrollment between 20,000 and 40,000 may need up to $750,000 to implement their projects. Please note that these are estimates only and IHEs that believe that they need additional support to successfully complete their projects should fully justify this in their applications.

Estimated Number of Awards: 26.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Budgets should be developed for a single award with a project period of up to 24 months. No continuation awards will be provided.

III. Eligibility Information

1. *Eligible Applicants:* To be considered for an award under this competition, an applicant must be considered an IHE, or a consortia thereof. An IHE, for the purposes of this competition, is defined as: an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate or persons who meet the requirements of section 484(d)(3) of the Higher Education Act of 1965, as amended;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. This eligibility requirement is from the notice of final priorities and requirements published elsewhere in this issue of the **Federal Register.**

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:* You can obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

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 listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: April 1, 2010.

Deadline for Transmittal of Applications: May 12, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 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 in 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: July 12, 2010.

4. *Intergovernmental Review:* This competition 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 84.184T), 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 84.184T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 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. For this competition, you must also submit an interim report 12 months after the award date. 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 Measure:* We have identified the following Government Performance and Results Act of 1993 (GPRA) performance measure for assessing the effectiveness of the EMHE grant program: The average number of National Incident Management System (NIMS) training course completions by key personnel at the start of the grant compared to the average number of NIMS training course completions by key personnel at the end of the grant.

This GPRA measure constitutes the Department's indicator of success for this program. Applicants for a grant under this program are advised to give careful consideration to this measure in designing their proposed project, including considering how data for the measure will be collected. Grantees will be required to collect and report, in their interim and final performance reports, baseline data and data on their progress with regard to this measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tara Hill, U.S. Department of Education, 400 Maryland Avenue, SW., Room 10088, PCP, Washington, DC 20202–6450. *Telephone:* (202) 245–7860 or by *e-mail: tara.hill@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.*

Dated: March 29, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–7417 Filed 3–31–10; 8:45 am]

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Federal Register

Thursday,
April 1, 2010

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Refuge Specific Regulations; Public Use; Kodiak National Wildlife Refuge; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–NSR–2009–0055]
[70133–1265–0000–4A]

50 CFR Part 36

RIN 1018–AW15

Refuge Specific Regulations; Public Use; Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are updating our regulations for Kodiak National Wildlife Refuge (NWR) to codify decisions from our 2007 Kodiak NWR Revised Comprehensive Conservation Plan (CCP). Specifically, we are amending our current seasonal closure of the O'Malley River area within Kodiak National Wildlife Refuge to allow operation of a bear-viewing program; prohibiting camping within one-quarter mile of public use cabins and Federal and State administrative facilities on the Kodiak NWR, with authorized exceptions; and prohibiting snowmachine use on approximately 4,972 acres of important brown-bear denning habitat in the Den Mountain area. We are also making technical corrections to the authorities section of our regulations.

DATES: This rule is effective on May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Glaspell, (907) 487–0248 (phone); (907) 487–2144 (fax).

SUPPLEMENTARY INFORMATION:

Background

Kodiak National Wildlife Refuge was established in 1941 for the purpose of protecting the natural feeding and breeding ranges of brown bears and other wildlife on Uganik and Kodiak Islands. The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*; 43 U.S.C. 1602) expanded the purposes of the refuge. It states the purposes for which Kodiak National Wildlife Refuge was "established and shall be managed include:

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonoids, sea otters, sea lions and other marine mammals and migratory birds;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge."

Kodiak Refuge now encompasses almost 2 million acres in southwestern Alaska, including about two-thirds of Kodiak Island, all of Uganik and Ban Islands, and a portion of Afognak Island. The City of Kodiak, where refuge headquarters are located, is about 250 air miles south of Anchorage and 20 miles northeast of the refuge boundary, on Kodiak Island.

Kodiak Refuge is characterized by a large range of habitats within a relatively small geographic area. Because of this, the refuge supports some of the highest densities of brown bears, nesting bald eagles, and spawning salmon found anywhere in North America. The mountainous interior of Kodiak Island, with several peaks over 4,000 feet in elevation, is covered by lush, dense vegetation during the summer, with alpine vegetation on the highest slopes. No place on the refuge is more than 15 miles from the ocean. Access to the refuge is by float plane and boat. Kodiak Refuge supports runs of five species of Pacific Salmon (Chinook, sockeye, coho, pink, and chum) and steelhead. Rainbow trout, Dolly Varden, and Arctic char are also found in refuge waters.

Kodiak Refuge contains some of the best brown bear habitat in the world, and some of the highest concentrations of brown bears found anywhere, with an estimated population of 3,000 bears. These bears feed on spawning salmon and forage throughout most of the refuge. The Karluk River drainage, including the O'Malley River at its upper end, is one of the most important feeding areas for bears, with as many as 200 bears using the Karluk area from mid-June through the end of September.

Under our regulations implementing ANILCA, all refuge lands in Alaska are open to public recreational activities as long as such activities are conducted in a manner compatible with the purposes for which the refuge was established (50 CFR 36.31). Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, hunting, fishing, boating, camping, hiking, picnicking, and other related activities [50 CFR 36.31(a)].

The National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, defines "wildlife-dependent recreation" and "wildlife-dependent recreational use" as "hunting, fishing, wildlife observation and photography, or environmental education and interpretation" [16 U.S.C. 668ee(2)]. We encourage these uses, and they receive emphasis in management of the public use of the refuge.

Actions to Implement the Comprehensive Conservation Plan

The 2007 Kodiak Refuge Comprehensive Conservation Plan (CCP) addressed four primary issues: protection of bear concentration areas, management of public use cabins, management of camping areas, and management of the O'Malley River area. This rule implements actions described in the CCP intended to address these issues.

O'Malley River Area and Bear Viewing Program: The O'Malley River is part of the Karluk Lake watershed in the southwestern portion of Kodiak Refuge. Karluk Lake and Karluk River watershed support the largest runs of sockeye salmon on the Kodiak Archipelago. Approximately 20 to 25 percent of these fish spawn in the O'Malley River system. The Karluk Lake drainage also supports one of the highest reported densities of brown bear, with the highest seasonal concentrations occurring in the O'Malley River area.

Until 1992, the O'Malley River area was open to unregulated public use, including guided and unguided day use and overnight camping. In 1992, after determining that unregulated public use was having unacceptable impacts on feeding bears, Kodiak Refuge established a temporary closure of the O'Malley River area. The closure prohibited all public use and entry, except for participants in a highly structured refuge-sponsored bear-viewing program. The bear-viewing program was a means to allow continued public use while eliminating the unacceptable impacts caused by unregulated activities.

The 1992 Service-run O'Malley River viewing program was successful in reducing human impacts to bears and also proved popular with the public. In 1993, structured O'Malley River bear viewing and the temporary area closure were suspended while a contractor was selected to operate the program in place of the Service. In 1994, the temporary closure was reinstated and the program was successfully operated by a private contractor under a Refuge-issued permit. Although the privately operated viewing program met the Refuge goal of

providing public use opportunities while reducing impacts to bears, a challenge to the process used to select the contractor led to cancellation of the program after one season. On July 19, 1995, we issued a permanent regulation, which closed approximately 2,560 acres of the O'Malley River area to all public access, occupancy, and use from June 25 through September 30 [60 FR 37308, July 19, 1995; 50 CFR 36.39(j)]. The O'Malley River area has remained seasonally closed to the public since that time.

During preparation of the 2007 Kodiak Refuge CCP and Environmental Impact Statement, the public expressed significant interest in re-establishing an O'Malley River bear-viewing opportunity. We analyzed the likely impacts of several different viewing program alternatives against the existing seasonal closure. The analysis was greatly facilitated by research conducted in the O'Malley River area during the periods 1991–94 and 2003–04. That research showed that structured bear viewing could occur at O'Malley River, with minimal impacts to bears.

Our final CCP (72 FR 21037; April 27, 2007) calls for us, in cooperation with the Alaska Department of Fish and Game, to develop and implement a bear-viewing program at O'Malley River. The regulation now closing the O'Malley River area to all use on a seasonal basis will be modified to allow this use. This rule amends our regulations to allow the recommended viewing program to proceed.

Public Use Cabin and Camping Area Management: There are currently nine public use cabins on the Refuge, all remotely located and accessible only by float plane or boat. The CCP allows construction of up to two additional cabins and conversion of administrative cabins and cabins on acquired lands to public use. A permit and $45 per night fee are required to occupy a public use cabin. Permits are available by reservation, and permit holders have exclusive use of reserved cabins and associated facilities (outhouse, meat cache).

Tent camping is unrestricted on most of the Refuge. Camping in close proximity to public use cabins or administrative facilities increases the likelihood of conflict with other users and trespass use of administrative facilities. The CCP calls for a rule prohibiting camping within one-quarter mile of public use cabins and Federal and State administrative facilities. This rule adopts that change, reducing the likelihood of conflict or trespass by prohibiting camping within one-quarter mile of any State or Federal facility located on Kodiak Refuge lands. Exceptions to the one-quarter mile limit may be considered by the Refuge Manager on a case-by-case basis, and camping nearer to State or Federal facilities may be authorized with a Refuge Special Use Permit.

Prohibiting Snowmachine Use in Den Mountain Area: Under our regulations implementing ANILCA, the use of snowmachines (during periods of adequate snow cover and frozen river conditions) for traditional activities and for travel to and from villages and home sites and other valid occupancies is currently allowed (43 CFR 36.11). However, in studies conducted at locations other than Kodiak, snowmachines have been shown to disturb denning bears, sometimes resulting in den abandonment. Of particular concern are adverse impacts on denning females with cubs. If females abandon dens as a result of snowmachine disturbance, newborn cubs are especially threatened.

On Kodiak Island, studies have documented concentrated bear denning, primarily by adult females, within the Den Mountain area of Kodiak Refuge. Den Mountain is located near places traditionally accessed by snowmachine operators along western Kizhuyak Bay. Terrain in the area affords snowmachine operators relatively unfettered access between the bay and mountain when adequate snow cover exists. Under this rule, we will continue to allow appropriate use of snowmachines on most of the Refuge, except for approximately 4,972 acres of accessible and important bear denning habitat on Den Mountain. The CCP calls for a regulation closing this area to snowmachine use, although the final document mistakenly reports the size of the area as 2,820 acres. The actual size of the area analyzed for closure during preparation of the Refuge CCP was approximately 4,670 acres. A minor boundary adjustment to make it easier for the public to identify the closure area on the ground and facilitate enforcement resulted in the final closure area size of 4,972 acres.

Technical corrections: We are making minor changes to update the authority citation for the regulation, correct an error in the current regulation, eliminate unneeded references, and conform to current citation format. The revised Statutory Authority citation will read as follows: 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, 3101 *et seq.*

Response to Comments Received

In the October 8, 2009 **Federal Register** (74 FR 52110), we published a proposed rule and invited public comments. We also participated in a local radio interview followed by a public forum concerning the proposed rule. The forum was advertised in the Kodiak local newspaper and on local radio. About 30 people attended the forum and the local newspaper printed a follow-up article summarizing the event.

We received five comment letters: One from the State of Alaska, one from the Alaska Citizen's Advisory Commission on Federal Areas, and three from private individuals. All five comments offered general support for our proposals to prohibit snowmachines in the vicinity of Den Mountain and restrict camping near administrative facilities. Both the State of Alaska and the Alaska Citizen's Advisory Commission on Federal Areas suggested a minor change in the proposed rule to allow the Refuge Manager to authorize camping closer than one-quarter mile from administrative structures on a case-by-case basis. The same commentors also requested that the final rule contain a clarification of the basis for the size (4,972 acres) of the proposed Den Mountain snowmachine closure.

Four of the five comments we received expressed general support for the proposal to modify the existing O'Malley River area closure to permit operation of a bear-viewing program. One individual, while expressing support in principle for the bear-viewing program, posed a number of questions about operational details of the program and enforcement of program stipulations. A second individual expressed opposition to opening of the O'Malley area for a public bear-viewing program on the grounds that it would lead to negative impacts on bears; however, they supported opening the area to researchers and photographers.

In response to these comments, this final rule states that the Refuge Manager may authorize exceptions to the one-quarter mile camping limit, and we clarify the basis for the size of the Den Mountain closure in the **SUPPLEMENTARY INFORMATION** section. The O'Malley closure amendment remains unchanged because the Refuge CCP and Environmental Impact Statement determined that development of an O'Malley area bear-viewing program will produce net benefits for Kodiak's bears as well as for visitors.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

The Office of Management and Budget has determined that this rule is not a significant rule.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act [as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)], whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This rule will impact visitor use associated with bear viewing in the O'Malley River area. Modifying the existing O'Malley River closure will create a new, high-quality public recreation opportunity in an area that is otherwise seasonally closed to the public. We estimate that annually an additional 30 to 144 people will visit the Refuge to view bears, generating approximately 120 to 576 additional recreation use-days at the Refuge (assuming an average 4–day visit). These additional recreation use-days represent between 1 and 7 percent of the average annual recreation use-days on Kodiak Refuge.

Small businesses within the retail trade industry (such as hotels, gas stations, bear-viewing guides, etc.) (NAIC [North American Industry Classification] 44), accommodation and food service establishments (NAIC 72), and air taxi operators (NAIC 48) may benefit from some increased spending generated by additional refuge visitation. Eighty percent of establishments in the Kodiak Island Borough qualify as small businesses. This statistic is similar for retail trade establishments (80 percent), accommodation and food service establishments (67 percent), and transportation establishments (75 percent). Due to the limited bear-viewing season and small number of people (30 to 144 people) who would annually participate in a bear-viewing program, this rule will have a minimal beneficial effect on these small businesses.

With the small increase in overall visitation anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small economic effect (benefit) from the increased spending near the Refuge. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under SBREFA [5 U.S.C. 804(2)]. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional 30 to 144 visitors participating in bear viewing at Kodiak Island Refuge would generate only a minimal economic impact. Consequently, the benefit of this rule for businesses would not be sufficient to make this a major rule.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. We do not expect the minimal increase in bear-viewing opportunities to significantly affect costs or prices in any sector of the economy.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending by a small number of recreational visitors. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the E.O.

Consultation and Coordination with Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined there are no effects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule constitutes a major Federal action significantly affecting the quality of the human environment. We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) (NEPA) and our

Departmental Manual part 516 chapter 6, Appendix 1. We prepared a draft Environmental Impact Statement (DEIS) under NEPA, and made it available for comment. Finally, we made our final revised CCP and EIS available for a 30–day comment period beginning September 29, 2006 (71 FR 57560). We announced availability of the Record of Decision for the Final Revised CCP and Environmental Impact Statement on April 27, 2007 (72 FR 21037). To obtain a copy of the CCP/EIS, contact Brian Glaspell (see **FOR FURTHER INFORMATION CONTACT**).

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Endangered Species Act Section 7 Consultation

In 2004, a section 7 consultation under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) was conducted for the Draft Revised Comprehensive Conservation Plan, Kodiak National Wildlife Refuge. The plan was found to be fully consistent with section 7 of the Endangered Species Act by the Service and the National Marine Fisheries Service.

Primary Author

Brian Glaspell, Visitor Services Manager, Kodiak National Wildlife, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and Recreation Areas, Reporting and Recordkeeping Requirements, Wildlife Refuges.

■ For the reasons set out in the preamble, we are amending title 50, part 36 of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

■ 1. Revise the authority citation for part 36 to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd-668ee, 3101 *et seq.*

■ 2. Amend §36.39 by revising the first sentence of paragraph (j)(1) and paragraph (j)(2) and adding paragraphs (j)(4) and (j)(5) to read as follows:

§ 36.39 Public use.

* * * * *

(j) * * *

(1) *Seasonal public use closure of the O'Malley River Area.* The area within the Kodiak National Wildlife Refuge described in this paragraph (j)(1) is closed to all public access, occupancy, and use from June 25 through September 30, except for individuals participating in the O'Malley River Bear-Viewing Program. * * *

(2) *Access easement provision.* Notwithstanding any other provision of this paragraph (j), there exists a 25-foot-wide access easement on an existing trail within the Koniag Inc. Regional Native Corporation lands within properties described in paragraph (j)(1) of this section in favor of the United States of America.

* * * * *

(4) *Camping prohibition near facilities.* On lands within Kodiak National Wildlife Refuge, you are prohibited from camping within one-quarter mile of public use cabins and Federal and administrative facilities, unless such activity is specifically authorized in a Refuge Special Use Permit. An administrative facility means any facility or site administered by the U.S. Fish and Wildlife Service or the State of Alaska for public entry or other administrative purposes, including but not limited to cabins, storage buildings, piers, docks, weirs, refuge offices, visitor centers, and public access and parking sites. Maps of the locations of public use cabins and administrative facilities are available from Refuge Headquarters in Kodiak, Alaska.

(5) *Snowmachine prohibition.* Snowmachines, as defined in §36.2, are prohibited within an approximately 4,972-acre area encompassing Den Mountain and adjacent highlands. The summit of Den Mountain is located within Township 29 South, Range 24 West, Seward Meridian, Alaska. Maps of the closed area are available from Refuge Headquarters in Kodiak, Alaska.

Dated: March 23, 2010

Will Shafroth,

Acting Assistant Secretary Fish and Wildlife and Parks.

[FR Doc. 2010–7370 Filed 3–31–10; 8:45 am]

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H.R. 4938/P.L. 111–150
To permit the use of previously appropriated funds to extend the Small Business Loan Guarantee Program, and for other purposes. (Mar. 26, 2010; 124 Stat. 1026)

S. 3186/P.L. 111–151
Satellite Television Extension Act of 2010 (Mar. 26, 2010; 124 Stat. 1027)

A Cumulative List of Public Laws for the first session of the 111th Congress appears in Part III of this issue.

Last List March 30, 2010

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