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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8520 of May 14, 2010**

## National Defense Transportation Day and National Transportation Week, 2010

**By the President of the United States of America**

**A Proclamation**

The transportation networks of early America connected our rapidly growing Nation with natural waterways and dirt roads, making travel difficult and time-consuming. In the time since, undeveloped paths have given way to iron and concrete thoroughfares, and our modern transportation system has profoundly shaped our landscape, communities, commerce, and culture. During National Defense Transportation Day and National Transportation Week, we reaffirm the importance of an advanced transportation infrastructure to our Nation's economy and security, and we thank the dedicated men and women who build and maintain it.

In times of peace and national crisis, efficient roads, rails, ports, and airports play a vital role in keeping us safe by enabling the rapid movement of people and resources. The devoted professionals who design and manage this infrastructure help ensure America has a world-class logistics and transportation system to support our military readiness and emergency response capabilities.

Our Nation's transportation arteries make our economy more efficient, promoting economic growth, the lifeblood of commerce. The Department of Transportation is working closely with State, local, and tribal governments to ensure billions in transportation funds from the American Recovery and Reinvestment Act of 2009 are used to improve infrastructure across America. Through Recovery Act projects, we are repairing crumbling infrastructure, expanding transit capacity, and modernizing our transportation system to meet national security standards and the needs of a 21st-century economy.

The ability to travel effectively also strengthens us as a people. President Eisenhower's creation of our interstate highway system over 50 years ago revolutionized channels of economic and social mobility, drew together distant areas of our Nation, and helped us maneuver through dense metropolitan areas. Today, smart, sustainable development, coupled with quality public transportation, has created more livable and environmentally sustainable communities for all to enjoy. By reducing isolation and bringing neighborhoods together, we can continue to increase access to good jobs, affordable housing, safe streets and parks, and a healthy food supply.

Working together to upgrade our Nation's transportation infrastructure, we will lay a new foundation for long-term growth, security, and prosperity in America and give future generations a transportation system that is second to none.

To recognize the importance of transportation and the Americans who work to meet our transportation needs, the Congress has requested, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), that the President designate the third Friday in May of each year as "National Defense Transportation Day," and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), that the week during which that Friday falls be designated as "National Transportation Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Friday, May 21, 2010, as National Defense Transportation Day and the week of May 16 through May 22, 2010, as National Transportation Week. I call upon all Americans to recognize the importance of our Nation's transportation system and to acknowledge the contributions of the men and women who support this critical sector.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12263
Filed 5–19–10; 8:45 am]
Billing code 3195–W0–P

# Presidential Documents

**Proclamation 8521 of May 12, 2010**

## World Trade Week, 2010

**By the President of the United States of America**

**A Proclamation**

For our Nation to compete and win in the 21st century, we must rebuild our economy on a stronger, more balanced foundation. Part of that effort will require us to boost our exports, which are critical for our long-term prosperity and which support millions of American jobs. World Trade Week is an opportunity for us to reaffirm the importance of trade to our Nation's continued economic recovery and growth.

Our Nation is still emerging from an unprecedented economic crisis. Millions of Americans have lost their jobs and millions more remain underemployed, limited to part-time work or odd jobs. To help them, we must do all we can to spur job creation and restore economic security. Producing and exporting more goods and services is essential to strengthening our ability to compete for customers outside our borders.

My Administration is proud to launch the National Export Initiative, a comprehensive strategy to promote American exports. This initiative brings senior Government officials together with leaders from the private sector to increase trade opportunities for businesses of all sizes, including individual entrepreneurs. To ensure American companies have free and fair access to global markets, we are enforcing existing trade agreements, addressing issues in pending agreements, and forging new ones that protect our businesses, workers, consumers, and environment. We are also opening new markets and encouraging development with trade preference programs. These steps will bring us closer to accomplishing the ambitious goal I set in this year's State of the Union address to double our Nation's exports over the next five years.

As we pursue measures to safeguard our future prosperity, we must remember that we still have the most innovative and productive workers in the world. We have the most dynamic and competitive economy, and we remain the top exporter of goods and services. As other nations and markets grow, our leadership will not be guaranteed. Yet, our success has never been guaranteed. It has been forged through decades of hard work, ingenuity, optimism, and common purpose.

This week, let us renew the enduring principles that have driven our Nation to the forefront of human progress. With our ships, trucks, trains, planes, and fiber optic lines, we will send our goods and services to every corner of the globe. Together, we will make this new century an American century yet again, and secure a bright future for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 16 through May 22, 2010, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate the benefits of trade to our Nation, American workers, and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12264
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# Presidential Documents

**Proclamation 8522 of May 14, 2010**

## Armed Forces Day, 2010

**By the President of the United States of America**

**A Proclamation**

America's Armed Forces represent the very best of our national character. They have answered the call to defend our Nation, and their service and sacrifice humble us all. On Armed Forces Day, we pay tribute to these patriots who risk their lives, sometimes giving their last full measure of devotion, to preserve the vision of our forebears and the freedoms we enjoy.

Our service members carry on the proud traditions of duty and valor that have sustained us from our earliest days of independence. Today, we have the greatest military force in the history of the world because we have the finest personnel in the world. Wherever they are needed, from Iraq and Afghanistan to right here at home, they are serving and protecting our Nation.

We owe our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen more than our gratitude; we owe them our support. That is why my Administration is committed to ensuring they have the strategy, clear mission, and equipment they need to get the job done, and the resources they deserve when they come home. We are also increasing support for military spouses and families who must deal with the stress and separation of war.

Today, let us raise our flags high to honor the service members who keep us safe, as we reaffirm our commitment to fulfill our duty to them.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense on behalf of the Army, Navy, Air Force, Marine Corps, and the Secretary of Homeland Security on behalf of the Coast Guard, to plan for appropriate observances each year, with the Secretary of Defense responsible for soliciting the participation and cooperation of civil authorities and private citizens.

I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States, to provide for the observance of Armed Forces Day within their jurisdiction each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States.

I also invite veterans, civic, and other organizations to join in the observance of Armed Forces Day each year.

Finally, I call upon all Americans to display the flag of the United States at their homes on Armed Forces Day, and I urge citizens to learn more about military service by attending and participating in the local observances of the day. I also encourage Americans to volunteer at organizations that provide support to our troops.

Proclamation 8380 of May 14, 2009, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

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# Rules and Regulations

Federal Register
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Thursday, May 20, 2010

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. APHIS-2008-0017]**

**RIN 0579-AC77**

### Importation of Tomatoes From Souss-Massa-Draa, Morocco; Technical Amendment

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In a final rule published in the **Federal Register** on November 2, 2009, and effective on December 2, 2009, we amended the fruits and vegetables regulations to allow the importation of commercial consignments of tomatoes from the Souss-Massa-Draa region of Morocco into the United States. However, we incorrectly referred to the national plant protection organization of Morocco as the Moroccan Ministry of Agriculture's Division of Plant Protection, Inspection, and Enforcement when it was recently changed to the National Office of Food Safety. The National Office of Food Safety is also responsible for export certification inspection and issuance of phytosanitary certificates rather than the Moroccan Ministry of Agriculture, Fresh Product Export. In order to prevent confusion, we are replacing all references to the Moroccan Ministry of Agriculture's Division of Plant Protection, Inspection, and Enforcement and the Moroccan Ministry of Agriculture, Fresh Product Export with the phrase "national plant protection organization of Morocco."

**EFFECTIVE DATE:** May 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Charisse Cleare, Project Coordinator, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737-1231; (301) 734-0773.

**SUPPLEMENTARY INFORMATION:** In a final rule published in the **Federal Register** on November 2, 2009 (74 FR 56523-56526, Docket No. APHIS-2008-0017), and effective on December 2, 2009, we amended the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50) to allow the importation of commercial shipments of tomatoes from the Souss-Massa-Draa region of Morocco subject to a systems approach similar to that which is already in place in that section for tomatoes imported into the United States from other areas within Morocco. These conditions, which we established in § 319.56-28, require, among other things, that the Moroccan Ministry of Agriculture's Division of Plant Protection, Inspection, and Enforcement (DPVCTRF) inspect and monitor production sites, and set and maintain Mediterranean fruit fly traps during the tomato shipping season. In addition, the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE), is responsible for export certification, inspection, and issuance of phytosanitary certificates. However, since publication of the final rule, we have learned that the Moroccan Ministry of Agriculture has undergone a reorganization and that DPVCTRF has been replaced by the National Office of Food Safety. In order to prevent confusion, we are replacing all references to DPVCTRF and EACCE with the phrase "national plant protection organization of Morocco."

### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319–FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56-28 is amended as follows:

■ a. In paragraph (c)(1), by removing the words "the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF)" and adding the words "the national plant protection organization (NPPO) of Morocco" in their place.

■ b. In paragraph (c)(3), by removing the word "DPVCTRF" and adding the words "the NPPO of Morocco" in its place.

■ c. In paragraph (c)(4), by removing the word "DPVCTRF" and adding the words "The NPPO of Morocco" in its place.

■ d. In paragraph (c)(7), by removing, in the first sentence, the words "The Moroccan Ministry of Agriculture, Fresh Product Export (EACCE)" and adding the words "The national plant protection organization of Morocco (NPPO)" in their place; and by removing, in the second sentence, the word "EACCE" and adding the words "the NPPO of Morocco" in its place.

■ e. In paragraph (g)(1), by removing, in the first sentence, the words "the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF)" and adding the words "the national plant protection organization (NPPO) of Morocco" in their place; by removing, in the second sentence, the word "DPVCTRF" and adding the words "the NPPO of Morocco" in its place; and by removing, in the third sentence, the word "DPVCTRF" and adding the words "The NPPO of Morocco" in its place.

■ f. In paragraph (g)(3), by removing, in the first sentence, the word "DPVCTRF" and adding the words "the NPPO of Morocco" in its place.

■ g. In paragraph (g)(4), by removing the word "DPVCTRF" and adding the words "The NPPO of Morocco" in its place each time it appears.

■ h. In paragraph (g)(5), by removing the word "DPVCTRF" and adding the words "the NPPO of Morocco" in its place.

■ i. In paragraph (g)(9), by removing, in the first sentence, the words "The Moroccan Ministry of Agriculture, Fresh Product Export (EACCE)" and adding the words "The national plant protection organization (NPPO) of Morocco" in their place; and by removing, in the second sentence, the word "EACCE" and adding the words "the NPPO of Morocco" in its place.

Done in Washington, DC, this 14th day of May 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–12027 Filed 5–19–10; 7:25 am]

**BILLING CODE 3410–34–S**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD; Amendment 39–16144; AD 2009–26–09]**

**RIN 2120–AA64**

### Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting airworthiness directive (AD) 2009–26–09, which published in the **Federal Register**. That AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. The GE alert service bulletin (ASB) numbers CF34–AL S/B 72 A0212, CF34–AL S/B 72 A0234, and CF34–AL S/B 72 A0235 in the regulatory section are incorrect. This document corrects those ASB numbers. In all other respects, the original document remains the same.

**DATES:** This correction is May 20, 2010. The compliance date of AD 2009–26–09 remains February 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: john.frost@faa.gov; phone:* (781) 238–7756; *fax:* (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On January 7, 2010 (75 FR 910), we published a final rule AD, FR Doc, E9–30471, in the **Federal Register**. That AD applies to (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. We need to make the following corrections:

**§ 39.13 [Corrected]**

1. On page 914, in the second column, in paragraph (k)(1)(i), in the fifth and eighth lines, "CF34–AL" is corrected to read "CF34–BJ".

2. On page 914, in the second column, in paragraph (k)(2)(iii), in the fifth line, "CF34–AL" is corrected to read "CF34–BJ".

3. On page 914, in the second column, in paragraph (l), in the seventh line, "CF34–AL" is corrected to read "CF34–BJ".

4. On page 914, in the second column, in paragraph (l)(1), in the second line, "CF34–AL" is corrected to read "CF34–BJ".

5. On page 914, in the third column, in paragraph (l)(1)(i), in the seventh and tenth lines, "CF34–AL" is corrected to read "CF34–BJ".

6. On page 914, in the third column, in paragraph (m)(1), in the second, ninth, and twelfth lines, "CF34–AL" is corrected to read "CF34–BJ".

Issued in Burlington, Massachusetts, on May 10, 2010.

**Peter A. White,**

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

[FR Doc. 2010–11642 Filed 5–19–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF STATE

### 22 CFR Part 22

**[Public Notice: 7018]**

**RIN 1400–AC57**

### Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

**AGENCY:** Bureau of Consular Affairs, State.

**ACTION:** Interim final rule.

**SUMMARY:** Further to the Department's proposed rule to amend the Schedule of Fees for Consular Services (Schedule) for nonimmigrant visa and border crossing card application processing fees, this rule raises from $131 to $140 the fee charged for the processing of an application for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and adult Border Crossing Cards (BCCs). The rule also provides new tiers of the application fee for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas (all of which are also MRVs). Finally, the rule increases the $13 BCC fee charged to Mexican citizen minors who apply in Mexico, and whose parent or guardian already has a BCC or is applying for one, by raising that fee to $14 by virtue of a congressionally mandated surcharge that went into effect in 2009. The Department of State is adjusting the fees to ensure that sufficient resources are available to meet the costs of providing consular services in light of an independent cost of service study's findings that the U.S. Government is not fully covering its costs for the processing of these visas under the current cost structure. Eighty-one comments were received during the period for public comment, and this rule also addresses a comment received about a prior change to the MRV fee implemented on January 1, 2008. This rule addresses comments received thus far, and reopens the comment period on these fees for an additional 60 days.

**DATES:** *Effective Date:* This interim final rule becomes effective June 4, 2010. *Comment date:* Written comments must be received on or before July 19, 2010.

**ADDRESSES:** Interested parties may contact the Department by any of the following methods:

- Persons with access to the Internet may view this notice and submit comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM):* U.S. Department of State, Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1001, 2401 E Street, NW., Washington, DC 20520.
- *E-mail: fees@state.gov.* You must include the RIN (1400–AC57) in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:** Amber Baskette, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202–663–3923, telefax: 202–663–2599; e-mail: *fees@state.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department published a proposed rule in the **Federal Register**, 74 FR 66076, on December 14, 2009, proposing to amend 22 CFR 22.1. Specifically, the rule proposed changes to the Schedule of Fees for Consular Services for nonimmigrant visa and border crossing card application processing fees, and provided 60 days for comments from the public. In response to requests by the public for more information and a further opportunity to submit comments, the Department subsequently published a supplementary notice in the **Federal Register**, 75 FR 14111, on March 24, 2010 (Public Notice 6928). The supplementary notice provided a more detailed explanation of the Cost of Survey Study (CoSS), the activity-based costing model that the Department used to determine the proposed fees for consular services, and reopened the comment period for an additional 15 days. During this and the previous 60-

day comment period, 81 comments were received, either by e-mail or through the submission process at *http://www.regulations.gov.* The current notice reflects responses by the Department to the comments received in the 75 days during which the comment period for this proposed rule was open. While the Department will implement the proposed changes to the Schedule of Fees contained in this notice and begin collecting the new fees 15 days after publication of this rule, on that same date it will also post additional information regarding the CoSS model and fee-setting exercise on its Web site (travel.state.gov) and will accept further public comments for an additional 60 days. The Department will consider these further comments, and whether to make any changes to the rule in response to them, prior to publishing a final rule.

**What Is the Authority for This Action?**

As explained when the revised Schedule of Fees was published as a proposed rule, the Department of State derives the statutory authority to set the amount of fees for the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency * * * based on * * * the costs to the Government."). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. When a service provided by the Department "provides special benefits to an identifiable recipient beyond those that accrue to the general public," guidance issued by the Office of Management and Budget (OMB) directs that charges for the good or service in question shall be "sufficient to recover the full cost to the Federal Government * * * of providing the service * * * or good * * * ." OMB Circular A–25, ¶ 6(a)(1), (a)(2)(a).

Other authorities allow the Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined, such as the $13 fee, discussed below, for machine-readable BCCs for certain Mexican citizen minors. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681–50, Div. A, Title IV, § 410(a), (reproduced at 8 U.S.C. 1351 note).

A number of other statutes address specific fees and surcharges related to nonimmigrant visas. A cost-based, nonimmigrant visa processing fee for MRVs and BCCs is authorized by section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, 108 Stat. 382, as amended, and such fees remain available to the Department until expended. *See, e.g.,* Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543; *see also* 8 U.S.C. 1351 note (reproducing amended law allowing for retention of MRV and BCC fees). Furthermore, section 239(a) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("Wilberforce Act") requires the Secretary of State to collect a $1 surcharge on all MRVs and BCCs in addition to the processing fee, including on BCCs issued to Mexican citizen minors qualifying for a statutorily mandated $13 processing fee; this surcharge must be deposited into the Treasury. *See* Public Law 110–457, 122 Stat. 5044, Title II, § 239 (reproduced at 8 U.S.C. 1351 note).

The Department last changed MRV and BCC fees in an interim final rule dated December 20, 2007 and effective January 1, 2008. 72 FR 72243. *See* Department of State Schedule for Fees and Funds, 22 CFR 22.1–22.5. This rule changed the MRV fee from $100 to $131.

**Why Is the Department Raising the Nonimmigrant Visa Fees at This Time?**

Consistent with OMB Circular A–25 guidelines, the Department contracted for an independent cost of service study (CoSS), which used an activity-based costing model from August 2007 through June 2009 to provide the basis for updating the Schedule. The results of that study are the foundation of the current changes to the Schedule.

The CoSS concluded that the average cost to the U.S. Government of accepting, processing, adjudicating, and issuing a non-petition-based MRV application, including an application for a BCC, is approximately $136.93 for Fiscal Year 2010. (The only exception is the non-petition-based E category visa, discussed below, for which costs are greater than $136.93.) The CoSS arrived at the $136.93 figure taking into account actual and projected costs of worldwide nonimmigrant visa operations, visa workload, and other related costs. Please note that in the proposed rule published December 14, 2009, the Department used a figure of $136.37, which was calculated using a weighted average of Fiscal Year 2009 and Fiscal Year 2010 costs; the $136.93 figure now included is based exclusively on Fiscal Year 2010 costs—as are all other costs presented in this Interim Final Rule. This cost also includes the unrecovered costs of processing BCCs for certain Mexican citizen minors. That processing fee is statutorily frozen at $13, even though such BCCs cost the Department the same amount to process as all other MRVs and BCCs—that is, significantly more than $13. (As discussed below, a statutorily imposed $1 surcharge brings the total fee for Mexican citizen minor BCCs to $14.) The Department's costs beyond $13 must, by statute, be recovered by charging more for all MRVs, as well as all BCCs not meeting the requirements for the reduced fee. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Div. A, Title IV, § 410(a)(3) (reproduced at 8 U.S.C. 1351 note) (Department "shall set the amount of the fee [for processing MRVs and all other BCCs] at a level that will ensure the full recovery by the Department * * * of the costs of processing" all MRVs and BCCs, including reduced cost BCCs for qualifying Mexican citizen minors).

Subsequent to the completion of data-gathering for the CoSS, the Department's Bureau of Consular Affairs decided to consolidate visa operations support services through an initiative called the Global Support Strategy (GSS) in Fiscal Year 2010. GSS consolidates in one contract costs of services currently being paid by MRV and BCC applicants directly to various private vendors in addition to the application processing fee paid to the Department, including appointment setting, fee collection, offsite data collection services, and document delivery. The GSS contract was initiated due to concerns that total application fees for visa services varied from country to country because, although the Department charges the same application processing fee for the same category of visa across all countries, the private vendors providing the necessary ancillary services charged fees that were different from one another. The Department's intent is to charge a consistent fee worldwide to applicants for the same category of visa that is comprehensive of the services the Department performs to process the visa, including any support services performed by companies contracted by the Department. The Department awarded the GSS contract on February 26, 2010, but total costs are not yet known. According to Department estimates, the costs of GSS services performed in Fiscal Year 2010 will be at least $2 per application. Future costs

related to GSS will be significantly higher and will impact fee revenue for the Department. When this additional cost is factored in along with the costs of recovering losses from the Mexican citizen minor BCC, the estimated cost to the U.S. Government of accepting, processing, and adjudicating non-petition-based MRV (except E category) applications, and BCC applications for all Mexican citizens not qualifying for a reduced-fee minor BCC, becomes $138.93.

Moreover, section 239(a) of the Wilberforce Act requires the Department to collect a fee or surcharge of $1 ("Wilberforce surcharge") in addition to cost-based fees charged for MRVs and BCCs, to support anti-trafficking programs. *See* Wilberforce Act, Public Law 110–457,Title II, § 239.

Combining the $138.93 cost to the U.S. Government with the $1 Wilberforce surcharge, the Department has determined that the fee for non-petition-based MRV (except E category) and BCC applications, with the exception of certain Mexican citizen minors' BCCs statutorily set at $13, will be $140. (The BCC fee is being set at the same level as the MRV fee—$140—because its processing procedures, and attendant production costs, are almost identical to those of the MRV.) This $140 fee will allow the Government to recover the full cost of processing these visa applications during the anticipated period of the current Schedule, and to comply with its statutory obligation to collect from applicants the $1 Wilberforce surcharge. The Department rounded up to $140 to make it easier for U.S. embassies and consulates to convert to foreign currencies, which are most often used to pay the fee.

As noted above, for Mexican citizens under 15 years of age who apply for a BCC in Mexico, and have at least one parent or guardian who has a BCC or is also applying for one, the BCC fee is statutorily set at $13. *See* Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Div. A, Title IV, § 410(a)(1)(A) (reproduced at 8 U.S.C. 1351 note). Nevertheless, the $1 Wilberforce surcharge applies to this fee by the terms of law establishing the surcharge, which postdates Public Law 105–277, Division A, Title IV, § 410(a)(1)(A), and does not exempt it from its application. *See* Wilberforce Act, Public Law 110–457, Title II, § 239(a). Therefore, the Department must now charge $14 for this category of BCC.

As discussed in the supplementary notice of March 24, 2010, the Department has used detailed activity-based costing models in past years to set fees in Consular Schedules of Fees. However, in previous iterations of the CoSS, the Department was not able to review the activity-based costs of its services, including the production of MRVs and BCCs, with the same degree of accuracy that the most recent CoSS now allows.

The most recent CoSS found that the cost of accepting, adjudicating, and issuing MRV applications for the following categories of visas is appreciably higher than for other categories: E (treaty-trader or treaty-investor); H (temporary workers and trainees); K (fiancé(e)s and certain spouses of U.S. citizens); L (intracompany transferee); O (aliens with extraordinary ability); P (athletes, artists, and entertainers); Q (international cultural exchange visitors); and R (aliens in religious occupations). Each of these visa categories requires the Department to perform a number of additional tasks and processes beyond those that are necessary for producing a BCC or other MRV, including review of extensive documentation and a more in-depth interview of the applicant. Some of the specific additional tasks and processes required to process the K-category fiancé(e) visa, for example, are described below in the "Analysis of Comments" section.

The CoSS determined that for FY 2010, the average cost of processing applications for H, L, O, P, Q, and R visas is $148.16; the average cost of processing applications for K visas is $348.39; and the average cost of processing applications for E visas is $390.58. These totals do not include the Wilberforce surcharge or any funding for GSS. Rather than setting a single MRV fee applicable to all MRVs regardless of category as was done in the past, the Department has concluded that it will be more equitable to set the fee for each MRV category at a level commensurate with the average cost of producing that particular product. Accordingly, since applications for BCCs and non-petition-based MRVs (except E-category) require less review and have unit costs lower than E, H, K, L, O, P, Q, or R visa applications, the applicant should pay a lower fee. By the same token, those applying for an H, L, O, P, Q, or R visa should pay a lower fee than those applying for an E or K visa, as the latter two categories require an even more extensive review.

Therefore, this rule establishes the following fees for these categories corresponding to projected cost figures for the visa category as determined by the CoSS. These fees incorporate the $1 Wilberforce surcharge that must be added to all nonimmigrant MRVs, *see* Public Law 110–457, Title II, § 239(a):

—H, L, O, P, Q, and R: $150;
—E: $390; and
—K: $350.

The Department rounded these fees to the nearest $10 for the ease of converting to foreign currencies, which are most often used to pay the fee. The additional revenue resulting from this rounding will be used for GSS services.

**Analysis of Comments**

As noted, the proposed rule was published for comment on December 14, 2009. During the comment period, which initially closed February 12, 2010 and was subsequently extended until April 8, 2010, the Department received 81 comments. With the publication of this interim final version of the rule, the Department is reopening the comment period for an additional 60 days, and will consider any further comments received before publishing a final rule.

The majority of comments received—48 out of 81—criticized the increase in the application fee for K-category fiancé(e) visas. The Department of State is adjusting the fee for K-category fiancé(e) visas from $131 to $350 specifically because adjudicating a K visa requires a review of extensive documentation and a more in-depth interview of the applicant than other categories MRVs. As noted in the supplementary notice, for example, a K visa requires pre-processing of the case at the National Visa Center, where the petition is received from the Department of Homeland Security (DHS), packaged, and assigned to the appropriate embassy or consulate. K visa processing also requires intake and review of materials not required by some other categories of nonimmigrant visas, such as the I–134 affidavit of support and the DS–2054 medical examination report. *See* 75 FR 14111, 14113. The higher incidence of fraud in K visa applications also requires, in many cases, a more extensive fraud investigation than is necessary for some other types of visa. Indeed, Department of State processing of a K visa is almost identical to that required for a family-based immigrant visa, so it follows that the costs of K visa processing are similar to those for immigrant visas. (Spouses, children, and parents applying for immigrant visas to the United States currently pay the Department of State a $355 application processing fee as well as a $45 immigrant visa security surcharge, items 32 and 36 on the Schedule of Fees.)

Several authors commented on the overall price of a K visa, which includes fees paid by the U.S. citizen fiancé(e) to

DHS. It is important to note, however, that DHS fees are not received by and do not cover the costs of Department of State processing. While the Department of State is aware of the financial impact this fee increase will have on individuals seeking to bring their fiancé(e)s to the United States, the Department has concluded that it would be more equitable to those applying for other categories of MRVs, for which such extensive review is not necessary, to establish separate fees that more accurately reflect the cost of processing these visas, rather than set a single average fee for all MRV categories that is necessarily higher due to the inclusion of K visas in the calculation.

The Department received one comment that supported the fee increase for K visas, but argued that these fees should be based not on the cost of maintaining the current level of visa processing services, but rather should assess the quality of those services and seek to determine if there would be a public preference for higher fees if they resulted in higher quality expedited visa services. This proposal offers an alternative to the current fee structure, which is based on cost. *See, e.g.,* 31 U.S.C. 9701(b)(2); OMB Circular A–25, ¶ 6(a)(2). Furthermore, while the Department does not as a policy offer expedited visa service in exchange for a higher fee, it appreciates the recommendation and will examine it for future fee-setting exercises.

One commenter argued that Australian applicants for E–3 "treaty alien in a specialty occupation" visas, which are not petition-based, should be charged the same fee as applicants for H visas, which are petition-based, rather than the proposed higher E rate—that is, $150 instead of $390. However, because E–3 visas are not petition-based when issued overseas, they require the Department of State visa adjudicator to both determine whether the employment falls under the E–3 program (similar to the work DHS performs in adjudicating the petition), and assess the eligibility of the applicant; this process is more similar to other E visas than to H visas, for which DHS has already adjudicated a petition.

One comment requested that the Department allow exchange visitors in the United States on a J–1 visa to renew their visas by mail in order to save costs. Current policies and procedures do allow a consular officer to waive the physical appearance of an applicant in the J–1 visa class, but only if he or she meets a number of specific criteria. 9 Foreign Affairs Manual 41.102 N3.

The Department of State received seven comments endorsing the fee increases or asking that the fees be increased further. As described above, the Department has set the current proposed fees at cost, and it may not set its fees above cost. *See, e.g.,* 31 U.S.C. § 9701(b)(2)(A). The Department received one request for clarification as to whether these fee increases will eliminate all visa reciprocity fees. They will not eliminate such fees.

A number of other comments proposed alternatives to cost-based fees, or expressed other concerns over charging fees commensurate with the Department's cost to produce the visa in question. For instance, the Department received six comments arguing that increasing MRV fees would be disadvantageous to applicants in less wealthy nations, and one comment arguing that fees should be based on the ability of the applicant to pay, rather than the cost to the U.S. Government of providing the service. The Department received four comments questioning whether increasing these fees will result in higher visa fees charged to U.S. citizens by foreign governments, two of which referenced China in particular. Two additional comments argued against the fee increases in general, suggesting that these fee changes were based not on cost but only on a desire to get more money from applicants. The Department is sympathetic to those with less means to cover the costs of a visa application, and acknowledges that the higher fees may result in some countries reciprocally raising visa fees charged to U.S. applicants. Nevertheless, as noted above, the Department of State is required to recover the costs of visa processing through user fees, and the Department has accordingly set these fees at a level that will allow full cost recovery.

The Department received two comments regarding U.S. nationality law, which is not affected in any way by this rule.

The Department received five comments, including one submitted jointly by United Air Lines, Inc. and the U.S. Travel Association on January 29, 2010, that expressed concern that raising MRV fees would result in a decline in travel to the United States and harm the U.S. economy. While the Department appreciates the concerns expressed, it reiterates that it is required to set its visa processing user fees at an amount that allows full cost recovery, so that these services are not subsidized by U.S. taxpayers. *See, e.g.,* OMB Circular A–25, ¶ 6(a)(2). The Department also points out that 92 percent of MRV applicants will see an increase of less than ten dollars. In addition, demand for U.S. nonimmigrant visas did not decline as a result of the last MRV fee increase, which took effect January 1, 2008. In fact, workload in the final three quarters of Fiscal Year 2008 was greater than the same period in Fiscal Year 2007.

Three comments, including the previously referenced joint comment from United Air Lines and the U.S. Travel Association, one from the American Immigration Lawyers Association, and one from the Air Transport Association of America, Inc., requested that the Cost of Service Study be made publicly available. In response, the Department published the supplementary notice of March 24, 2010, *see* 75 FR 14111, and allowed an additional 15 days for public comment. The Department received one further comment from United Airlines and the U.S. Travel Association, on April 8, 2010, within the 15-day period. That comment made an additional request for actual cost and related data and specifically requested: Specific inputs used to determine cost for the U.S. passport book and passport card; that the Department confirm how the CoSS ensured that administrative support costs were correctly attributed to individual consular services and that these costs for positions not dedicated to fee-based consular activities were excluded from the CoSS; and that the Department confirm whether the CoSS accounted for the transition to the DS–160 electronic nonimmigrant visa application. The comment also requested that the Department suspend final publication of the rules, release additional data supporting its proposed fee increases, and hold a public meeting to address questions from the public.

Concerning the request for specific inputs used to determine the cost for the U.S. passport book and card, the Department will address that request in the separate interim final rule governing fees for those and other consular services, RIN 1400–AC58.

With regard to the question of administrative support costs, the International Cooperative Administrative Support Services (ICASS) system is the means by which the Department shares with other agencies the costs of shared administrative support at embassies and consulates overseas. The CoSS includes not all Department of State ICASS costs, but rather only the share of those costs equal to the share of consular "desks" at all embassies and consulates. The consular share of ICASS costs—which represent an "allocated cost", a concept described in more detail in the supplementary notice of March 24, 2010—was then assigned equally within

the model to all overseas services. Because the Department aims to use the most accurate and complete cost data in its cost calculations, beginning in Fiscal Year 2011 the Bureau of Consular Affairs will be considered its own separate entity for ICASS purposes, which the Department believes will result in a more precise accounting of ICASS costs than calculating consular ICASS costs based on the proportion of consular staff. We anticipate that this adjustment will actually increase the ICASS costs attributed to consular services.

With regard to the DS–160, United and the U.S. Travel Association suggest that the DS–160 will "presumably reduce the space, personnel, storage and other costs associated with previous paper based nonimmigrant visa applications." The most recent CoSS, upon which the proposed fees are based, were calculated using Fiscal Years 2006, 2007, and 2008 as "base years" and Fiscal Years 2009 and 2010 as "predictive years." The DS–160 was still only a pilot program through Fiscal Year 2009, and has not yet been rolled out worldwide. Once changes in costs are known, they will of course be incorporated into future Cost of Service Studies. Further, while the DS–160 presents great advantages in making more applicant data available electronically and allowing advance review of such data, it has not thus far resulted in any significant time savings for consular staff. Even storage space and labor required to box and ship applications will continue until all previous paper applications are retired from embassies and consulates, which we anticipate will be sometime in Fiscal Year 2011.

Based on review of all the comments, including those of United and the U.S. Travel Association, the Department has determined that it is unnecessary to suspend publication of this interim final rule pending release of additional data or a public meeting. As explained above, the Department has provided information regarding the basis for the MRV and BCC fee increases in an initial notice of proposed rulemaking on December 14, 2009, and provided additional qualitative information in response to the requests of United, the U.S. Travel Association, and others in a supplemental notice dated March 24, 2010. The Department provided the public a total of 75 days in which to make comments and pose questions to the Department about the proposed MRV and BCC fee changes. The Department determined that a supplemental written notice would provide more useful information and reach a broader public audience, than a public meeting or other action. The Department has also decided to post additional quantitative information regarding its CoSS model and fee-setting exercise on its Web site (travel.state.gov), which will be available on the date this rule is published. It will accept public comments for an additional 60 days and consider them in advance of publishing a final rule.

The American Immigration Lawyers Association argued that the Department did not provide evidence to support what it termed a "substantial" increase for petition-based employment visas, and stated that adjudication of these petition-based visa applications should require less time than for non-petition cases. The Department has provided cost data for those cases: The average cost of processing applications for H, L, O, P, Q, and R visas is $148.16 in Fiscal Year 2010, versus $136.93 for most non-petition-based visas. (Neither cost figure includes the Wilberforce surcharge or GSS costs.) As discussed above, the unit cost for petition-based cases includes the costs of activities that are not required for non-petition cases, such as receiving petition information from DHS, conducting reviews of government and commercial databases to confirm the existence of the petitioning business, and entering that data into the Petition Information Management Service (PIMS) database. The single exception to the greater expense of producing petition-based visas is the non-petition-based E-category visa which, for reasons described above, is even more costly to produce than the various categories of petition-based visa.

The Department received a comment from the Microsoft Corporation regarding the January 2008 MRV fee increase resulting from the interim final rule dated December 20, 2007. *See* 72 FR 72243. That comment argued that the Department should give the public an opportunity to comment on proposed MRV fee changes before they are put into effect, and that it should make available a more detailed analysis of overall cost. The Department has made this information available, and has given the public a total of 75 days to comment on it and the proposed fees, in the proposed rule of December 14, 2009, and the supplementary notice of March 24, 2010. *See* 74 FR 66076, 75 FR 14111. The comment also touched upon the cost of FBI fingerprint and name checks, suggesting that such checks may not be effective or necessary. The U.S. Government has determined that checking the fingerprints of visa applicants against the FBI's Integrated Automated Fingerprint Identification System database is a critical tool for identifying applicants with criminal ineligibilities. Further, FBI name checks are an important piece of the interagency clearance process for applicants subject to security advisory opinions. Microsoft also argued that the December 20, 2007 interim final rule did not provide assurance that the fee increases would lead to improvements in customer service. However, as noted repeatedly above, these fees must be based on actual cost. *See, e.g.,* OMB Circular A–25, ¶ 6(a)(2). While customer service is extremely important to the Department and it strives constantly to improve the quality of its service, changing process or altering customer service standards do not figure strictly into the calculus of setting user fees.

Finally, in their joint comment of January 29, 2010, United Airlines and the U.S. Travel Association protested the incorporation of a $2 startup cost per MRV or BCC application for GSS, since as of the date of the proposed rule on MRV and BCC fees, final costs of GSS were not yet known and the contract had not yet been awarded, and thus the Department had not yet incurred any GSS startup costs. The Department awarded the GSS contract on February 26, 2010, with a 10-year ceiling of $2.8 billion. The costs of the three-to-five task orders the Department will award under this contract in Fiscal Year 2010 will be at least $2 per application.

## Regulatory Findings

### *Administrative Procedure Act*

The Department is issuing this interim final rule, with an effective date 15 days from the date of publication. The Administrative Procedure Act permits a final rule to become effective fewer than 30 days after publication if the issuing agency finds good cause. 5 U.S.C. § 553(d)(3). The Department finds that good cause exists for an early effective date in this instance for the following reasons.

As stated in the supplementary information above, the Department's mandate is to align as closely as possible its user fees for consular services with the actual, measured costs of those services. This enables better cost recovery and ensures that U.S. taxpayers do not subsidize consular services. 31 U.S.C. 9701; OMB Circular A–25. *See also* GAO–08–386SP, *Federal User Fees: A Design Guide.* The CoSS, which supports the fees set by this rule, used data from past years, as well as predictive data for Fiscal Years 2010

and 2011, to determine the amount of the fees set by this rule.

The fees currently charged by the Department cover less than 94 percent of the underlying services' true cost. On a monthly basis, taxpayers are paying $5.4 million in unmet costs for consular services that should be borne by those who actually benefit from those services. In the current economic climate, this shortfall is unusually grave, exacerbating budgetary pressures and threatening other critical Department priorities. It is thus in the public's interest to make the appropriated funds currently used to fill this gap available as soon as possible.

For these reasons, and because the public's level of preparation for this fee increase is unlikely to be meaningfully improved by 15 additional days of advance warning, the Department finds that good cause exists for making this rule effective 15 days after its publication as an interim final rule.

*Regulatory Flexibility Act*

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule raises the application processing fee for nonimmigrant visas. Although the issuance of some of these visas is contingent upon approval by DHS of a petition filed by a U.S. company with DHS, and these companies pay a fee to DHS to cover the processing of the petition, the visa itself is sought and paid for by an individual foreign national overseas who seeks to come to the United States for a temporary stay. The amount of the petition fees that are paid by small entities to DHS is not controlled by the amount of the visa fees paid by individuals to the Department of State. While small entities may be required to cover or reimburse employees for application fees, the exact number of such entities that does so is unknown. Given that the increase in petition fees accounts for only 7 percent of the total percentage of visa fee increases, the modest 15 percent increase in the application fee for employment-based nonimmigrant visas is not likely to have a significant economic impact on the small entities that choose to reimburse the applicant for the visa fee.

*Unfunded Mandates Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Chapter 25.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*Executive Order 12866*

OMB considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), *Regulatory Planning and Review,* September. 30, 1993. Accordingly, this rule was submitted to OMB for review. This rule is necessary in light of the Department of State's CoSS finding that the cost of processing nonimmigrant visas has increased since the fee was last set in 2007. The Department is setting the nonimmigrant visa fees in accordance with 31 U.S.C. 9701 and other applicable legal authority, as described in detail above. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency * * * based on * * * the costs to the Government."). This regulation sets the fees for nonimmigrant visas at the amount required to recover the costs associated with providing this service to foreign nationals.

*Executive Orders 12372 and 13132*

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

*Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose any new or modify any existing reporting or recordkeeping requirements.

**List of Subjects in 22 CFR Part 22**

Consular services, fees, passports and visas.

■ Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

## PART 22—[AMENDED]

■ 1. The authority citation for part 22 is revised to read as follows:

**Authority:** 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

■ 2. Revise § 22.1 Item 21 to read as follows:

**§ 22.1 Schedule of fees.**

* * * * *

| Item No. | Fee |
|---|---|
| **SCHEDULE OF FEES FOR CONSULAR SERVICES** | |
| * * * * * * * | |
| **Nonimmigrant Visa Services** | |
| 21. Nonimmigrant visa and border crossing card application processing fees (per person): | |
| (a) Non-petition-based nonimmigrant visa (except E category) | $140 |
| (b) H, L, O, P, Q and R category nonimmigrant visa | $150 |
| (c) E category nonimmigrant visa | $390 |
| (d) K category nonimmigrant visa | $350 |
| (e) Border crossing card—age 15 and over (valid 10 years) | $140 |
| (f) Border crossing card—under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner) | $14 |
| * * * * * * * | |

Dated: May 14, 2010.

**Patrick Kennedy,**

*Under Secretary of State for Management, Department of State.*

[FR Doc. 2010–12125 Filed 5–19–10; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0277]**

**RIN 1625-AA00**

## Safety Zone; San Clemente 3 NM Safety Zone, San Clemente Island, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around San Clemente Island in support of potentially hazardous military training and testing exercises. The existing zones do not sufficiently overlap potential danger zones and testing areas used by the Navy during live-fire and ocean research operations resulting in a delay or cancellation of these operations. The new safety zone will protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

**DATES:** This rule is effective June 21, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0277 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0277 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@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:**

### Regulatory Information

On August 7, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; San Clemente Island, CA in the **Federal Register** (74 FR 39584). We received one comment on the proposed rule.

### Basis and Purpose

As part of the Southern California Range Complex, San Clemente Island (SCI) and the surrounding littoral waters support the training requirements for the U.S. Pacific Fleet, Fleet Marine Forces Pacific, Naval Special Warfare Command, Naval Expeditionary Combat Command and other military training and research units. In 1934, Executive Order 6897 transferred full ownership of SCI from the Department of Commerce to the Department of the Navy for "naval purposes". The San Clemente Island Range Complex (SCIRC) has the capability to support training in all warfare areas including Undersea Warfare, Surface Warfare, Mine Warfare, Strike Warfare, Air Warfare, Amphibious Warfare, Command and Control, and Naval Special Warfare. It is the only location in the United States that supports Naval Special Warfare full-mission training profiles. The Shore Bombardment Area (SHOBA) is the only range in the United States where expeditionary fire support exercises utilizing ship to shore naval gunfire can be conducted. SCI's unique coastal topography, proximity to the major Fleet and Marine concentration areas in San Diego County, supporting infrastructure, and exclusive Navy ownership make the island and surrounding waters vitally important for fleet training, weapon and electronic systems testing, and research and development activities.

### Background

In the 2009 NPRM, the Coast Guard proposed to establish a permanent safety zone in the area of San Clemente Island in order to conduct training essential to successful accomplishments of U.S. Navy missions relating to military operations and national security. We proposed to establish a safety zone consisting of 8 segments, which were described in the NPRM as Sections (A) through (G) and Wilson Cove. We believe that a safety zone is necessary to protect the public from hazardous, live-fire and testing operations and ensure operations proceed as scheduled.

### Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. This was a joint statement from three commercial fishing organizations: the Sea Urchin Commission (CSUC), the California Lobster and Trap Fishermen's Association (CLTFA), and the Point Conception Ground Fishermen's Association (PCGA), and is available in the docket. The commenters joined together to express their support for the Navy training missions associated with San Clemente Island, including the use of safety zones and permanent closures at Special Warfare Training Area 1

(SWAT 1) and Wilson Cove. However, the fishing organizations also expressed concern that some issues were not adequately addressed and some information in the administrative record may not be factually accurate.

The commenters raised several issues that will be addressed below. First, they argued that the socio-economic impacts of the proposed safety zone were more substantial than the Coast Guard had estimated, because section "G" contains important fishing areas and is also important to chartered passenger vessels. Second, the commenters requested that section "F" was too broad, and should be subdivided into smaller areas. Third, the commenters stated that it is important to keep the North West Harbor open to the public, due to the need for safe anchorages for small boats.

In light of these concerns, the comment included the following requests:

1. Re-assess the socio-economic impacts of permanent closures in Sections 'G' and Wilson Cove and the socio-economic impacts of intermittent closures in Sections 'A' & 'F' on charter passenger vessels, seiners, and individual sport fishermen in light of other regional closures proposed under the State's Marine Life Protection Act (MLPA) process.

2. Convene two workshops (between January—March 2010) with representatives from DoD, U.S. Coast Guard, and fishing groups to: (a) Review Section F configuration and (b) develop a protocol that affords public access to Northwest Harbor during time periods the area is not scheduled for military training. Implement Final Rule no later than June 1, 2010.

*Response*:

Many of the issues raised by the three commercial fishing organizations are addressed in the Southern California (SOCAL) Environmental Impact Statement (EIS)/Overseas EIS (OEIS) (Record of Decision, January 30, 2009) (74 FR 5650). The entire document is also available on the Web at *http://www.socalcomplexeis.com*. The SOCAL EIS/OEIS included a socio-economic assessment of increased naval activities around San Clemente Island. The current rulemaking establishing a safety zone around San Clemente Island is part of the Navy's continued efforts to protect the public from potentially hazardous training evolutions assessed in the SOCAL EIS/OEIS, while supporting Department of Defense training range requirements.

Implementation of the Proposed Action in the SOCAL EIS/OEIS increased the overall number of training evolutions by 24 percent. Enforcement of the safety zone during these increased training periods is necessary to protect persons and vessels transiting through the area. A public safety determination was made to establish a safety zone around San Clemente Island to protect the public from potentially hazardous training evolutions while still facilitating the public's use of offshore waters during times when hazardous training was not scheduled. The safety zone provides exclusive use by the military to certain offshore waters around San Clemente Island. The EIS/OEIS concluded that "the increased training tempo associated with [an] increase in range clearance [restricted public access] will not cause a considerable [socioeconomic] impact due to advanced public notification and [the] primarily short-term duration of military activities" (SOCAL EIS/OEIS, 2009).

*1. Socio-Economic Impacts*

One argument made by the commenters was that the agency had not considered the socio-economic impacts of the safety zone. In response, we note that the socio-economic impacts associated with restricted public access to offshore waters during hazardous training evolutions were assessed in detail in two recent documents and considered prior to initiating the safety zone rulemaking process, both of which are available on the Web at *http://www.socalcomplexeis.com:*

- *Southern California (SOCAL) Environmental Impact Statement (EIS)/Overseas EIS (OEIS)* (January 2009), *Section 3.14 Socioeconomics.*
- *Southern California (SOCAL) Fisheries Study: Catch Statistics (2002–2007), Fishing Access, and Fishermen Perception* (February 2009).

The Navy recognizes the importance of the waters around San Clemente Island to commercial and recreational fishermen, and contrary to the commenters' assertion, careful analysis of the socio-economic impact of the increased training activity was undertaken in these documents. In order to mitigate the economic and social impacts of its training exercises, the Navy has gone to great lengths to provide advanced notice of these exercises to fishermen and operators of recreational vehicles. In response to recommendations expressed by fishermen during the San Clemente Island Range Complex EIS/OEIS scoping meetings for advanced knowledge of operations scheduled around San Clemente Island, the Navy developed (2000) and maintains a public Web site (*http://www.scisland.org*). The Web site publishes scheduled training times and locations up to six months in advance. Fishermen can utilize this Web site, in conjunction with other notification methods, including NOTMARS and Very High Frequency (VHF) radio Channel 16, to plan their trips near San Clemente Island.

The Navy also sponsored a detailed survey to examine fishing concerns in SOCAL. The *Southern California (SOCAL) Fisheries Study: Catch Statistics (2002–2007), Fishing Access, And Fishermen Perception* (February 2009) focused on two goals:

- Determine the potential impact of Navy activities on commercial and recreational fishing in the SOCAL Range Complex.
- Examine potential use-conflicts, particularly in the waters around San Clemente Island.

The study highlighted the importance of the waters around San Clemente Island to commercial and recreational fishermen particularly for spiny lobster, swordfish, red urchin, Pacific sardine and market squid. Overall, fishermen agreed that a combination of regularly scheduled radio announcements, a clear and regularly updated Web site, and easily obtainable and reliable contact information with assured rapid response would serve to mitigate conflicts between fishermen and the Navy within the SOCAL Range Complex. As a result of this study, the Navy is working on improvements to the San Clemente Island Web site: adding operating areas and altitude acronyms/codes and clarifying whether a Navy activity requires a closure to fishing grounds or if fishing is still permitted in conjunction with scheduled training events.

For these reasons, we believe that the economic and social impacts regarding implementation of the safety zones will be minimal. While extending the safety zone will cause some inconvenience, we believe that it is needed for the protection of both vessels and persons, and that the negative socio-economic effects of the zone are far outweighed by the safety need.

*2. Additional Workshops*

Over the past two years, the Navy has conducted extensive public outreach concerning increased training evolutions in Southern California: public meetings and comment periods were held in conjunction with the SOCAL EIS/OEIS; outreach efforts were conducted with local fishing organizations; and Department of Defense representatives served as members of the Marine Life Protection

Act South Coast Regional Stakeholder Group.

The Navy has a longstanding appreciation of the economic importance of San Clemente Island to commercial and recreational fishermen and divers, so in an effort to ensure public safety while optimizing the public's access to offshore waters, the Navy sub-divided the Safety Zone into eight separate sections. If the Safety Zone had been managed as one contiguous zone, a scheduled training evolution off the southern end of San Clemente Island would have restricted public access to all offshore areas around San Clemente Island. The segmented configuration facilitates the public's access to areas not scheduled for hazardous training, while ensuring continued use of the waters around San Clemente Island for critical naval training.

**Safety Zone 'F'**

As stated above, commenters argued that section "F" of the safety zone was too broad, and that it should be broken up into various subzones. However, the commenters did not make any recommendations as to what these smaller subzones should be. Furthermore, we note that boundaries of all Safety Zone segments, including Section 'F', were developed in accordance with training requirements and the public's continued access to safe harbor. Specifically, section 'F' boundaries are consistent with the surface danger zone (SDZ) associated with the live fire Naval Special Warfare (NSW) range designated as Training Area and Range (TAR) 10 (SOCAL EIS/OEIS, 2009). Section 'F' also overlaps the existing Restricted Area (No Anchorage) area (West Cove) depicted in the Coast Pilot since 1985. This is designated as a No Anchor area because trunk cables from the critical deepwater instrumented hydrophone array come ashore in West Cove. Given these facts, we have decided to maintain the boundaries of the current segment "F" as proposed in the NPRM.

**Northwest Harbor Anchoring**

The Navy recognizes the importance of retaining the public's access to safe harbors located around San Clemente Island. As documented in the SOCAL Fisheries Study (2009), "Maintaining access to public anchorages around SCI, particularly Pyramid Cove and Northwest Harbor, is critical for the safety of the fishermen, as well as for ensuring that fishermen are not subjected to increased fuel costs as a result of relocation." The safety zone was configured such that Northwest Harbor and Pyramid Cove would be accessible to the public except during scheduled, hazardous training events. The new safety zone does not alter the public's use of Wilson Cove for safe harbor because a permanent Security Zone restricting public access has existed in Wilson Cove (out to 2 nm offshore) for many years. In addition, neither of the two permanently restricted areas overlaps Northwest Harbor or Pyramid Cove.

**Coordination With Commercial Fishing Organizations**

We also note that there has been substantial coordination with local fishing organizations throughout the process of developing plans for this area. During a coordination meeting held in early 2009 with representatives from various fishing organizations (including commercial fishing associations submitting comments on the Safety Zone Notice of Proposed Rule Making), the Navy briefed the Safety Zone proposal. The California Sea Urchin Commission (CSUC) recommended that the Navy assess the feasibility of facilitating safe transit through SWAT 1 during times when the range may be cold. Consequently, the Navy spent considerable time and resources to establish a permanent watch stander and dedicated call sign (KRAKEN on Channel 82A) that boaters can contact to request safe vessel transit authorization through SWAT 1 Safety Zone. When authorized by KRAKEN, vessels may safety transit within 3nm of the northern end of San Clemente Island, thereby saving time and fuel costs, a related concern raised in the commenters' letter.

**Conclusion**

The Southern California Range Complex is the most capable and heavily used Navy Range Complex in the eastern Pacific region. San Clemente Island is the tactical cornerstone of the Range Complex. The Navy has assessed the socio-economic effects of conducting training operations in Southern California (including San Clemente Island) and conducted extensive public outreach. As described in the SOCAL EIS/OEIS, the Navy is expanding training evolutions in Southern California. The Navy recognizes and appreciates the importance of the waters around San Clemente Island to commercial and recreational fishermen and has exerted substantial effort to successfully co-exist with commercial and recreational neighbors. The Navy will continue to provide the public with up-to-date, accurate information on areas accessible for the public's commercial and recreational uses.

**Discussion of Rule**

The Coast Guard is establishing a permanent safety zone around San Clemente Island for the U.S. Navy. The limits of the segmented safety zone range from high tide seaward 3 NM. The zone is broken down into the following sections:

*(a) Section A*

Beginning at 33°02.05′ N, 118°35.85′ W; thence to 33°04.93′ N, 118°37.07′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 33°02.82′ N, 118°30.65′ W; thence to 33°17.28′ N, 118°33.88′ W; thence along the shoreline returning to 33°02.05′ N, 118°35.85′ W.

*(b) Section B*

Beginning at 32°57.30′ N, 118°30.88′ W; thence to 32°59.60′ N, 118°28.33′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°55.83′ N, 118°24.22′ W; thence to 32°53.53′ N, 118°26.52′ W; thence along the shoreline returning to 32°57.30′ N, 118°30.88′ W.

*(c) Section C*

Beginning at 32°53.53′ N, 118°26.52′ W; thence to 32°55.83′ N, 118°24.22′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°47.27′ N, 118°18.23′ W; thence to 32°49.10′ N, 118°21.05′ W; thence along the shoreline returning to 32°53.53′ N, 118°26.52′ W.

*(d) Section D*

Beginning at 32°49.10′ N, 118°21.05′ W; thence to 32°47.27′ N, 118°18.23′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°48.38′ N, 118°31.69′ W; thence to 32°50.70′ N, 118°29.37′ W; thence along the shoreline returning to 32°49.10′ N, 118°21.05′ W.

*(e) Section E*

Beginning at 32°50.70′ N, 118°29.37′ W; thence to 32°48.05′ N, 118°31.68′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°53.62′ N, 118°35.93′ W; thence to 32°56.13′ N, 118°32.95′ W; thence along the shoreline returning to 32°50.70′ N, 118°29.37′ W.

*(f) Section F*

Beginning at 32°56.13′ N, 118°32.95′ W; thence to 32°53.62′ N, 118°35.93′ W;

thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.95′ N, 118°39.77′ W; thence to 33°01.08′ N, 118°36.33′ W; thence along the shoreline returning to 32°56.13′ N, 118°32.95′ W.

*(g) Section G*

Beginning at 33°01.08′ N, 118°36.33′ W; thence to 32°59.95′ N, 118°39.77′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 33°04.93′ N, 118°37.07′ W; thence to 33°02.05′ N, 118°35.85′ W; thence along the shoreline returning to 33°01.08′ N, 118°36.33′ W.

*(h) Wilson Cove*

Beginning at 33°01.28′ N, 118°33.88′ W; thence to 33°02.82′ N, 118°30.65′ W; thence running parallel to the shoreline at a distance of approximately 3 NM from the high tide line to 32°59.60′ N, 118°28.33′ W; thence to 32°57.30′ N, 118°30.88′ W; thence along the shoreline returning to 33°01.28′ N, 118°33.88′ W.

Mariners requesting permission to transit through Section G must request authorization from the Fleet Area Control and Surveillance Facility (FACSFAC) San Diego by hailing KRAKEN (dedicated call sign) on VHF bridge-to-bridge radio connection on Channel 16 or calling 619–545–4742 or 619–545–1742. Once vessel has established contact with KRAKEN on Channel 16, vessel will be asked to switch to Channel 82A. Vessel will be asked to provide the following information: Name of vessel and registration number, name of Captain and homeport, military or non-military designation, current location (latitude/longitude), date and time, and projected transit time through Section G. VESSELS MUST HAVE AUTHORIZATION FROM KRAKEN TO TRANSIT WITHIN 3NM OF SAN CLEMENTE ISLAND THROUGH SECTION G. No other non-military activities are permitted in Section G at any time. If vessel does not receive authorization to transit through Section G, mariner must navigate to greater than 3nm offshore San Clemente Island. Immediately upon completing transit, vessel operator must promptly notify KRAKEN of safe passage through Section G safety zone. Failure to expeditiously notify KRAKEN of passage through the safety zone will result in a determination by the Navy that the vessel is still in the safety zone, thereby restricting the use of the area for naval operations. If the Navy determines that facilitating safe transit through the zone negatively impacts range operations, the Navy will cease this practice and enforce the safety zone without exception.

Mariners are restricted at all times from transiting into the Safety Zone/Security Zone extending from shoreline in Wilson Cove to 2nm offshore. However, mariners may transit through the Safety Zone extending from 2nm to 3nm offshore unless asked by the Navy to transit outside the Wilson Cove Safety Zone. Transit only is permitted in this area.

Mariners who wish to transit through any of the other six sections (A, B, C, D, E, and/or F) will also be required to request permission from FACSFAC San Diego, using the same procedure described above, except during periods when the Navy is not conducting potentially hazardous military training or testing activity. Mariners will be able to transit some or all of these sections without obtaining prior authorization from FACSFAC San Diego only when the Coast Guard notifies the public that enforcement of the zone in specified sections is temporarily suspended. Notice of suspended enforcement will be provided through broadcast notice to mariners and publication in the local notice to mariners; and the schedule of restricted access periods by date, location and duration will continue to be proposed at *http://www.scisland.org.*

**Regulatory Analyses**

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

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the fact that the majority of the proposed safety zone will be open a significant portion of the time. The safety zone will be divided into eight sections. Two of the sections, specifically Section G and Wilson Cove, will be continually enforced as a Safety Zone, thereby restricting public use of these offshore waters, although transit through Section G and parts of Wilson Cove will be permitted at times. The other six sections (A, B, C, D, E, and F) will be enforced for the Navy's exclusive use only during potentially hazardous military training or testing activity. The schedule of restricted access periods by date, location and duration will continue to be posted at *http://www.scisland.org.* Prior to the use of sections A thru F, the Navy will inform U.S. Coast Guard Sector San Diego.

**Small Entities**

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

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Pacific Ocean around San Clemente Island.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Except for Section G and Wilson Cove, which will be continually enforced, the safety zone will be activated, and thus subject to enforcement, only during naval training and testing exercises. During periods when portions of the safety zone are enforced in sections A through F, vessel traffic can pass safely around the safety zone. When the safety zone is not enforced, vessel traffic will be allowed to use the offshore waters for commercial and recreational activities. Permission for safe vessel transit through the permanently restricted safety zones designated Section G and Wilson Cove may be requested of the Fleet Area Control and Surveillance Facility, San Diego. Furthermore, the safety zones will not impede access to safe port areas, important to small boats, such as North West Harbor or Pyramid Cove, as discussed above.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects

on them and participate in the rulemaking process.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.2.

■ 2. Add § 165.1141 to read as follows:

**§ 165.1141 Safety Zone; San Clemente 3 NM Safety Zone, San Clemente Island, CA.**

(a) *Location.* The following area is a safety zone: All waters of the Pacific Ocean surrounding San Clemente Island, from surface to bottom, extending from the high tide line on the island seaward 3 NM. The zone consists of the following sections (*see* Figure 1):

*(1) Section A*

Beginning at 33°02.05′ N, 118°35.85′ W; thence to 33°04.93′ N, 118°37.07′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 33°02.82′ N, 118°30.65′ W; thence 33°01.29′ N, 118°33.88′ W; thence along the shoreline returning to 33°02.05′ N, 118°35.85′ W.

*(2) Section B*

Beginning at 32°57.30′ N, 118°30.88′ W; thence to 32°59.60′ N, 118°28.33′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°55.83′ N, 118°24.22′ W; thence to 32°53.53′ N,

118°26.52′ W; thence along the shoreline returning to 32°57.30′ N, 118°30.88′ W.

*(3) Section C*

Beginning at 32°53.53′ N, 118°26.52′ W; thence to 32°55.83′ N, 118°24.22′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°47.27′ N, 118°18.23′ W; thence to 32°49.10′ N, 118°21.05′ W; thence along the shoreline returning to 32°53.53′ N, 118°26.52′ W.

*(4) Section D*

Beginning at 32°49.10′ N, 118°21.05′ W; thence to 32°47.27′ N, 118°18.23′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°48.38′ N, 118°31.69′ W; thence to 32°50.70′ N, 118°29.37′ W; thence along the shoreline returning to 32°49.10′ N, 118°21.05′ W.

*(5) Section E*

Beginning at 32°50.70′ N, 118°29.37′ W; thence to 32°48.05′ N, 118°31.68′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°53.62′ N, 118°35.93′ W; thence to 32°56.13′ N, 118°32.95′ W; thence along the shoreline returning to 32°50.70′ N, 118°29.37′ W.

*(6) Section F*

Beginning at 32°56.13′ N, 118°32.95′ W; thence to 32°53.62′ N, 118°35.93′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°59.95′ N, 118°39.77′ W; thence to 33°01.08′ N, 118°36.33′ W; thence along the shoreline returning to 32°56.13′ N, 118°32.95′ W.

*(7) Section G*

Beginning at 33°01.08’ N, 118°36.333’ W; thence to 32°59.95′ N, 118°39.77′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 33°04.93′ N, 118°37.07′ W; thence to 33°02.05′ N, 118°35.85′ W; along the shoreline returning to 33°01.08′ N, 118°36.33′ W.

*(8) Wilson Cove*

Beginning at 33°01.28′ N, 118°33.88′ W; thence to 33°02.82′ N, 118°30.65′ W; thence running parallel to the shore at a distance of approximately 3 NM from the high tide line to 32°59.60’ N, 118°28.33′ W; thence to 32°57.30′ N, 118°30.88′ W; thence along the shoreline returning to 33°01.28′ N, 118°33.88′ W.

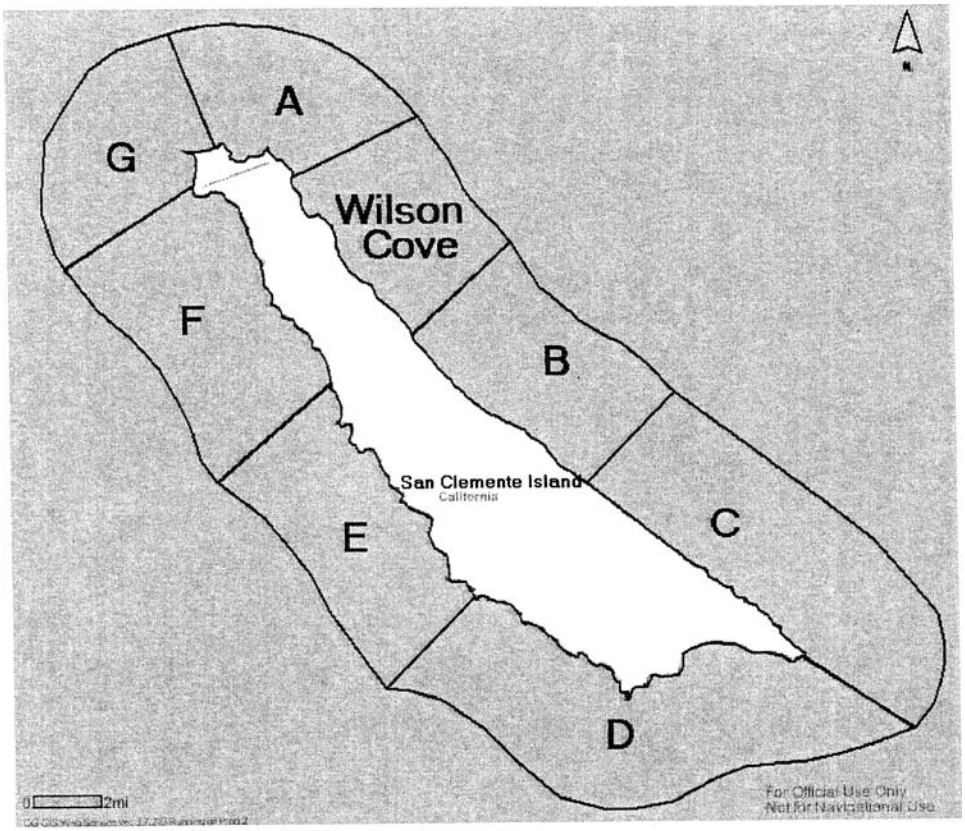


Figure 1. San Clemente Island Safety Zone Configuration

(b) *Definitions.* The following definition applies to this section: designated representative, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port (COTP).

(c) *Enforcement.* (1) This regulation will be enforced at all times in Section G and the Wilson Cove section of the safety zone described in paragraph (a) of this section. Mariners must obtain permission in accordance with the procedure described in paragraph (d)(2) of this section before entering either of those sections (paragraphs (a)(7) and (8)).

(2) This regulation will be enforced in Sections A through F of the safety zone described in paragraphs (a)(1) through (6) of this section except when the Coast

Guard notifies the public that enforcement of the zone in specified sections is temporarily suspended. Mariners need not obtain permission in accordance with the procedure described in paragraph (d)(2) of this section to enter a zone section in which enforcement is temporarily suspended. At all other times, mariners must obtain permission in accordance with the procedure described in paragraph (d)(2) before entering any of those sections.

(3) The COTP will provide notice of suspended enforcement by means appropriate to effect the widest publicity, including broadcast notice to mariners, publication in the local notice to mariners, and posting the schedule of restricted access periods by date, location and duration at *http://www.scisland.org.*

(d) *Regulations.* (1) The general regulations governing safety zones found in 33 CFR 165.23 apply to the safety zone described in paragraph (a) of this section.

(2) Mariners requesting permission to transit through any section of the zone may request authorization to do so from the Fleet Area Control and Surveillance Facility (FACSFAC) San Diego by either calling 619–545–4742 or establishing a VHF bridge to bridge radio connection on Channel 16. Immediately upon completing transit, the vessel operator must promptly notify the FACSFAC of safe passage through the safety zone. Failure to expeditiously notify FACSFAC of passage through the safety zone will result in a determination by the Navy that the vessel is still in the safety zone, thereby restricting the use of the area for naval operations. If the Navy determines that facilitating safe transit through the zone negatively impacts range operations, the Navy will cease this practice and enforce the safety zones in these two areas without exception.

(3) All persons and vessels must comply with the instructions of the U.S. Navy, Coast Guard Captain of the Port or the designated representative.

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

(5) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

Dated: April 22, 2010.

**T. H. Farris,**

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

[FR Doc. 2010–12063 Filed 5–19–10; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2010–0389]**

**RIN 1625–AA00**

## Safety Zone; Washington State Department of Transportation Ferries Division Marine Rescue Response (M2R) Full-Scale Exercise for a Mass Rescue Incident (MRI)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Washington State Department of Transportation Ferries Division (WSF) is conducting a Marine Rescue Response (M2R) full-scale exercise in Port Madison. This training exercise will simulate a mass rescue incident (MRI) and will involve an abandon ship scenario with multiple response vessels. This temporary safety zone is necessary to ensure the safety of the participating ferries, rescue vessels, and the maritime public during the exercise by prohibiting any vessel operators from entering or remaining within a 500-yard radius of the participating ferries unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

**DATES:** This rule is effective from 8 a.m. until 11:59 p.m. on 25 May 2010, unless cancelled sooner by the Captain of the Port.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0389 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0389 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Ensign Rebecca E. McCann, Sector Seattle, Waterways Management Division, Coast Guard; telephone 206–217–6088, e-mail *Rebecca.E.McCann@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of life and property on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date would be contrary to the public interest because hazards associated with large scale training exercises could lead to severe injury, fatalities and/or destruction of public property. Therefore immediate action is necessary to ensure safety of the public and of participants in the WSF M2R exercise.

### Basis and Purpose

The WSF is hosting a M2R full scale exercise which will simulate a MRI to provide training in specific emergency response procedures. The exercise will test WSF procedures, and establish protocols with the response organization specific to ferries in the Puget Sound area. This temporary safety zone will mitigate navigation and safety concerns that may arise from the exercise by restricting the area and keeping any transiting vessels from interfering.

### Discussion of Rule

The Coast Guard is establishing a temporary safety zone within Port Madison, Washington. This safety zone is established to prohibit any vessel operator from entering or remaining within 500 yards of the ferries participating in the WSF M2R exercise, unless authorized by the Captain of the Port, Puget Sound or Designated Representative. The simulation involves one large ferry dead in the water (DIW),

being assisted by another large ferry and will temporarily affect vessel traffic. The zone will be effective between 8 a.m and 11:59 p.m. on May 26, 2010.

The Captain of the Port may be assisted in the enforcement of the zone by other federal, state, or local agencies.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

Although this safety zone will restrict access to the area, the effect of the rule will not be significant because: the safety zone will be in place for a limited period of time and maritime traffic will still be able to transit around the zone. Additionally, maritime traffic may request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

**Small Entities**

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in Port Madison, Washington between 8 a.m. and 11:59 p.m. on 25 May 2010. The rule will not have a significant economic impact on a substantial number of small entities, because the safety zone is short in duration and maritime traffic will be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

adopted by voluntary consensus standards bodies.

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–144 to read as follows:

**§ 165.T13–144 Safety Zone; Washington State Department of Transportation Ferries Division Marine Rescue Response (M2R) Full-Scale Exercise for a Mass Rescue Incident (MRI).**

(a) *Location.* All waters encompassed within 500 yards of the Washington State Ferries involved in the M2R exercise in Port Madison, WA on 25 May 2010.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel operator may enter or remain in the safety zone without the permission of the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other Federal, State, or local agencies with the enforcement of the safety zone.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) on VHF Ch 16 or via telephone at (206) 217–6001. Vessel operators granted permission to enter the zone will be escorted by the on-scene Coast Guard patrol craft until they are outside of the safety zone.

(d) *Enforcement Period.* This rule is effective from 8 a.m. until 11:59 p.m. on 25 May 2010, unless canceled sooner by the Captain of the Port.

Dated: May 7, 2010.

**S. W. Bornemann,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2010–12062 Filed 5–19–10; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–1057]**

**RIN 1625–AA87**

## Security Zone; Escorted U.S. Navy Submarines in Sector Seattle Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a moving security zone around any U.S. Navy submarine that is operating in the Sector Seattle Captain of the Port Zone, which includes the Puget Sound and coastal waters of the State of Washington, and is being escorted by the Coast Guard. The security zone is necessary to help ensure the security of the submarines, their Coast Guard security escorts, and the maritime public in general. The security zone will do so by prohibiting all persons and vessels from coming within 1000 yards of an escorted submarine unless authorized by the Coast Guard patrol commander.

**DATES:** This rule is effective May 20, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–1057 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1057 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Matthew N. Jones, Staff Attorney, Thirteenth Coast Guard District; telephone 206–220–7155, e-mail *Matthew.N.Jones@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:**

**Regulatory Information**

On January 13, 2010, we published an interim rule entitled "Security Zone; Escorted U.S. Navy Submarines in Sector Seattle Captain of the Port Zone" in the **Federal Register** (75 FR 1709). We received one comment on the proposed rule that was actually posted to the docket of a related rule. No one requested a public meeting and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be contrary to the public interest since U.S. Navy submarine operations in the Sector Seattle Captain of the Port Zone are ongoing, making the security zone created by this rule immediately necessary to help ensure the security of the submarines, their Coast Guard security escorts, and the maritime public in general.

**Background and Purpose**

U.S. Navy submarines frequently operate in the Sector Seattle Captain of the Port Zone as defined in 33 CFR 3.65–10, which includes the Puget Sound and coastal waters of the State of Washington. Due to the numerous security concerns involved with submarine operations near shore, the Coast Guard frequently provides security escorts of submarines when operating in that area. Security escorts of this type require the Coast Guard personnel on-scene to make quick judgments about the intent of vessels operating in close proximity to the submarines and decide, occasionally with little information about the vessels

or persons on board, whether or not they pose a threat to the submarine.

The security zone established by this rule will keep persons and vessels a sufficient distance away from submarines operating in the Sector Seattle Captain of the Port Zone so as to (1) avoid unnecessary and potentially dangerous contact with or distraction of Coast Guard security escorts and (2) give Coast Guard security escorts additional time and space to determine the intent of vessels that, for whatever reason, are operating too close to a submarine. Both of these effects will help ensure the security of the submarines, their Coast Guard security escorts, and the maritime public in general.

**Discussion of Comments and Changes**

This rule establishes a moving security zone encompassing all waters within 1000 yards of any U.S. Navy submarine that is operating in the Sector Seattle Captain of the Port Zone as defined in 33 CFR 3.65–10, which includes the Puget Sound and coastal waters of the State of Washington, and is being escorted by the Coast Guard. All persons and vessels are prohibited from entering the security zone unless authorized by the Coast Guard patrol commander. While naval vessel protection zones, under 33 CFR 165.2030, around these escorted U.S. Navy submarines are still in effect, persons would need to seek permission from the Coast Guard patrol commander to enter within 1000 yards of these escorted submarines while they are in the Sector Seattle Captain of the Port Zone.

One comment was received about this rule. The commenter expressed concerns about the potential for commercial traffic to have to deviate from established traffic lanes and/or instructions provided by Vessel Traffic Service (VTS) Puget Sound to avoid entering the security zone. A change to the rule was made based on this comment. Specifically, language was added to clarify that the Coast Guard patrol commander will coordinate with Vessel Traffic System users on a case-by-case basis to make appropriate passing arrangements under the circumstances.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

The Coast Guard has made this determination based on the fact that (1) the security zone is only in effect for the short periods of time when submarines are operating in the Sector Seattle Captain of the Port Zone and are being escorted by the Coast Guard, (2) the security zone moves with the submarines, (3) vessels will be able to transit around the security zone at most locations in the Puget Sound and other coastal waters of Washington, and (4) vessels may, if necessary, be authorized to enter the security zone with the permission of the Coast Guard patrol commander.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit an area covered by the security zone. The security zone will not, however, have a significant economic impact on a substantial number of small entities because (1) the security zone is only in effect for the short periods of time when submarines are operating in the Sector Seattle Captain of the Port Zone and are being escorted by the Coast Guard, (2) the security zone moves with the submarines, (3) vessels will be able to transit around the security zone at most locations in the Puget Sound and other coastal waters of Washington, and (4) vessels may, if necessary, be authorized to enter the security zone with the permission of the Coast Guard patrol commander.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.1327 to read as follows:

**§ 165.1327 Security Zone; Escorted U.S. Navy Submarines in Sector Seattle Captain of the Port Zone.**

(a) *Location.* The following area is a security zone: All waters within 1000 yards of any U.S. Navy submarine that is operating in the Sector Seattle Captain of the Port Zone, as defined in 33 CFR Section 3.65–10, and is being escorted by the Coast Guard.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Section 165, Subpart D, no person or vessel may enter or remain in the security zone created by paragraph (a) of this section unless authorized by the Coast Guard patrol commander. The Coast Guard patrol commander will coordinate with Vessel Traffic System users on a case-by-case basis to make appropriate passing arrangements under the circumstances. 33 CFR Section 165, Subpart D, contains additional provisions applicable to the security zone created in paragraph (a) of this section.

(c) *Notification.* The Coast Guard security escort will attempt, when necessary and practicable, to notify any persons or vessels inside or in the vicinity of the security zone created in paragraph (a) of this section of its existence via VHF Channel 16 and/or any other means reasonably available.

Dated: April 25, 2010.

**G.T. Blore,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 2010–12064 Filed 5–19–10; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL SERVICE

## 39 CFR Part 232

## Conduct on Postal Property; Penalties and Other Law

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Postal Service is amending the Code of Federal Regulations to retract an increase in the maximum penalty for violations of the rules concerning conduct on Postal Service property.

**DATES:** *Effective Date:* May 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth P. Martin, General Counsel, Office of Inspector General, (703) 248–2100.

**SUPPLEMENTARY INFORMATION:** On January 27, 2010, the Postal Service published an amendment to the Code of Federal Regulations concerning the maximum penalty for a violation of the rules governing conduct on Postal Service property (75 FR 4273). The former rules had established the maximum penalty for a violation as a fine of not more than $50 or imprisonment of not more than 30 days, or both. As revised by that notice, the maximum penalty for a violation was increased to a fine of not more than that allowed under title 18 of the United States Code or imprisonment of not more than 30 days, or both.

Since the publication of this amendment, the Postal Service has determined that it is necessary to revisit this matter, and to re-examine the text of the rule for clarity, specificity, and contractual compliance. For this reason, the Postal Service has determined that

it is appropriate to amend the relevant provision once again to re-establish the maximum penalty in effect before the effective date of the previous notice, January 27, 2010.

**List of Subjects in 39 CFR Part 232**

Authority delegations (Government agencies), Crime, Federal buildings and facilities, Government property, Law enforcement officers, Postal Service, Security measures.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR part 232 as set forth below:

## PART 232—CONDUCT ON POSTAL PROPERTY

■ 1. The authority citation for part 232 continues to read as follows:

**Authority:** 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7), 1201(2).

■ 2. In § 232.1, paragraph (p)(2) is revised to read as follows:

**§ 232.1 Conduct on postal property.**

* * * * *

(p) * * *

(2) Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

* * * * *

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2010–12122 Filed 5–19–10; 8:45 am]

BILLING CODE 7710–12–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 388

**[Docket No. MARAD 2010 0012]**

**RIN 2133–AB76**

## Administrative Waivers of the Coastwise Trade Laws: New Definition for Eligible Vessel

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Maritime Administration (MARAD) is changing the definition of "eligible vessel" to be considered for a waiver of the coastwise laws to operate as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. The new definition of "eligible vessel" deletes the requirement that the eligible vessel be five net tons or more. That requirement is not in the enabling statute and is preventing MARAD from considering waiver requests from small vessels. In addition, the mailing address of the agency needs to be updated to reflect the agency's present address.

**DATES:** This final rule will be effective June 21, 2010.

*Docket:* For access to the docket to read background documents, go to *http://*www.regulations.gov at any time to view docket number 2010–0012 or to Room PL–401 of the Department of Transportation, 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:** Joann Spittle, Office of Cargo Preference and Domestic Trade, Maritime Administration, MAR–730, Room W21–203, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5979 or 800–9US–FLAG; e-mail: *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Public Law 105–383 authorized the Secretary of Transportation to grant waivers of the U.S.-build requirement for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade. It also authorized the Secretary of [Homeland Security] to issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel for eligible vessels authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect: (1) United States vessel builders; or (2) the coastwise trade business of any person that employs vessels built in the United States in that business.

Until now, the term "eligible vessel" was understood to mean a vessel eligible for U.S. Coast Guard documentation, which applies to vessels of a minimum size of five net tons. However, under 46 U.S.C. 12102(b), a vessel of less than five net tons may engage in the coastwise trade without documentation, if the vessel otherwise satisfies the requirements to engage in the trade. An unintended consequence of the current small passenger waiver regulation is that the Maritime Administration is unable to grant waivers to owners of vessels of less than five net tons who want to operate in coastwise trade.

On January 27, 2010, MARAD published a notice of proposed rulemaking providing for a public comment period of 60 days. No comments were received on this proposal. Accordingly, in this final rule, the Maritime Administration adopts the rule, as proposed. The rule extends the eligibility of vessels for its Small Vessel Waiver Program by removing the five net ton minimum requirement.

Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign re-built small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than three years old. We will not grant waivers in instances where such waivers will have an unduly adverse effect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, is deemed to have obtained such endorsement through fraud. In addition, the final rule changes the mailing address of the agency found at 46 CFR 388.3(a)(2) to reflect the agency's present address.

**Rulemaking Analysis and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further regulatory impact analysis is necessary.

*Executive Order 1313*

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial

effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small entities. After analysis of this final rule, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Although we expect many applicants for vessel waivers to be small businesses, we do not believe that the economic impact will be significant. This rule allows MARAD to waive the U.S.-build and other requirements for eligible vessels and provides a small economic benefit to applicants. This regulation will only allow vessels to carry the statutory maximum of 12 passengers. As a consequence, MARAD estimates that a vessel owner who receives a waiver may earn a few hundred dollars per year for localized operations (geographic restrictions apply), such as whale watching and personalized fishing expeditions. Also, the economic impact of this rule is limited because it precludes vessel owners from participating in other economic activities, such as carrying cargo and commercial fishing.

*Environmental Assessment*

This rule is not expected to have a significant effect on the human and natural environment, individually or cumulatively, and is categorically excluded from further documentation requirements under the National Environmental Policy Act (NEPA) by Maritime Administrative Order 600–1, Categorical Exclusion No. 3. In pertinent part, Categorical Exclusion No. 3 applies to: "promulgation of rules, regulations, directives, and amendments thereto which do not require a regulatory impact analysis under section 3 of Executive Order 12291 or do not have a potential to cause a significant effect on the environment."

*Paperwork Reduction Act*

The Office of Management and Budget (OMB) has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) The OMB approval number is 2133–0529.

*Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule. Department guidance requires the use of a revised threshold figure of $141.3 million, which is the value of $100 million in 2008 after adjusting for inflation.

*Consultation and Coordination With Indian Tribal Governments*

MARAD believes that regulations evolving from this final rule would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply.

*Regulation Identifier Number (RIN)*

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

**Privacy Act**

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

**List of Subjects in 46 CFR Part 388**

Adminsitrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

■ Accordingly, the Maritime Administration amends part 388, 46 CFR chapter II, subchapter J, to read as follows:

## PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

**Authority:** 46 App. U.S.C. 1114(b); Pub. L. 105–383, 112 Stat. 3445 (46 U.S.C. 12121): 49 CFR 1.66.

■ 1. In § 388.2, revise paragraph (c) to read as follows.

**§ 388.2 Definitions.**

* * * * *

(c) *Eligible Vessel* means a vessel that—is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement if granted, would become effective.

* * * * *

■ 2. In § 388.3, revise the introductory paragraphs of paragraphs (a) and (a)(2) to read as follows:

**§ 388.3 Application and fee.**

(a) An owner of a vessel may choose either of two methods to apply for an administrative waiver of the coastwise trade laws of the United States for an eligible vessel to carry no more than twelve passengers for hire.

* * * * *

(2) Alternatively, applicants may send written applications to Small Passenger Vessel Waiver Applications, Office of Cargo Preference, MAR–730, 1200 New Jersey Ave., SE., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check made out to the order of "Maritime Administration," and contain the following information:

* * * * *

By the order of the Maritime Administrator.

Dated: May 10, 2010.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010–11927 Filed 5–19–10; 8:45 am]

BILLING CODE P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 0

**[GN Docket No. 09–51; PS Docket No. 06–229; FCC 10–67]**

## Establishment of an Emergency Response Interoperability Center

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Order amends Part 0 of the Commission's rules to establish rules governing the Emergency Response Interoperability Center (ERIC).

The Commission further delegates authority to the Chief of the Public Safety and Homeland Security Bureau to establish advisory bodies and select appropriate representatives from federal agencies, the public safety community, and industry to advise ERIC.

**DATES:** *Effective Date:* June 21, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Manner, *Jennifer.manner@fcc.gov;* (202) 418–3619.

**SUPPLEMENTARY INFORMATION:** The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

On March 16, 2010, the Commission submitted a report to Congress entitled "The National Broadband Plan (Plan)." As part of its national broadband strategy, the Plan recommends the establishment of an Emergency Response Interoperability Center (ERIC) tasked with ensuring that the 700 MHz public safety broadband wireless network will be fully operable and interoperable on a nationwide basis, both day-to-day as well as during times of emergency.

To ensure a baseline of operability and interoperability from the start of the network's development, the Commission has concluded that the public interest will be served by establishing ERIC within the Public Safety and Homeland Security Bureau (PSHSB). Accordingly, the Commission is assigning to ERIC responsibilities consistent with those currently assigned to PSHSB under § 0.191 of the FCC's rules. More specifically, ERIC will be tasked with implementing national interoperability standards and developing technical and operational procedures for the 700 MHz public safety broadband wireless network. The Commission also anticipates that over time, ERIC may perform similar functions with respect to other public safety communications systems.

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

### List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 0 as follows:

## PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.191 is amended by adding paragraph (q) to read as follows:

**§ 0.191 Functions of the Bureau.**

* * * * *

(q) Oversees the Emergency Response Interoperability Center, establishes the intergovernmental advisory committees described under § 0.192(b), and administers the agency's responsibilities in connection with such committees.

■ 3. Add § 0.192 to Subpart A to read as follows:

**§ 0.192 Emergency Response Interoperability Center.**

(a) The Emergency Response Interoperability Center acts under the general direction of the Chief of the Public Safety and Homeland Security Bureau to develop, recommend, and administer policy goals, objectives, rules, regulations, programs, and plans for the Commission in matters pertaining to the implementation of national interoperability standards and the development of technical and operational requirements and procedures for the 700 MHz public safety broadband wireless network and other public safety communications systems. These requirements and procedures may involve such issues as interoperability, roaming, priority access, gateway functions and interfaces, interconnectivity of public safety broadband networks, authentication and encryption, and requirements for common public safety broadband applications.

(b) To the extent permitted by applicable law, the Chief of the Public Safety and Homeland Security Bureau shall have delegated authority to establish one or more advisory bodies, consistent with the Federal Advisory Committee Act or other applicable law, to advise the Emergency Response Interoperability Center in the performance of its responsibilities. Such advisory bodies may include representatives from relevant Federal public safety and homeland security entities, representatives from state and local public safety entities, industry representatives, and service providers.

■ 4. Section 0.392 is amended by revising the introductory text to read as follows:

**§ 0.392 Authority Delegated.**

The Chief, Public Safety and Homeland Security Bureau, is hereby delegated authority to perform all functions of the Bureau, described in §§ 0.191 and 0.192, subject to the following exceptions and limitations in paragraphs (a) through (e) of this section.

* * * * *

[FR Doc. 2010–12139 Filed 5–19–10; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 75, No. 97
Thursday, May 20, 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.

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1109

**[CPSC Docket No. CPSC–2010–0037]**

### Conditions and Requirements for Testing Component Parts of Consumer Products

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a notice of proposed rulemaking regarding the conditions and requirements for testing of component parts of consumer products to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations: to support a general conformity certificate or a certificate for a children's product pursuant to section 14(a) of the Consumer Product Safety Act (CPSA); as part of a reasonable testing program pursuant to section 14(a) of the CPSA; as part of the standards and protocols for continued testing of children's products pursuant to section 14(d)(2) of the CPSA; and/or to meet the requirements of any other rule, ban, standard, guidance, policy, or protocol regarding consumer product testing that does not already directly address component part testing.[1]

**DATES:** Written comments must be received by August 3, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2010–0037, 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. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *http://www.regulations.gov*.

*Written Submissions:* Submit written submissions in the following way:

*Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to:* Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this proposed collection of information. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing, with the sensitive portions clearly identified.

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

**FOR FURTHER INFORMATION CONTACT:** Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7562; e-mail *rbutturini@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

Except as provided in section 14(a)(2) of the CPSA, section 14(a)(1) of the CPSA, 15 U.S.C. 2063(a)(1), requires manufacturers and private labelers of a product that is subject to a consumer product safety rule (defined in section 3(a)(6) of the CPSA), or to any similar rule, ban, standard, or regulation under any other act enforced by the Commission, to issue a certificate. The certificate: (1) Must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all CPSC requirements; and (2) must specify each rule, ban, standard, or regulation applicable to the product. This certificate is called a General Conformity Certificate (GCC).

Section 14(a)(2) of the CPSA, 15 U.S.C. 2063(a)(2), requires manufacturers and private labelers of any children's product that is subject to a children's product safety rule to submit samples of the product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited by CPSC to be tested for compliance with such children's product safety rule. Based on that testing, the manufacturer or private labeler must issue a certificate that certifies that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests. 15 U.S.C. 2063(a)(2)(B). The manufacturer or private labeler of the children's product must issue either a separate certificate for each applicable children's product safety rule or a combined certificate that certifies compliance with all applicable children's product safety rules and specifies each such rule. This certificate is called a Children's Product Certificate.

Section 14(g) of the CPSA contains additional requirements for these certificates. 15 U.S.C. 2063(g). Each certificate must identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate must include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. Every certificate must be legible, and all required content must be in the English language. A certificate also may contain the same content in any other language.

Section 14(g) of the CPSA also states that every certificate must accompany the applicable product or shipment of products covered by the same certificate, and a copy of the certificate must be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate must furnish a copy of the certificate to the

[1] The Commission voted 5–0 to approve publication of this proposed rule. Chairman Inez Tenenbaum and Commissioners Nancy Nord and Anne Northup each filed a statement concerning this action. These statements may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/statements.html* or obtained from the Commission's Office of the Secretary.

Commission. The Commission has regulations, at 16 CFR part 1110, specifying the parties responsible for issuing certificates, the form and content of certificates, and other requirements for certificates, including that certificates can be provided in electronic form.

This proposed rule would set forth the conditions and requirements for testing of component parts of consumer products, including children's products, where such testing is intended to demonstrate, in whole or in part, the product's compliance with any rule, standard, ban, or regulation enforced by the Commission that is subject to the requirements of section 14 of the CPSA and that does not itself directly address testing of component parts. Specifically, the proposed rule would establish the conditions under which a party certifying a product under section 14 of the CPSA may rely on tests of component parts of the product, including materials used to produce it, as all or part of the basis for a valid certificate that the product complies with all applicable requirements enforced by the Commission. The proposed rule also would set out the conditions under which such tests of component parts can be conducted by persons other than the manufacturer, such as the manufacturer or supplier of the component parts. The proposed rule is consistent with earlier positions taken by the Commission (*see:* (1) A Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety Improvement Act, available on the Commission's Web site at *http://www.cpsc.gov/about/componenttestingpolicy.pdf,* which outlined the Commission's interim position on component testing of products containing plasticized component parts for phthalates; (2) a Statement of Policy: Testing and Certification of Lead Content in Children's Products, available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/leadpolicy.pdf.*; (3) *Guidance Document:* Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008, available at *http://www.cpsc.gov/library/foia/foia10/brief/102testing.pdf;* (4) a notice regarding a Commission workshop on testing and certification published in the **Federal Register** on November 13, 2009, at 74 FR 58611, 58616; and (5) an Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2000 Lead Limits (the Lead Limits Interim Enforcement Policy), available at *http://www.cpsc.gov/businfo/frnotices/fr10/comppol.pdf* and published in the **Federal Register** on December 29, 2009 (74 FR 68593)). The proposed rule also reflects the Commission's consideration of comments to those notices and to the workshop.

The Commission invites comment on whether finished product certifiers should be permitted to rely on other types of certifications from other persons (in addition to component part certifications). The proposed rule only would allow a finished product certifier to rely on certificates relating to the performance of individual component parts; it would not authorize a finished product certifier to rely on a certificate from another party certifying that the finished product itself complies with an applicable rule. For example, it would not allow certification by others in the case of standards, such as the small parts ban at 16 CFR 1500.19, which require testing of the entire product as opposed to an individual component. Should this limitation be modified so that the importer of a product would be able to base its own certification on what might be termed a "subordinate" certificate from a foreign manufacturer or other interested party to the effect that the product complies with one or more of these standards? What are the risks and benefits of allowing such an arrangement?

Elsewhere in this issue of the **Federal Register**, the Commission is issuing a proposed rule titled "Testing and Labeling Pertaining to Product Certification"; that proposed rule would address testing, continuing testing, and labeling requirements for consumer products, including children's products, and would create a new 16 CFR part 1107. Component testing may help manufacturers meet their testing or continuing testing obligations under section 14 of the CPSA.

## II. Description of the Proposed Rule

### *A. Introduction*

The proposed rule would establish a new 16 CFR part 1109, setting forth the conditions under which the Commission will allow certification of consumer products based in whole or in part on testing of component parts or composite parts. The new part 1109 would consist of two subparts: Subpart A—General Conditions and Requirements, and Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals.

### *B. Proposed Subpart A—General Conditions and Requirements*

Proposed subpart A, consisting of §§ 1109.1 through 1109.5, would set out generally applicable conditions and requirements.

1. Scope—Proposed § 1109.1

Proposed § 1109.1 would define the scope of the rule as applying to all tests of component parts of consumer products where the test results are used to support a certificate of compliance issued pursuant to section 14(a) of the CPSA or where the tests are otherwise required or permitted by section 14 of the CPSA.

2. Purpose—Proposed § 1109.2

Proposed § 1109.2 would discuss the rule's purpose, which is to set forth the conditions and requirements under which the Commission will require or accept the results of testing of component parts of consumer products, instead of the entire consumer product, to meet, in whole or in part, the testing and certification requirements of sections 14(a), 14(b), and 14(d) of the CPSA.

3. Applicability—Proposed § 1109.3

Proposed § 1109.3 would specify that the rule applies to all manufacturers, importers, or private labelers and to the manufacturers or suppliers of component parts that: (1) Are responsible for certifying products under section 14(a) of the CPSA or for continued compliance testing under section 14(d) of the CPSA; or (2) test component parts of consumer products to support a certification of compliance under section 14(a) of the CPSA or to comply with continuing testing requirements under section 14(d) of the CPSA.

4. Definitions—Proposed § 1109.4

Proposed § 1109.4 would define various terms used in the rule. For example, the proposal would define a component part, in part, as "any part of a consumer product, including a children's product, that either must or may be tested separately from a finished consumer product, to assess the consumer product's ability to comply with a specific rule, ban, standard, or regulation enforced by the CPSC." As another example, proposed § 1109.4 would define a "finished product certifier" as "a firm responsible for certifying compliance of a consumer product with all applicable rules, bans, standards, and regulations pursuant to part 1110 of this chapter." "Component part certifier" would be defined as "a firm that certifies component parts to be

used in consumer products as complying with one or more rules, bans, standards, or regulations enforced by the CPSC pursuant to part 1109." The generic term "certifier" would be defined as a firm that is either a finished product certifier or a component part certifier.

The proposed rule would provide that when samples of component parts are tested, they must be identical in all material respects to the component parts used in the finished product. Proposed § 1109.4 would specify that "identical in all material respects" means there is no difference with respect to compliance to the applicable rules between the samples and the finished product.

5. Conditions and Requirements Generally—Proposed § 1109.5

Proposed § 1109.5 would set out conditions and requirements that generally apply to all types of component part testing. Proposed § 1105.5(a)(1) would state that finished product certifiers may rely on testing of a component part of a consumer product only where testing of the component part is required or sufficient to assess the consumer product's compliance, in whole or in part, with an applicable rule, ban, standard, or regulation. For example, testing a component part of a children's product for lead may be sufficient in situations where only the component part is known to contain or may contain lead. On the other hand, testing a component part of a consumer product for compliance with the small parts requirements of 16 CFR part 1501 will rarely, if ever, be appropriate, because the test procedure described at 16 CFR 1501.4 generally requires that the entire product be tested to determine whether small parts can be detached during the use or abuse of the entire product. Proposed § 1109.5(a)(1) also would specify that any doubts about whether testing one or more component parts of a consumer product can help to assess whether the entire product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the entire product.

Proposed § 1109.5(a)(2) would require that the component part tested be identical in all material respects to the component used in the finished consumer product. Under this section, to be identical in all material respects to a component for purposes of supporting a certification of a children's product, a sample need not necessarily be of the same size, shape, or finish condition (such as polished, deburred, etc.) as the component part of the finished product; rather, the sample may consist of any quantity that is sufficient for testing purposes and may be in any form that has the same content as the component part of the finished product. For example, assume that a children's toy manufacturer receives plastic resins in an unfinished state (such as pellets) from a supplier and later molds the plastic resins into a component or a finished children's toy in the manufacturing process, and assume that the plastic resins need to be tested for phthalates. The children's toy manufacturer may send samples of the plastic, either as pellets or in their finished state, to a third party conformity assessment body for testing. A finished product certifier must exercise due care to ensure that no change in the component parts after testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation. Proposed § 1109.5(a)(2) also would state that manufacturers must exercise due care in the proper management and control of all raw materials, component parts, subassemblies, and finished goods for any factor that could affect the finished product's compliance with all applicable rules. The manufacturer must exercise due care that the manufacturing process does not add a prohibited chemical from an untested source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product. Proposed § 1109.4(g) would define "due care" to mean the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

Under proposed § 1109.5(b), a finished product certifier would not be able to rely on testing of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the entire consumer product to assess compliance.

Under proposed § 1109.5(c), certifiers and testing parties would be required to ensure that the required test methods and sampling protocols, as set forth in proposed 16 CFR part 1107, as well as any more specific applicable rules, bans, standards, regulations, or testing protocols, are used to assess compliance of the component part.

Proposed § 1109.5(d) would state that, subject to any more specific rule, ban, standard, or regulation, component part testing may occur before final assembly of a consumer product, provided that nothing in the final assembly of the consumer product can cause the component part or the consumer product to become noncompliant.

Proposed § 1109.5(e) would specify that finished product certifiers may not rely on component part testing conducted by another unless such component parts are traceable. Traceable is defined in proposed § 1109.4(m) as the ability of a certifier to identify the source of a component part, including the name and address of the entity providing the component part to the certifier.

Proposed § 1109.5(f) would require testing parties who are not themselves certifying a component part to provide the following documentation to the component part certifier, either in hard copy or electronically:

(1) Identification or a description of the component part tested;

(2) Identification of a lot or batch number for which the testing applies;

(3) Identification of the applicable rules, bans, standards, and regulations for which each component part was tested;

(4) Identification or a description of the testing methods and sampling protocols used;

(5) The date or date range when the component part was tested;

(6) The results of each test on a component part; and

(7) If the product was tested by a third party conformity assessment body, regardless of whether such third party testing was required because the product is a children's product or whether the testing party chose to use such third party conformity assessment body, identification of such conformity assessment body, a copy of the original test results, and a certification that all testing was performed in compliance with section 14 of the CPSA and proposed part 1107 of this title.

The above information is needed so that, if noncomplying products are found, the Commission can use this information to determine whether a finished product certifier, component part certifier, or third party conformity assessment body is not complying with the appropriate requirements.

Under proposed § 1109.5(g)(1), the Commission would consider any certificate issued by a component part certifier in accordance with this part to be a certificate issued in accordance with section 14(a) of the CPSA. A component part certificate must contain all of the information required by part 1110 of this chapter. This provision would allow finished product certifiers to rely on section 19(b) of the CPSA, which provides that a person who holds a certificate issued in accordance with section 14(a) of the CPSA (to the effect that a consumer product conforms to all applicable consumer product safety

rules) is not subject to the prohibitions in section 19(a)(1) of the CPSA (regarding distributing noncomplying products) and section 19(a)(2) of the CPSA (regarding distributing products subject to certain voluntary corrective actions) unless such person knows that such consumer product does not conform. However, such person may violate section 19(a)(6) of the CPSA if the products that are the subject of any certificate issued by that person in fact do not comply with the applicable standard(s) and such person, in the exercise of due care, would have reason to know that their certificate is false or misleading in any material respect. Proposed § 1109.5(h)(1) would address how this duty of due care applies to finished product certifiers.

Proposed § 1109.5(g)(2) would provide that any person who elects to certify compliance of a component part with an applicable rule must assume all responsibilities of a manufacturer under part 1107 of this chapter with respect to that component part's compliance with the applicable rule.

Under proposed § 1109.5(h)(1), a finished product certifier must exercise due care in order to rely, in whole or in part, on a component part certificate issued by a component part certifier or on component part testing by a testing party as the basis for a finished product certificate. If a finished product certifier fails to exercise due care in its reliance on a certificate for a component part, then the Commission will not consider the finished product certifier to hold a component part certificate issued in accordance with section 14(a) of the CPSA. Exercising due care in this context means taking the steps a prudent and competent person would take to conduct a reasonable review of a component part certificate and to address any concern over its validity. Such steps may vary according to the circumstances.

Under proposed § 1109.5(h)(2), a finished product certifier must not rely on component part testing by a testing party or component part certifier unless it receives the documentation under proposed § 1109.5(f) from the component part certifier or testing party. The Commission may consider a finished product certifier who does not obtain such documentation before certifying a consumer product to have failed to exercise due care.

Under proposed § 1109.5(h)(3), any certification of a consumer product based, in whole or in part, on component part testing performed by a component part certifier or a testing party must:

(1) Identify both the corresponding documentation required in proposed § 1109.5(f) and any report provided by a third party conformity assessment body on which the consumer product's certification is based; and

(2) Certify that nothing subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it affected the product's ability to meet all applicable rules, bans, standards, and regulations.

Proposed § 1109.5(i) would require testing parties to maintain the documentation that would be required in proposed § 1109.5(f) for 5 years. Additionally, all certifiers would have to maintain records to support the traceability of component part suppliers for as long as the product is produced or imported by the certifier plus 5 years. Test records would be retained for 5 years. All records would be required to be available in the English language. The documentation and records are needed to enable the Commission to investigate component part suppliers and component part certifiers if noncomplying, yet certified, products are found. Records would be required to be maintained for 5 years because the statute of limitations under 28 U.S.C. 2462 allows the Commission to bring an action within that time. It would be unnecessarily burdensome to require a manufacturer to maintain records beyond the time the Commission could pursue an action. The proposal would require certifiers to maintain the records at the location within the United States specified in 16 CFR 1110.11(d), or, if the records are not maintained at the custodian's address, at a location specified by the custodian. The manufacturer must make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

Some requirements enforced by the Commission limit the content of certain chemicals in consumer products. These include the limits for lead content in children's products in section 101(a) of the CPSIA, the limit for lead content of paint and similar surface-coating materials in 16 CFR part 1303, the prohibition of more than 0.1 percent of certain phthalates in children's toys and child care articles in section 108 of the CPSIA, and the limitation of the amounts of compounds of antimony, arsenic, barium, cadmium, chromium, lead, mercury, or selenium in paints or other surface coatings in toys in section 4.3.5.2 of ASTM F 963 ("Standard Consumer Safety Specification for Toy Safety"). (Section 106(a) of the CPSIA states that the requirements of ASTM F 963 must be considered to be consumer product safety standards issued by the Commission under section 9 of the CPSA.)

The testing of component parts consists of three general categories: (1) Testing for the levels of chemicals in paints or surface coatings; (2) testing of actual component parts of a product to determine the content of chemicals in the component parts; and (3) testing of a combination of paints or surface coatings or a combination of component parts (*i.e.,* composite testing), which can reduce the number of tests required or the number of products needed to obtain a sample large enough to test.

*C. Proposed Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals*

1. Introduction

Proposed subpart B would consist of four provisions, §§ 1109.11 through 1109.14. The first three provisions would discuss specific requirements for consumer products (namely chemicals in paint and similar surface coatings, lead content, and phthalates in products). The fourth provision would concern composite testing.

2. Proposed § 1109.11—Lead in Paint and Surface Coatings

Proposed § 1109.11 would address component part testing for the levels of specified chemicals in paints or surface coatings. This aspect of the proposed rule is based on the Commission's previously published enforcement policy for testing products for compliance with lead limits. 74 FR 68593 (December 28, 2009).

Section 101(f)(1) of the CPSIA required the Commission to revise its preexisting regulation (at 16 CFR 1303.1) so that paints and similar surface coating materials having a lead content in excess of 0.009 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film are banned hazardous products. (To simplify this discussion, we use the term "paint" broadly to include any type of surface coating that is subject to 16 CFR part 1303 or section 4.3.5.2 of ASTM F 963.) The new lower limit in 16 CFR part 1303 applies not only to paint sold to consumers as such (for example, a gallon of paint sold at a hardware store), but also to any paint on toys or other articles for children and to any paint on certain household furniture items (not limited to children's furniture). *See* 16 CFR part 1303. The principles for testing paint subject to 16

CFR part 1303 also apply to the testing of paint and surface coatings for toys in section 4.3.5.2 of ASTM F 963.

In the case of paint and coatings, a manufacturer of a children's product can send samples of the finished product to a third party conformity assessment body so that each type of paint may be scraped off and tested individually. However, where small amounts of a particular paint are used (such as painted eyes on a doll), under existing regulations, a large number of samples of the children's product may be needed to obtain enough of that paint to test.

Because compliance of a paint to its content limits is a function of the paint and not of the component part or substrate to which it is applied, proposed § 1109.11(a)(1) would require testing of paint after it has been applied to any suitable substrate, in an appropriate quantity, and dried. The substrate used need not be of the same material as in the finished product or have the same shape or other characteristics as the part of the finished product to which the paint will be applied.

Proposed § 1109.11(a)(2) would provide that, for the tested paint to be identical in all material respects to that used in production of the consumer product, the paint samples tested must have the same composition as the paint used on the finished product. For example, if a children's product manufacturer uses a drying agent that mixes with the paint, then the test sample must reflect this mixture. However, a larger quantity of the paint may be tested than is used on the consumer product, in order to generate a sufficient sample size. For example, a children's product manufacturer may spray paint a large surface area of a substrate with the paint product for the purposes of generating a sufficient amount of paint for the sample. The paint may be supplied to the third party conformity assessment body either in liquid form or in the form of a dried film of the paint on any suitable substrate. (A third party conformity assessment body is a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products. Such facilities are listed on the Commission's Web site at *http://www.cpsc.gov/cgi-bin/labapplist.aspx.)*

Proposed § 1109.11(a)(3) would require that the documentation required by a testing party pursuant to proposed § 1109.5(f) and the certificate required of finished product certifiers under section 14(a) of the CPSA and proposed § 1109.5(g) identify each paint tested by color, location, specification number or other characteristic, the manufacturer of the paint, and the supplier of the paint (if different).

Proposed § 1109.11(b) would state that, as part of its basis for certification of a children's product to the lead paint limit or other paint limit, a certifier may rely on a test report showing passing test results for one or more paints used on the product, based on testing performed by a third party conformity assessment body. The manufacturer of the children's product must ensure that each paint sample sent to a third party conformity assessment body is identical in all material respects to the paint used on the finished product. Test reports must identify each paint tested, by color, formulation, or other characteristic, and identify the manufacturer of the paint and the supplier of the paint (if different).

Proposed § 1109.11(c) would state that, as part of its basis for certification of a children's product to the lead paint limit or other paint limit, a component part certifier or finished product certifier may rely on a certificate from another person certifying that paint complies with the applicable limit. The paint certificate for a children's product must be based on testing by a third party conformity assessment body of samples of paints that are identical in all material respects to the paints used on the finished product. The paint certificate must identify all test reports underlying the certification.

Proposed § 1109.11(c) also would provide that any finished product certifier who certifies a children's product as complying with the lead paint limit or other paint limit should be able to trace each batch of paint that is used on the product to the supplier and, if different, the paint manufacturer. The finished product manufacturer should ensure that paints meeting the applicable limits are not later contaminated with lead from other sources before or during application to the product.

For consumer products that are not children's products but are subject to lead paint limits (such as certain furniture items), proposed § 1109.11(c) would provide that a finished product certifier may base its certification to the lead paint limit on its own testing of each paint used on the product, on testing by any third party conformity assessment body, on paint certification(s) from any person, or on a combination of these methods. However, product manufacturers must ensure that paint meeting the applicable limits when tested and certified is not later contaminated with lead from other sources before or during application to the product.

3. Proposed § 1109.12—Component Part Testing for Lead Content of Children's Products

a. Testing for Lead Content

On August 14, 2009, the general limit for lead in any accessible part of a children's product was reduced from 600 parts per million ("ppm") to 300 ppm (see section 101(a)(2)(B) of the CPSIA). On that date, it became unlawful to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any product that is subject to the new lead limits, but fails to comply, regardless of when the product was made. Under section 101(a)(1) of CPSIA, any children's product containing an accessible part with lead above the limit is to be treated as a banned hazardous substance under the Federal Hazardous Substances Act. Section 101 of the CPSIA provides that the lead content limit for children's products will be lowered to 100 ppm beginning August 14, 2011, unless the Commission finds that a limit of 100 ppm is not technologically feasible for a product or product category.

Currently, testing and certification is required for metal component parts of children's metal jewelry. 73 FR 78331 (December 22, 2008); 74 FR 6396 (February 9, 2009). The certification must be based on testing by a third party conformity assessment body listed on CPSC's Web site as qualified to test for lead in children's metal jewelry (see *http://www.cpsc.gov/cgi-bin/labapplist.aspx*). If the children's metal jewelry bears paint, it must also be certified as in compliance with the 90 ppm limit. The requirement for testing and certification of other children's products for lead content (except paint) has been stayed until February 10, 2011. 74 FR 68588 (December 28, 2009).

The Commission has determined that some materials, by their nature, will never exceed the lead content limits. These materials include many natural materials such as gemstones, wood, cotton, and wool, as well as certain refined metals and alloys. For a more complete list of such materials, *see* 74 FR 43031 (August 26, 2009). If all accessible parts of a children's product consist of such materials, then that product need not be tested or certified as in compliance with the lead content limits. The Commission recently issued a "Statement of Policy on Testing and Certification of Lead Content in Children's Products" (*see* 74 FR 55820 (Oct. 29, 2009)).

Since the lead content requirements for children's products apply to any accessible part of the product, testing of the children's product's component parts may be required. The Commission has promulgated a final rule for determining when parts of a children's product may be deemed inaccessible and do not need to be tested for lead content. 16 CFR 1500.87; 74 FR 39535 (August 7, 2009). Neither paint nor electroplating may be considered as making underlying materials inaccessible (see section 101(b)(3) of the CPSIA).

b. Certification of Children's Products Subject to Lead Content Requirements

Children's products, other than children's metal jewelry or those made of materials that, by their nature, will never exceed the lead content limits, must be certified as being in compliance with the 300 ppm lead content limit only if they are manufactured after February 10, 2011, and only as to accessible parts that are not subject to a Commission determination as described in 16 CFR part 1500.91. Pursuant to section 14(a)(2) of the CPSA, the certification must be based on testing by a third party conformity assessment body listed on CPSC's Web site as qualified to test for lead in children's products.

Thus, proposed § 1109.12 would describe requirements pertaining to component part testing of children's products to determine their lead content. Proposed § 1109.12(a) would explain that a certifier may rely on component part testing of each accessible part of a children's product provided that:

- The determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the CPSIA is based on an evaluation of the finished product; and
- For each accessible component part of the product, the certifier either has a component part test report or a component part certificate.

Proposed § 1109.12(b) states that, as part of its basis for certification of a children's product to the lead content limit, a finished product certifier could rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a third party conformity assessment body. The proposal would require the component part test reports to identify each component part tested, by part number or other specification, as well as the manufacturer of the component part and the supplier (if different).

Proposed § 1109.12(c) would address component part certificates. The proposal states that, as part of its basis for certification of a children's product to the lead content limit, a finished product certifier could rely on a certificate from another person certifying that a component part complies with the lead limit. The component part certificate would have to be based on testing by a third party conformity assessment body of a sample identical in all material respects to the component part(s) used in the finished product. The proposal would require the component part certificate to identify all test reports underlying the certification consistent with section 14 of the CPSA.

Under proposed § 1109.12(d), the certificate accompanying the children's product would have to list each component part tested, by part number or other specification, and for each such part identify the corresponding test report or component part certificate on which product certification is based.

4. Proposed § 1109.13—Component Part Testing for Phthalates in Children's Toys and Child Care Articles

Section 108 of the CPSIA permanently prohibits the sale of any children's toy or child care article containing concentrations of more than 0.1 percent of three specified phthalates (di-(2-ethylhexyl) phthalate, dibutyl phthalate, or benzyl butyl phthalate). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of any children's toy that can be placed in a child's mouth or child care article containing concentrations of more than 0.1 percent of three additional phthalates (diisononyl phthalate, diisodecyl phthalate, or di-n-octyl phthalate), pending the recommendation of a Chronic Hazard Advisory Panel. These prohibitions became effective on February 10, 2009.

The Commission has stayed the requirement for testing and certification for the phthalate content requirements until 90 days after the Commission publishes a notice of requirements for accrediting conformity assessment bodies to test to the phthalate content requirements. 74 FR 68588 (December 28, 2009).

In general, phthalates are chemicals added to plastic to make the plastic more flexible or resilient, and concerns have been raised about possible adverse health effects resulting from exposure to phthalates. In March 2009, the Commission's staff sought comment on a method for testing phthalate content as a percentage of the entire toy or child care article. Testing the phthalate content of an entire children's toy or child care article may present certain difficulties. For example, the risk presented by phthalates in a component part may not be adequately described if the percentage concentration of phthalates is determined in comparison to the whole product, which may have other component parts that do not contain phthalates. In an extreme example, a product that has a plasticized component part that had a phthalate concentration above 0.1 percent arguably could be brought into compliance with the phthalate limit by adding more non-plasticized material and thus "dilute" the concentration of phthalates in the whole product. However, this approach would not reduce the risk posed by the concentration of phthalates in the component part. Testing only the plasticized component parts would avoid such "dilution" scenarios, is more protective of human health, and is consistent with the CPSIA's goal of limiting children's exposure to phthalates. The benefits of the component part approach are twofold; in addition to providing more protection for children, it also may significantly reduce the testing costs for manufacturers in certain circumstances.

Proposed § 1109.13(a) would reflect our position regarding component part testing for phthalates by stating that a certifier may rely on component part testing of appropriate component parts of a children's toy or child care article for phthalate content if the certifier is provided with a copy of the original test results obtained from the third party conformity assessment body.

Proposed § 1109.13(b) would state that, as part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a recognized third party conformity assessment body. Component part test reports would have to identify each component part tested, by part number or other specification, and the manufacturer and the supplier of the component part (if different).

Proposed 1109.13(c) would state that, as part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a certificate from another person certifying that a component part complies with the limit. The component part report must be based on testing by a third party conformity assessment body of a sample that is identical in all material respects

to the component parts used in the finished product. The component part certificate must identify all test reports underlying the certification required by section 14 of the CPSA. Any person who certifies a children's product as complying with the phthalate content limits must be able to trace each component part of the product to the component part's manufacturer.

Proposed § 1109.13(d) would require that the certificate accompanying the children's product list each component part tested by part number or other specification and, for each such part, identify the corresponding test report or component part certificate on which product certification is based.

5. Proposed § 1109.14—Composite Part Testing

Composite testing is where more than one paint or surface coating, or more than one component part, are combined and the combination is tested for the level of the target chemical. This can reduce the number of tests required or the number of products needed to obtain a sample large enough to test (composite testing). For example, if different parts of a doll are painted with small amounts of different paints, the paints could be mixed together and tested for lead. Proposed § 1109.14 would address composite testing and would consist of three subsections, one dealing with tests of composite paints and surface coatings, one dealing with tests of composite component parts, and one dealing with how to ensure that no failure to comply with the chemical content limits will go undetected.

Proposed § 1109.14(a) would state that, in testing paints for compliance with chemical content limits, testing parties may test a combination of different paint samples so long as they follow procedures ensuring that no failure to comply with the lead limits will go undetected. For an example of an acceptable method, see Test Method CPSC–CH–E1003–09, Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings (April 26, 2009) (available on the Internet at *http://www.cpsc.gov/about/cpsia/CPSC–CH–E1003–09.pdf*). Proposed § 1109.14(a) also would require testing and certification of composite paints to comply with proposed § 1109.11.

Proposed § 1109.14(b) would allow a third party conformity assessment body to test a combination of plastic component parts or a combination of metal component parts so long as the third party conformity assessment body follows procedures ensuring that no failure to comply with the lead limits will go undetected. The proposal would require such testing and certification of component parts to comply with proposed § 1109.12 for the lead content of children's products or with proposed § 1109.13 for the phthalate content of children's toys and child care articles.

When using composite testing, only the total amount of the target chemical is determined, not how much was in each individual paint or component part. Therefore, to determine that each paint or component part is within the applicable limit, proposed § 1109.14(c) would provide that the entire amount of the target chemical in the composite is attributed to each paint or component part. If this method yields an amount of the target chemical that exceeds the limit applicable to any paint or component part in the composite sample, additional testing would be required to determine which of the paints or component parts, if any, fails to meet the applicable limit.

## III. Previous Guidance on Component Part Testing and Requests for Comment

Between 2008 and December 28, 2009, the Commission discussed component part testing issues, either generally or regarding specific substances (such as lead and phthalates), and invited comment. We also held a public workshop on issues relating to product testing, including component part testing (*see* 74 FR 58611 (November 13, 2009). In brief, the previous activities on component part testing have consisted of the following:

First, the Commission's staff posted a document on the Commission's Web site explaining the new requirements for third party testing of children's products and requesting comments on a number of issues related to component part testing. That document is available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/ComponentPartsComments.pdf*. The comment period closed on January 30, 2009.

Second, on August 7, 2009, the Commission issued a Statement of Policy: Testing of Component Parts with Respect to Section 108 of the CPSIA, available on the Commission's Web site at *http://www.cpsc.gov/about/componenttestingpolicy.pdf*. The August 7, 2009, Statement of Policy outlined the Commission's interim position on component part testing of products containing plasticized component parts for phthalates. In the **Federal Register** of August 17, 2009 (74 FR 41400), the Commission invited comments on the Statement of Policy. The comment period closed on September 16, 2009.

Third, in October 2009, the Commission issued a Statement of Policy: Testing and Certification of Lead Content in Children's Products, available at *http://www.cpsc.gov/about/cpsia/leadpolicy.pdf*. The October 2009 Statement of Policy on lead content addressed component part testing for lead in children's products and provided that component part testing could be used to test for compliance with the 300 ppm lead content limit, especially in circumstances where a product is made up of several substances, some of which will not, by their nature, contain lead, or where lead containing parts are inaccessible.

Fourth, on November 3, 2009, CPSC staff issued a proposed Guidance Document Testing and Certification Requirements Under The Consumer Product Safety Improvement Act of 2008 (available at *http://www.cpsc.gov/library/foia/foia10/brief/102testing.pdf*). The proposed Guidance Document set forth the CPSC staff's proposed interpretation of the testing and certification requirements established in section 102 of the CPSIA. Although the Commission did not vote on this document, the document provided the framework for the December 10 through 11, 2009, workshop on testing and certification requirements under section 14 of the CPSA. The Guidance Document addressed component part testing in sections III.C and III.D of the document, as well as in section IV on Questions and Answers, in questions 14 through 20. Moreover, component part testing was discussed in several sessions at the December 2009 workshop on testing and certification requirements. Stakeholders were able to submit comments on our proposed interpretation of section 14 of the CPSA with regard to testing of component parts and on the discussion on component part testing at the December 2009 workshop by submitting comments on the workshop. We invited written comments on the December 2009 workshop and testing and certification issues through January 11, 2010, in a notice announcing the workshop that appeared in the **Federal Register** of November 13, 2009, at 74 FR 58611, 58616. We summarize and respond to these comments in section IV of this document below.

Fifth, on December 16, 2009, the Commission approved an Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2000 Lead Limits (available at *http://www.cpsc.gov/businfo/frnotices/fr10/comppol.pdf*. The Lead Limits Interim Enforcement Policy

was published in the **Federal Register** on December 29, 2009 (74 FR 68593).

Finally, a petition was filed with the Commission seeking recognition of various methods of component part testing for lead in paint. The petition seeks approval for three methods of testing for lead in paint on component parts of a consumer product. In a notice that appeared in the **Federal Register** of December 29, 2009 (74 FR 68596), we invited comments on the petition. The comment period ended on February 26, 2010.

Any final rule arising out of this notice of proposed rulemaking is intended to supersede all policy statements and guidelines referred to above in section III of this document as they apply to testing of component parts. To the extent component part testing is not addressed by another CPSC-enforced rule, regulation, standard, or testing protocol, the Commission intends that this proposed rule, if finalized, shall apply. In general, certifiers should test and certify consumer products, including children's products, based on the most specific regulation that applies to such consumer product.

## IV. Comments on Component Part Testing and the CPSC's Responses

As described in section III of this document above, we have invited and received comments on a number of documents relating to component part testing and at a public workshop. All of these documents were publicly available before the end of the comment period associated with the workshop held by the Commission on December 10 through 11, 2009. *See* 74 FR 58611 (November 13, 2009). The comment period for the workshop ended on January 11, 2010. During that comment period, we received 27 comments relating to testing of component parts of regulated products. Because the comment period for the workshop was the latest opportunity for interested parties to submit comments, and because the comments received cover the issues raised by previous comments, we now address only the comments received between November 13, 2009 (the date on which we issued a **Federal Register** notice announcing the workshop) and January 11, 2010 (the closing date of the comment period for the workshop). To make it easier to identify comments and responses, the word "Comment" will precede each topic addressed by the comments, and the word "Response" will precede each response to a topic. We also have numbered each topic to make it easier to identify and distinguish comments. The number assigned to each topic is for organizational purposes and does not signify the comment's value, importance, or order in which it was received.

Comment 1—Almost all persons who commented on component part testing favored it. Many commenters acknowledged the benefit of component part testing to small businesses. The commenters cited component part testing as a way to reduce redundant testing when a particular component part is used in multiple products. They also wanted the option of component part testing when the amount of the component part in the finished product is small and testing of the finished product requires destruction of a large number of units to collect a sufficient quantity of the component part to be tested. Several commenters indicated that testing at the component part level may reduce costs associated with reworking products that do not meet safety standards due to a noncompliant component part.

Response—We view component part testing, when appropriate, as a cost-effective option to facilitate assurance of compliant consumer products. A certifier may choose testing of a component part, which by its construct or materials is subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other act enforced by the Commission, when the component part is not altered during the manufacturing process. Tested component parts must be identical in all material respects to those used in a finished product, and certified component parts in a finished product must be able to be traced back to their certificates.

Comment 2—Commenters had different opinions concerning who should conduct component part testing and whether a certification provided by a supplier can be used. One commenter suggested that component part testing be limited to the finished product manufacturer, and not be available to component part suppliers, many of whom, according to the commenter, are located in foreign countries. The commenter's concern is that supply chain integrity might not always be maintained and untested or counterfeit component parts could be introduced into a manufacturer's production. Other commenters suggested that product manufacturers should be able to use testing results obtained from component part suppliers or manufacturers, rather than requiring the product manufacturer to test each component part separately. Three commenters indicated that the supplier who certifies a component part, and not the manufacturer that uses the supplier-certified component part, should be held liable for noncompliance.

Response—Excluding the option of using supplier-provided component part certificates may unduly burden some manufacturers or importers. Where appropriate, certifiers may rely on component part certificates received from suppliers of component parts as the basis for issuance of their own certificates for the component part or the finished product. However, under section 19(a)(6) of the CPSA, certifiers may be charged with issuing a false certificate if, in the exercise of due care, they would have had reason to know that a certificate upon which they relied was false or misleading in any material respect. Therefore, certifiers who rely on a certification from a component part supplier should use due care when electing to use the component part suppliers' certification. Ultimately, the domestic manufacturer or importer is responsible for compliance of its finished product.

Comment 3—Other commenters suggested that, to protect against counterfeit supplier component part certifications, CPSC should set up an annual review process of the laboratories that it recognizes to prevent such falsifications.

Response—We disagree with the commenters. Neither the CPSA nor this rule requires a certifier to accept a component part certification provided by a supplier. A certifier is always free to have the component part or the product tested and then issue a certificate for the product based on tests conducted by the certifier (in the case of nonchildren's products) or by a third party conformity assessment body (in the case of children's products).

If the concern is whether manufacturers will be unable to distinguish between genuine and counterfeit component part certificates purporting to come from a specific component part supplier, we note that suppliers themselves can take steps to deter or reduce counterfeiting. For example, a supplier concerned about counterfeit certificates could add various security features, such as color-shifting ink, microprinting, and holograms, to its certificates to make counterfeiting more difficult.

Comment 4—One commenter suggested that we establish different requirements for different component parts based on their inherent safety risks. Component parts presenting the least risk would be exempt from mandatory third party testing.

Response—In the CPSIA, Congress set the chemical content levels applicable to children's products. The CPSIA does not provide that component parts presenting a real, albeit low, risk can be exempted from the requirements for third party testing.

Comment 5—Many commenters stated that reliance on component part testing requires that the tested component parts be representative of those used in the finished product and that adequate traceability of component parts is maintained. One commenter stressed the need to prepare component part samples (such as a large paint sample substituted for a sample obtained by scraping paint from a large number of products, each with only a tiny amount of paint) using the same technique and equipment that is used for the products. Some commenters were concerned that, subsequent to testing, raw materials (*e.g.,* premolded plastic pellets or wet paint in the can) could be contaminated in the production process, resulting in the manufacture of noncompliant products. If, for example, wet paint is found to be compliant, the commenter stated, the drying process could evaporate enough solvent to raise the concentration above the allowable limit. Another commenter stated that compositing of similar materials should be valid, so long as the acceptance limit for the test is adjusted downward to account for multiple materials being tested.

Response—Under the proposed rule, testing of component parts is an option when the component part is not altered during the process of assembling the finished product. If, during processing or assembly of the component part into the finished product, there is a chance that the component part could be contaminated or changed in such way that it is no longer compliant with the applicable safety rule(s), the manufacturer or importer should test the finished product, or its component parts, for compliance. Component part samples must be identical in all material respect to the component parts that will be used in the finished product. Component part testing of composited samples is acceptable provided the subsequent procedures will ensure that no failure to comply with a limit will go undetected. An example of an acceptable procedure is provided in CPSC–CH–E1003–09, Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings (available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/CPSC-CH-E1003-09.pdf*). We note that the criteria for lead content refer to the percentage of lead (calculated as lead metal) by weight of the total nonvolatile content of the paint or the weight of the dried paint film. Thus, the commenter's concern about evaporation of solvents from the paint increasing the lead concentration is unwarranted.

Additionally, under the proposed rule, finished product certifiers would have to maintain documents that demonstrate the traceability of certified materials in their products.

Comment 6—Several commenters noted that many component parts are not children's products until they are actually incorporated into a completed product. To these commenters, mandatory third party testing of all component parts that might be used in a children's product would be inefficient and wasteful. The commenters added that component part suppliers often do not know whether their component part will be used in the manufacture of other products.

Response—Under the proposal, a component part supplier may, but is not required to, subject its component part to third party testing and/or certification (assuming that the component part becomes part of a children's product). Similarly, manufacturers may, but are not required to, decide whether to purchase third party certified component parts from a supplier or whether to conduct third party testing and certification at the component part or finished product level. The proposed rule would not require third party testing or certification of component parts that are not used in children's products.

Comment 7—One commenter suggested that reasonable attestations from raw material manufacturers should be used in determinations on whether or not to test for phthalates. The commenter contended that third party tests by an accredited third party conformity assessment body should not be required. The commenter argued that, as part of a reasonable testing program, assurances provided by suppliers that plastic resins meet Food and Drug Administration (FDA) requirements should be considered as a basis to reduce the amount of periodic testing of toys or children's products, or component parts thereof, made from food-grade plastics. Further, the commenter suggested excluding the limits or requirement for testing for inaccessible component parts that may contain phthalates, similar to the exclusion for lead.

Response—We will consider these comments as part of any rulemaking activity for phthalates. However, neither section 14 of the CPSA nor section 108 of the CPSIA contains an exclusion for products that happen to meet FDA requirements.

Comment 8—Many commenters mentioned that manufacturers with very small production quantities would not be able to afford the destructive testing of a significant percentage of their production. Another commenter mentioned that destructive testing of gold jewelry is very expensive and that component part testing would alleviate that situation.

Response—The concerns of these commenters are addressed by the proposed rule, since component part testing can eliminate or reduce the need to test the finished product.

Comment 9—One commenter stressed that some component parts require testing of the completed product to evaluate compliance to the applicable rules.

Response—We agree with the comment. Many CPSC rules may require testing of a finished product. The proposed rule would not disturb any preexisting regulation that requires testing of a finished product.

Comment 10—One commenter said that precertified component parts also should be allowed as part of a reasonable testing program. The supplier would undertake third party testing and supply a copy of its certificate to the manufacturer. No additional testing on the component parts should be required.

Response—A manufacturer may rely upon a supplier's certification of a component part, provided that the component part is not altered during the assembly of the finished product. The manufacturer must exercise due care to determine that the supplier's component part certificate is not false or misleading in any material respect and must maintain traceability of component parts. The person required to issue a product certificate under section 14(a) of the CPSA for the finished product is ultimately responsible for the finished product's compliance to CPSC's safety rules.

Comment 11—One commenter stated that component part testing with production process control measures should be acceptable as verification to issue a general certificate of conformity.

Response—Proposed part 1109 would allow component part testing in appropriate circumstances. Requirements for a reasonable testing program sufficient to support a general certificate of conformity are addressed in the proposed rule titled "Testing and Labeling Pertaining to Product Certification," which is published

elsewhere in this issue of the **Federal Register** as proposed 16 CFR part 1107.

## V. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The proposed rule contains the Commission's conditions and requirements for testing of component parts of consumer products to support, in whole or in part, a finished product certificate that a consumer product complies with all applicable rules, bans, standards, and regulations, pursuant to section 14(a) of the CPSA and to ensure continued compliance pursuant to section 14(d) of the CPSA. As such, the proposed rule is not expected to have an adverse impact on the environment. The rule falls within the categorical exclusion in 16 CFR 1021.5(b)(2) for product certification rules. Accordingly, no environmental assessment or environmental impact statement is required.

## VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. The RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. 5 U.S.C. 603. The proposed rule defines conditions upon which the finished product certifier (currently the manufacturer or importer) can rely upon tests conducted on component parts of the product, rather than on the whole product, as the basis for the certification. This section discusses the impact that the draft proposed rule would have on small businesses.

In the absence of component part testing, certifiers of children's products would have to obtain test results for each component part of a consumer product even if the same component part were used in more than one consumer product. Component part testing will allow certifiers to rely upon tests conducted on the component part to certify that the finished product meets the applicable safety rules. Because testing costs are relatively fixed, component part testing allows the cost of the testing to be spread over more units of finished goods. This can significantly reduce the cost of testing and certifying products.

For example, a manufacturer that uses the same paint on five different products could obtain test results for the paint and use those results to certify that the same paint, when used on each of the five products, complies with the applicable safety rules (provided that nothing is added to the paint after the testing or during the application process). Without component part testing, the manufacturer would have to test the paint on each product on which it is used, which would increase the costs of testing by a factor of about 5.

Because component part testing can significantly reduce the cost of testing, the proposed rule would reduce, but not eliminate, the economic impact that the testing and certification requirements of the CPSIA may have on manufacturers and importers of consumer products subject to consumer product safety rules.

## VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The proposed rule would require certifiers to maintain records of the source of component parts tested for compliance to ensure traceability of component parts. If a component part is tested for certification by a party other than the manufacturer or importer of the finished product (the finished product certifier), the proposed rule would require that the testing party provide certain documentation or records to the certifier. These records include identification of a lot or batch number for which the testing applies; what applicable rules, bans, standards, and regulations it tested for on each component part tested; what testing methods and sampling protocols were used; the date or date range the component part was tested; the results of each test on a component part; if the product was tested by a third party conformity assessment body, identification of such third party conformity assessment body, and a copy of the original test results; and a certification that all testing was performed in compliance with section 14 of the CPSA and part 1107 of this title, as applicable.

These records are similar to the records that a manufacturer would be required to develop and maintain under the proposed rule on "Testing and Labeling Pertaining to Product Certification" (which appears elsewhere in this issue of the **Federal Register**). Most of the records concern the documentation of the test plan and test results for the component part, which would be required whether the component part was tested as part of the finished product or apart from the finished product. Even without component part testing, certifiers would be expected to maintain records regarding the lot, batch, or other information identifying the component parts used, since changes in the component part or the sourcing of the component part would constitute a material change and trigger requirements for additional testing.

The proposed component part testing rule may shift the responsibility for preparing the records, especially those documenting the test results, in some cases, from the manufacturer or importer of the consumer product to the manufacturer or supplier of the component part.

We do not know how many manufacturers or wholesalers will voluntarily test component parts for manufacturers of children's products. Component part manufacturers that are not themselves manufacturers of children's products could voluntarily obtain the required third party testing for children's product manufacturers who use their component parts. Such manufacturers might include textile manufacturers, paint and coating manufacturers, manufacturers of buttons and other fasteners, and manufacturers of plastics material and resin. The 2007 Economic Census showed that there were 5,220 establishments that were engaged in manufacturing these materials or component parts. However, the number who would actually obtain

third-party testing will probably be a small subset of these establishments.

At this time, there is no clear basis for estimating the recordkeeping burden on component part suppliers that voluntarily obtain the third party testing. We note that, in the proposed rule titled, "Testing and Labeling Pertaining to Product Certification" (which appears elsewhere in this issue of the **Federal Register**), we tentatively estimated that the total recordkeeping burden for that proposal with respect to the continued testing requirements of the CPSIA would be 200,000 to 300,000 hours annually. Some of this burden cannot be shifted to the component part suppliers because some tests must be performed on the whole product. In other cases, the burden will not be shifted because the component part is unique to the product or the manufacturer or because the component part supplier declines to obtain the third party testing. However, if we assume that eventually 10 percent of the total testing were ultimately shifted to the component part suppliers, then the recordkeeping burden shifted would be approximately 20,000 to 30,000 hours. The total cost of the burden shifted would be $0.9 million to 1.5 million. This estimate was obtained by multiplying the total hour burden estimates by $48.91, which is the total hourly compensation for private sector workers in management, professional, and related occupations. The actual cost burden would depend upon the extent to which component suppliers are willing to voluntarily obtain the third party testing.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the CPSC has submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to fax comments regarding information collection by June 21, 2010, to the Office of Information and Regulatory Affairs, OMB (*see* **ADDRESSES**).

## VIII. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the CPSA only addresses the preemptive effect of consumer product safety standards under the CPSA. The current rule is not a consumer product safety standard under the CPSA. Accordingly, this rule does not fall within the scope of any provision of any act enforced by the Commission that grants preemptive effect to rules.

## IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission intends that any final rule based on this proposal would become effective 180 days after the date of publication of a final rule in the **Federal Register**. This should allow time for any product changes needed for testing of component parts and for implementation of the component part testing requirements.

## X. Request for Comments

Although the CPSC has, on several occasions, invited and received comments on component part testing, the issuance of this proposed rule begins a rulemaking proceeding under sections 3 and 102 of the CPSIA which will establish the conditions and requirements for testing of component parts of consumer products to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations. We invite interested persons to submit comments on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking.

## List of Subjects in 16 CFR Part 1109

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Toys.

Accordingly, the Commission proposes to add 16 CFR part 1109 to read as follows:

# PART 1109—CONDITIONS AND REQUIREMENTS FOR TESTING COMPONENT PARTS FOR COMPLIANCE WITH ALL APPLICABLE RULES, BANS, STANDARDS OR REGULATIONS

### Subpart A—General Conditions and Requirements

Sec.
1109.1 Scope.
1109.2 Purpose.
1109.3 Applicability.
1109.4 Definitions.
1109.5 Conditions, requirements, and effects generally.

### Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

1109.11 Component part testing for paint and other surface coatings.
1109.12 Component part testing for lead content of children's products.
1109.13 Component part testing for phthalates in children's toys and child care articles.
1109.14 Composite testing.

**Authority:** Secs. 3 and 102, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063.

## Subpart A—General Conditions and Requirements

### § 1109.1 Scope.

This part applies to all tests of component parts of consumer products where the test results are used to support a certificate of compliance issued pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or where the tests are otherwise required or permitted by section 14 of the CPSA. The requirements of this subpart A apply to the consumer products, component parts, and chemicals subject to subpart B of this part.

### § 1109.2 Purpose.

The purpose of this part is to set forth the conditions and requirements under which the Commission will require or accept the results of testing of component parts of consumer products, instead of the entire consumer product, to meet, in whole or in part, the testing and certification requirements of sections 14(a), 14(b), and 14(d) of the CPSA.

### § 1109.3 Applicability.

The provisions of this part apply to all manufacturers, importers, and private labelers, and to the manufacturers and suppliers of component parts who are responsible for certifying consumer products under section 14(a) of the CPSA and continued compliance under section 14(d) of the CPSA or who are responsible for testing component parts of consumer products to support a certificate of compliance under section 14(a) of the CPSA or to comply with continuing testing requirements under section 14(d) of the CPSA.

### § 1109.4 Definitions.

The following definitions apply to this part:

(a) *Certifier* means a firm that is either a finished product certifier or a component part certifier as defined in this section.

(b) *Component part* means any part of a consumer product, including a children's product, that either must or may be tested separately from a finished consumer product to assess the consumer product's ability to comply with a specific rule, ban, standard, or regulation enforced by the CPSC. Within the same consumer product, which component parts will have to be tested

may vary, depending on the test being conducted.

(c) *Component part certifier* means a firm that certifies component parts to be used in consumer products as complying with one or more rules, bans, standards, or regulations enforced by the CPSC pursuant to part 1109.

(d) *CPSA* means the Consumer Product Safety Act.

(e) *CPSC* means the Consumer Product Safety Commission.

(f) *CPSIA* means the Consumer Product Safety Improvement Act of 2008.

(g) *Due care* means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

(h) *Finished product certifier* means a firm responsible for certifying compliance of a consumer product with all applicable rules, bans, standards, and regulations enforced by the CPSC, pursuant to part 1110 of this chapter.

(i) *Identical in all material respects* means there is no difference with respect to compliance to the applicable rules between the samples and the finished product.

(j) *Paint* means any type of surface coating that is subject to part 1303 of this chapter or section 4.3.5.2 of ASTM F 963.

(k) *Testing party* means the firm (including, but not limited to, domestic manufacturers, foreign manufacturers, importers, private labelers, third party conformity assessment bodies, or component part suppliers) who tests a consumer product, or any component part thereof, for compliance, in whole or in part, with any applicable rule, ban, standard, or regulation enforced by the CPSC.

(l) *Third party conformity assessment body* means a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products.

(m) *Traceable* means the ability of a certifier to identify the source of a component part of a consumer product, including the name and address of the supplier of the component part and, if different, the manufacturer of the component part.

**§ 1109.5 Conditions, requirements, and effect generally.**

(a) *Component part testing allowed.* A certifier may certify compliance of a consumer product with all applicable rules, bans, standards, and regulations as required by section 14(a) of the CPSA, and may ensure continued compliance of children's products pursuant to section 14(d) of the CPSA, based, in whole or in part, on testing of a component part of the consumer product conducted by the certifier and/or a testing party if the following requirements are met:

(1) Testing of the component part is required or sufficient to assess compliance, in whole or in part, of the consumer product with the applicable rule, ban, standard, or regulation. Any doubts about whether testing one or more component parts of a consumer product can help to assess whether the entire product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the entire product; and

(2) The component part tested is identical to the component parts used in the finished consumer product in all material respects. To be identical in all material respects to a component part for purposes of supporting a certification of a children's product to the applicable content limit, a sample need not necessarily be of the same size, shape, or finish condition as the component part of the finished product; rather, it may consist of any quantity that is sufficient for testing purposes and in any form that has the same content as the component part of the finished product. A certifier must exercise due care to ensure that no change in the component parts after testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation. Manufacturers of finished consumer products must exercise due care in the proper management and control of all raw materials, component parts, subassemblies, and finished goods for any factor that could affect the finished product's compliance with all applicable rules. The manufacturer must exercise due care that the manufacturing process does not add a prohibited chemical from an untested source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product.

(b) *Limitation.* A certifier must not rely on testing of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the entire consumer product to assess compliance.

(c) *Test method and sampling protocol.* Regardless of which entity performs component part testing or selects samples for component part testing, both certifiers and testing parties must ensure that the required test methods and sampling protocols, as set forth in part 1107 of this chapter, as well as any more specific applicable rules, bans, standards, regulations, or testing protocols, are used to assess compliance of the component part.

(d) *Timing.* Subject to any more specific rule, ban, standard, or regulation, component part testing may occur before final assembly of a consumer product provided that nothing in the final assembly of the consumer product can cause the component part or the final consumer product to become noncompliant.

(e) *Traceability.* Certifiers must not rely on component part testing conducted by another testing party unless such component parts are traceable.

(f) *Documentation by testing party.* Unless the testing party is the finished product certifier, a testing party must provide the following documentation to a certifier either in hard copy or electronically:

(1) Identification of the component part tested;

(2) Identification of a lot or batch number for which the testing applies;

(3) Identification of the applicable rules, bans, standards, and regulations it tested for on each component part tested;

(4) Identification of the testing methods and sampling protocols used;

(5) The date or date range when the component part was tested;

(6) The results of each test on a component part; and

(7) If the product was tested by a third party conformity assessment body, regardless of whether it was required because the product is a children's product or whether the testing party chose to use such third party conformity assessment body, identification of such third party conformity assessment body, a copy of the original test results, and a certification that all testing was performed in compliance with section 14 of the CPSA and part 1107 of this chapter.

(g) *Effect of Voluntary Certification by Component Part Certifiers.* (1) The Commission will consider any certificate issued by a component part certifier in accordance with this part to be a certificate issued in accordance with section 14(a) of the CPSA. A component part certificate must contain all of the information required by part 1110 of this chapter.

(2) Any person who elects to certify compliance of a component part with an applicable rule must assume all responsibilities of a manufacturer under part 1107 of this chapter with respect to that component part's compliance to the applicable rule.

(h) *Certification by Finished Product Certifiers.* (1) A finished product certifier must exercise due care in order

to rely, in whole or in part, on a component part certificate issued by a component part certifier or on component part testing by a testing party as the basis for a finished product certificate. If a finished product certifier fails to exercise due care in its reliance on a certificate for a component part, then the Commission will not consider the finished product certifier to hold a component part certificate issued in accordance with section 14(a) of the CPSA. Exercising due care in this context means taking the steps a prudent and competent person would take to conduct a reasonable review of a component part certificate and to address any concern over its validity. Such steps may vary according to the circumstances.

(2) A finished product certifier must not rely on component part testing by a testing party or component part certifier unless it receives the documentation under paragraph (f) of this section from the component part certifier or testing party. The Commission may consider a finished product certifier who does not obtain such documentation before certifying a consumer product to have failed to exercise due care.

(3) Any certification of a finished product based, in whole or in part, on component part testing performed by a component part certifier or a testing party must:

(i) Identify both the corresponding documentation required in paragraph (f) of this section and any report provided by a third party conformity assessment body on which the consumer products certification is based; and

(ii) Certify that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product's ability to comply with all applicable rules, bans, standards, and regulations.

(i) *Recordkeeping requirements.* All testing parties must maintain the documentation required in paragraph (f) of this section for 5 years. Additionally, all certifiers must maintain records to support the traceability of component part suppliers for as long as the corresponding product is produced or imported by the certifier and for 5 years thereafter. Test records must be maintained for 5 years. All records must be available in the English language. Finished product certifiers must maintain the records at the location within the United States specified in § 1110.11(d) of this chapter or, if the records are not maintained at the custodian's address, at a location within the United States specified by the custodian. The finished product certifier must make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

## Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

### § 1109.11 Component part testing for paint and other surface coatings.

(a) *Generally.* The Commission will permit certification of a product as being in compliance with the lead paint limit of part 1303 of this chapter or the content limits for paint on toys of section 4.3.5.2 of ASTM F 963 if, for each paint used on the product, the party that certifies the product either has obtained a test report or holds a paint certificate as described below and the following requirements are met:

(1) All testing must be performed on dry paint that is scraped off of a substrate for testing (the substrate used need not be of the same material as the material used in the finished product or have the same shape or other characteristics as the part of the finished product to which the paint will be applied);

(2) The tested paint is identical in all material respects to that used in production of the consumer product. The paint samples to be tested must have the same composition as the paint used on the finished product. However, a larger quantity of the paint may be tested than is used on the consumer product, in order to generate a sufficient sample size. The paint may be supplied to the testing laboratory either in liquid form or in the form of a dried film of the paint on any suitable substrate; and

(3) Documentation required by a testing party pursuant to § 1109.5(f) and the certificate required of certifiers under section 14(a) of the CPSA and § 1109.5(g) identifies each paint tested by color, location, formulation, or other characteristic, the supplier of the paint and, if different, the manufacturer of the paint.

(b) *Test reports.* As part of its basis for certifying a children's product to the lead in paint limit, or other paint limit, a finished product certifier may rely on a test report showing passing test results for one or more paints used on the product, based on testing it commissioned from a third party conformity assessment body. The finished product certifier of the children's product must ensure that each paint sample sent to a third party conformity assessment body is identical in all material respects to that used on the finished product. Test reports must identify each paint tested by color, specification number, or other characteristic, as well as the manufacturer of the paint and the supplier of the paint (if different).

(c) *Paint certificates*—(1) *Children's products.* As part of its basis for certification of a children's product to the lead in paint limit or other paint limit, a finished product certifier may rely on a certificate from another person certifying that the paint complies with the lead limit. The paint certificate must be based on testing by a third party conformity assessment body of sample of one or more paints that are identical in all material respects to the paint used on the finished product. The paint certificate must identify all test reports underlying the certification.

(2) *Nonchildren's products.* For consumer products that are not children's products but are subject to paint limits (such as certain furniture items), a finished product certifier may base its certification on its own testing of each paint used on the product, on testing by any third party conformity assessment body, on paint certification(s) from any person, or on a combination of these methods.

(3) *Traceability.* Any person who certifies a product as complying with the lead paint limit or other paint limit must be able to trace each batch of paint that is used on the product to the paint supplier and, if different, the paint manufacturer.

(4) *Prevention of contamination subsequent to testing.* The finished product manufacturer must ensure that paint meeting the applicable limits when tested and certified is not later contaminated with lead from other sources before or during application to the product.

### § 1109.12 Component part testing for lead content of children's products.

(a) *Generally.* A certifier may rely on component part testing of each accessible component part of a children's product for lead content, where such component part testing is performed by a third party conformity assessment body, provided that:

(1) The determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the CPSIA is based on an evaluation of the finished product; and

(2) For each accessible component part of the product, the certifier either has a component part test report or a component part certificate.

(b) *Component part test reports.* As part of its basis for certification of a children's product to the lead content limit, a finished product certifier may

rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a third party conformity assessment body. Component part test reports must identify each component part tested, by part number or other specification, and the manufacturer and the supplier of the component part (if different).

(c) *Component part certificates.* As part of its basis for certifying that a children's product complies with the applicable lead content limit, a finished product certifier may rely on a certificate from another person certifying that a component part complies with the lead limit. The component part certificate must be based on testing by a third party conformity assessment body of a sample that is identical in all material respects to the component parts used in the finished product. The certificate pertaining to the component part must identify all test reports underlying the certification consistent with section 14 of the CPSA.

(d) *Certificates for the finished product.* The certificate accompanying the children's product must list each component part that was tested, by part number or other specification, and, for each such component part, identify the corresponding test report, paint certificate, or component part certificate on which a certification for the finished children's product is based.

**§ 1109.13 Component part testing for phthalates in children's toys and child care articles.**

(a) *Generally.* A finished product certifier may rely on component part testing of appropriate component parts of a children's toy or child care article for phthalate content if the finished product certifier is provided with a copy of the original test results obtained from the third party conformity assessment body or a component part certificate.

(b) *Component part test reports.* As part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a third party conformity assessment body. Component part test reports must identify each component part tested, by part number or other specification, and the component part's supplier and, if different, the component part's manufacturer.

(c) *Component part certificates.* As part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a certificate from another person certifying that a component part complies with the limit. The component part certificate must be based on testing by a third party conformity assessment body of a sample that is identical in all material respects to the component part used in the finished product. The component part certificate must identify all test reports underlying the certification consistent with section 14 of the CPSA. Any person who certifies a children's product as complying with the phthalate content limits must be able to trace each component part of the product to the component part's supplier and, if different, the component part's manufacturer.

(d) *Certificates for the finished product.* The certificate accompanying the children's product must list each component part required to be tested by part number or other specification and, for each such part, must identify the corresponding test report from a third party conformity assessment body on which the product's certification is based.

**§ 1109.14 Composite part testing.**

(a) *Paint and other surface coatings.* In testing paint for compliance with chemical content limits, testing parties may test a combination of different paint samples so long as they follow procedures ensuring that no failure to comply with the lead limits will go undetected (see paragraph (c) of this section). Testing and certification of composite paints must comply with § 1109.11.

(b) *Component parts.* Third party conformity assessment bodies may test a combination of component parts so long as they follow procedures ensuring that no failure to comply with the content limits will go undetected (see paragraph (c) of this section). Testing and certification of composite component parts for lead content must comply with § 1109.12. Testing and certification of composite component parts for phthalate content must comply with § 1109.13.

(c) *How to evaluate composite part testing.* When using composite part testing, only the total amount or percentage of the target chemical is determined, not how much was in each individual paint or component part. Therefore, to determine that each paint or component part is within the applicable limit, the entire amount of the target chemical in the composite is attributed to each paint or component part. If this method yields an amount of the target chemical that exceeds the limit applicable to any paint or component part in the composite sample, additional testing would be required to determine which of the paints or component parts, if any, fail to meet the applicable limit.

Dated: May 7, 2010.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2010–11370 Filed 5–19–10; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF JUSTICE

## Parole Commission

## 28 CFR Part 2

## Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Parole Commission proposes to amend a rule that implements its authority under the District of Columbia Youth Rehabilitation Act to set aside a conviction for a youth offender. The proposed rule specifies the Commission's authority to set aside a youth offender's misdemeanor conviction and describes the information the Commission examines in making such a determination, given that the misdemeanant only served a jail term for the offense without subsequent community supervision on parole or supervised release. In addition, the rule clarifies the Commission's policy for issuing a set-aside certificate for a youth offender who was formerly on supervised release and who was not reviewed for the set-aside certificate before the offender's sentence expired. The proposed rule adopts the Commission's established criteria for conducting set-aside reviews when a youth offender's parole term ends before such a review has been held.

**DATES:** Comments must be received by June 30, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification number USPC–2010–02 by one of the following methods:

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

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, 5550

Friendship Blvd., Chevy Chase, Maryland 20815.

3. *Fax:* (301) 492–5563.

**FOR FURTHER INFORMATION CONTACT:** Rockne Chickinell, Office of General Counsel, U. S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** The District of Columbia Youth Rehabilitation Act authorizes the Parole Commission to set aside a conviction for a deserving youth offender who has been committed under the Act. DC Code 24–906. The sentencing judge exercises similar authority for a youth offender if the judge sentenced the offender to probation. DC Code 24–906(e). Normally, the Commission reviews a youth offender's case for issuance of a set-aside certificate after the offender has served a period of community supervision on parole or supervised release following discharge from the commitment portion of the sentence. DC Code 24–906(a), (c), and (d) require the issuance of a set-aside certificate if the Commission terminates parole supervision or supervised release before the expiration of the committed youth offender's sentence. Under 24–906(b), the Commission also has the authority to exercise its discretion to set aside a committed youth offender's conviction if the youth offender's sentence expires before the unconditional discharge of the offender. This situation will normally arise when: (1) A youth offender's jail term for a misdemeanor conviction expires and the offender is discharged from the custody of the DC Department of Corrections without further supervision in the community; or (2) a youth offender is unconditionally discharged from parole supervision or supervised release and the Commission somehow did not review the case for early termination from supervision.

The Commission's rules presently do not address the agency's authority to grant a set-aside certificate to a youth offender who was sentenced only to a jail term for a misdemeanor offense, or a youth offender formerly on supervised release who was not reviewed for early termination from supervision before the supervised release term expired. *See* 28 CFR 2.106 and 2.208. The Commission has been carrying out its statutory authority to consider these offenders for set-aside certificates even in the absence of a regulation on this function. Given the gap in its rules on issuing set-aside certificates for youth misdemeanants who have not been on parole or supervised release, the Commission is proposing a revision of paragraph (a) in 28 CFR 2.208 to include a brief statement of the Commission's authority to issue a set-aside certificate after the youth offender's sentence expires and the information the Commission would consider in granting or denying the set-aside certificate. For former supervised releasees, the new rule proposes a cross-reference to § 2.106(f)(3), which describes the Commission's criteria for issuing a set-aside certificate *nunc pro tunc* for a youth offender who was on parole supervision and who was not reviewed for early termination from supervision (and the possible issuance of the set-aside certificate) before the expiration of the sentence.

**Executive Order 12866**

The U.S. Parole Commission has determined that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

**Regulatory Flexibility Act**

The proposed rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**Unfunded Mandates Reform Act of 1995**

The rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

**Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)**

This rule is not a "major rule" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

**The Proposed Rule**

Accordingly, the U.S. Parole Commission is proposing the following amendment to 28 CFR part 2.

## PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise § 2.208(a)(2) to read as follows:

**§ 2.208 Termination of a term of supervised release.**

(a) * * *

(2) Upon terminating supervision of a committed youth offender before the sentence expires, the Commission shall set aside the offender's conviction and issue a certificate setting aside the conviction instead of a certificate of discharge. The Commission may issue a set-aside certificate *nunc pro tunc* for a youth offender previously under supervised release on the sentence and who was not considered for early termination from supervision, using the criteria stated at § 2.106(f)(3). If the youth offender was sentenced only to a term of incarceration without any supervision to follow release, the Commission may issue a set-aside certificate after the expiration of the sentence. In such cases, the Commission shall determine whether to grant the set-aside certificate after considering factors such as the offender's crime, criminal history, social and employment history, record of institutional conduct, efforts at rehabilitation, and any other relevant and available information.

* * * * *

Dated: May 11, 2010.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2010–12023 Filed 5–19–10; 8:45 am]

BILLING CODE 4410–31–P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2700

### Simplified Proceedings

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the "Commission") is an independent adjudicatory agency that provides trials and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (the "Mine Act"). Trials are held before the Commission's Administrative Law Judges and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is proposing a rule to simplify the procedures for handling certain civil penalty proceedings.

**DATES:** Written and electronic comments must be submitted on or before June 21, 2010.

**ADDRESSES:** Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state "Comments on Simplified Proceedings" in the subject line and be sent to *mmccord@fmshrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 105(a) and (d) of the Mine Act, 30 U.S.C. 815(a) and (d), set forth dual filing procedures, which are reflected in subparts B and C of the Commission's Procedural Rules, 29 CFR part 2700. Under the dual filing procedures, a party may contest a citation or order before the Secretary has proposed a civil penalty for the alleged violation described in the citation or order. The procedures for this type of proceeding, referred to by the Commission as a "contest proceeding," are found in subpart B. In addition, a party may contest a civil penalty after a proposed penalty assessment has been issued. The procedures for this type of proceeding, referred to by the Commission as a "civil penalty proceeding," are found in subpart C.

Since 2006, the number of new cases filed with the Commission has dramatically increased. From 2000 through 2005, an average of approximately 2300 cases were filed with the Commission per year. In 2006 and 2007, between approximately 3000 and 4000 new cases were filed each year, while in 2008 and 2009, approximately 9200 cases were filed each year.

In order to deal with its burgeoning caseload, the Commission is considering various ways to streamline its processing of cases. One approach the Commission has explored is to simplify and streamline the procedures for handling certain civil penalty proceedings. The Commission anticipates that such simplified proceedings will likely reduce the amount of time between the docketing and disposition of a case. The Commission also anticipates that simplified proceedings will result in the expenditure of less time and resources by the parties who practice before the Commission.

The major differences between the simplified procedures set forth in the proposed rules ("Simplified Proceedings") and conventional procedures are that answers to petitions for assessment of penalty would not be not required; motions would be eliminated to the greatest extent practicable; early discussions among the parties and the Commission Administrative Law Judge ("Judge") would be required to narrow and define the disputes between parties; parties would be required to disclose certain materials early in the proceedings; discovery would not be permitted except as ordered by the Judge; interlocutory appeals would not be permitted; and post-hearing briefs would not be allowed, except as ordered by the Judge. Although the administrative process would be streamlined, hearings would remain full due process hearings as they are under conventional procedures.

### Eligibility

The Commission is proposing various characteristics to describe which cases might be eligible for Simplified Proceedings. Under the proposed rule, cases designated for Simplified Proceedings by the Chief Judge or the Judge's designee would not involve complex issues of law or fact and would generally include one or more of the following characteristics: (1) Limited number of citations; (2) an aggregate proposed penalty of not more than $15,000 per docket and not more than $50,000 per proceeding; (3) no citation or order issued under sections 104(b), 104(d), 104(e), 105(c), 107(a), 110(b), 110(c), or 111 of the Mine Act; (4) not involving a fatality; or (5) a hearing that is expected to take not more than one day.

The Commission encountered a practical problem in attempting to describe a dollar limit for cases eligible for Simplified Proceedings. In considering which cases are appropriate for Simplified Proceedings, it would be useful for the Commission to consider, at an early stage, all of the contested civil penalties that might be at issue in a single hearing. However, the Commission does not currently have access to information that would allow it to group contested civil penalties in such a fashion.

Under its current practice, the Department of Labor's Mine Safety and Health Administration ("MSHA") assesses a proposed civil penalty for each violation alleged in a citation after the citation has been terminated or 30 days after the citation was issued, whichever is sooner. Each mine is on a 30-day billing cycle. On the 30th day in the billing cycle, all violations that are ready to be assessed are included on a proposed penalty assessment form that is sent to the operator. Thus, a proposed penalty assessment form may include proposed penalties from more than one inspection, and proposed penalties from one inspection may be included on more than one proposed penalty assessment form.

The operator must indicate which penalties it wishes to contest on the proposed assessment form and return the form to MSHA within 30 days of receipt. The Secretary then files a petition for assessment of civil penalty with the Commission and attaches a copy of the proposed assessment form to the petition. The petition for assessment of civil penalty, with attached proposed penalty assessment, is typically the first document filed in a civil penalty proceeding.

The Commission plans to review each petition and proposed penalty assessment in its consideration of whether a case is appropriate for Simplified Proceedings. Under MSHA's current practice for grouping citations and proposed penalties in a proposed penalty assessment based upon a 30-day billing cycle, the Commission may not have a complete view of all of the contested penalties that may be relevant in a particular hearing.

The Commission requests suggestions regarding criteria that might be used to better group proposed penalties and the underlying citations and orders on a proposed penalty assessment form. In addition, the Commission seeks suggestions regarding an appropriate dollar demarcation for cases eligible for Simplified Proceedings, such as whether there should be a dollar limit per citation and/or a limit on the number of penalties that may be at issue in a case, and the amount that should constitute the dollar limit.

**Designation of Case for Simplified Proceedings**

The Commission proposes that a civil penalty proceeding would be designated for Simplified Proceedings by the Chief Judge or the Judge's designee. After a case has been designated for Simplified Proceedings under the proposed rule, the Commission would issue a notice of designation to the parties, which would also provide certain information, such as contact information for the Judge assigned to the case, including the Judge's e-mail address. In addition, parties would be required to file a notice of appearance providing specific contact information for the counsel or representative acting on behalf of the party, if that information has not already been provided. The operator would not be required to file an answer to the petition for assessment of civil penalty.

Even if a case has not been designated for Simplified Proceedings by the Chief Judge or the Judge's designee, under the proposed rule, any party would have the opportunity to request that a case be designated. The Commission proposes that the request would need to be in writing and state whether the request is opposed. The request should also address the characteristics specified in the rule that make the case appropriate for designation. If a request for designation is granted, under the proposed rule, the parties would be required to file and serve notices of appearance providing specific contact information unless such contact information had already been provided. Under the proposed rule, if a party requests Simplified Proceedings, the deadline for filing an answer to a petition for assessment of penalty would be suspended. If a request is denied, the time for filing an answer would begin to run upon issuance of the Judge's order denying the request.

**Discontinuance of Simplified Proceedings**

Under the proposed rules, if it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the assigned Judge could discontinue Simplified Proceedings upon the Judge's own motion or upon the motion of any party. A party would have the opportunity to move to discontinue the Simplified Proceedings at any time during the proceedings but no later than 30 days before the scheduled hearing. The moving party would be required to confer with the other parties and state in the motion if any other party opposes or does not oppose the motion. Parties opposing the motion would have eight business days after service of the motion to file an opposition. The Commission has proposed that if Simplified Proceedings were discontinued, the Judge would issue such orders as are necessary for an orderly continuation under conventional rules.

**Pre-Hearing Exchange of Information**

Under Simplified Proceedings, the Commission proposes that discovery would not be permitted except as ordered by the Judge. Rather than requiring the disclosure of documents and materials through discovery, the Commission has proposed a more expeditious means for disclosure through the mandatory exchange of documents and materials and through a pre-hearing conference. More specifically, the Commission proposes that within 30 calendar days after a case has been designated for Simplified Proceedings, each party would provide to all other parties copies of all documents, electronically stored information and tangible things that the disclosing party has and would use to support its claims or defenses. Materials required to be disclosed under the proposed rule would include, but would not be limited to, inspection notes, citation documentation, narratives, photos, diagrams, preshift and onshift reports, training documents, mine maps and witness statements (subject to the provisions of 29 CFR 2700.61). Under the proposed rule, as early as practicable after the parties received these materials, the Judge would order and conduct a pre-hearing conference. At the pre-hearing conference, the parties would discuss the following: settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. At the conclusion of the conference, the Judge would issue an order setting forth any agreements reached by the parties and would specify in the order the issues to be addressed by the parties at the hearing.

**Hearing**

The Commission has proposed that as soon as practicable after the conclusion of the pre-hearing conference, the Judge would hold a hearing on any issue that remained in dispute. The hearing would be a full due process hearing. Each party would present oral argument at the close of the hearing, and post-hearing briefs would not be permitted except by order of the Judge. The Judge would issue a written decision that constitutes the final disposition of the proceedings within 60 calendar days after the hearing. If the Judge announced a decision orally from the bench, it would be reduced to writing within 60 calendar days after the hearing.

**Miscellaneous**

The Commission has proposed conforming changes to Rule 5(c). The proposed changes to Rule 5(c) conform the contact information required in all proceedings with the contact information that would be required under Simplified Proceedings.

**Notice and Public Procedure**

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") do not apply to rules of agency procedure (*see* 5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on these proposed rules in order to assist the Commission in its deliberations regarding the adoption of final rules. The Commission will accept public comments until June 21, 2010.

The Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rule does not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act, 5 U.S.C. 801, is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this rule "does not substantially affect the rights or obligations of non-agency parties."

**List of Subjects in 29 CFR Part 2700**

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission proposes to amend 29 CFR part 2700 as follows:

## PART 2700—PROCEDURAL RULES

1. The authority citation for part 2700 continues to read as follows:

**Authority:** 30 U.S.C. 815, 820, 823, and 876.

2. Section 2700.5 is amended by revising paragraph (c) to read as follows:

### § 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address, business telephone number, cell telephone number if available, fax number if available, and e-mail address if available. Written notice of any change in contact information shall be given promptly to the Commission or the Judge and all other parties.

3. A new subpart J is added to read as follows:

### Subpart J—Simplified Proceedings

Sec.

2700.100 Purpose.
2700.101 Eligibility for Simplified Proceedings.
2700.102 Commission Commencement of Simplified Proceedings.
2700.103 Party Request for Simplified Proceedings.
2700.104 Discontinuance of Simplified Proceedings.
2700.105 Disclosure of Information by the Parties.
2700.106 Pre-hearing conference.
2700.107 Discovery.
2700.108 Hearing.
2700.110 Application.

## Subpart J—Simplified Proceedings

### § 2700.100 Purpose.

(a) The purpose of this Simplified Proceedings subpart is to provide simplified procedures for resolving civil penalty contests under the Federal Mine Safety and Health Act of 1977, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those that would otherwise apply in subparts A, C, G, H, and I of the Commission's rules of procedures are as follows.

(1) Answers to petitions for assessment of penalty are not required.

(2) Motions are eliminated to the greatest extent practicable.

(3) Early discussions among the parties and the Administrative Law Judge are required to narrow and define the disputes between the parties.

(4) The parties are required to provide certain materials early in the proceedings.

(5) Discovery is not permitted except as ordered by the Administrative Law Judge.

(6) Interlocutory appeals are not permitted.

(7) The administrative process is streamlined, but hearings will be full due process hearings. The parties will argue their case orally before the Judge at the conclusion of the hearing instead of filing briefs. In many instances, the Judge will render a decision from the bench.

### § 2700.101 Eligibility for Simplified Proceedings.

Cases designated for Simplified Proceedings will not involve complex issues of law or fact and will generally include one or more of the following characteristics:

(a) Limited number of citations to be determined by the Chief Judge.

(b) An aggregate proposed penalty of not more than $15,000 per docket and not more than $50,000 per proceeding,

(c) No citation or order issued under sections 104(b), 104(d), 104(e), 105(c), 107(a), 110(b), 110(c), or 111 of the Mine Act,

(d) Not involving a fatality, or

(e) A hearing that is expected to take not more than one day.

### § 2700.102 Commission Commencement of Simplified Proceedings.

(a) *Designation.* Upon receipt of a petition for assessment of penalty, the Chief Administrative Law Judge, or designee, has the authority to designate an appropriate case for Simplified Proceedings.

(b) *Notice of designation.* After a case has been designated for Simplified Proceedings, the Commission will issue a Notice of Designation for Simplified Proceedings. The Notice will inform parties that the case has been designated for Simplified Proceedings, state the name and contact information for the Commission Administrative Law Judge assigned to the case, provide instructions for filing a notice of appearance in the Simplified Proceedings, and state that the operator need not file an answer to the petition for assessment of penalty. The Commission will send the notice of designation to the parties' addresses listed on the petition for assessment of penalty.

(c) *Notice of appearance.* Unless the contact information described in this paragraph has already been provided to the Judge, within 15 calendar days after receiving a notice of designation, the parties shall file notices of appearance with the assigned Judge. Each notice of appearance shall provide the following information for the counsel or representative acting on behalf of the party: name, address, business telephone number, cell telephone number if available, fax number if available, and e-mail address if available. Notices of appearance shall be served on all parties in accordance with the provisions of § 2700.7.

(d) *Time for filing an answer under Subpart C.* If a case has been designated for Simplified Proceedings, the deadline for filing an answer under § 2700.29 is suspended.

### § 2700.103 Party Request for Simplified Proceedings.

(a) *Party request.* Any party may request that a case be designated for Simplified Proceedings. The request must be in writing and should address the characteristics specified in § 2700.101. The request must be filed with the Commission in accordance with the provisions of § 2700.5 and served on all parties in accordance with the provisions of § 2700.7. The requesting party shall confer or make reasonable efforts to confer with the other parties and shall state in the request if any other party opposes or does not oppose the request. Parties opposing the request shall have eight business days after service of the motion to file an opposition.

(b) *Judge's ruling on request.* The Chief Administrative Law Judge or the Judge assigned to the case may grant a party's request and designate a case for Simplified Proceedings at the Judge's discretion.

(c) *Notice of appearance.* Unless the contact information described in this paragraph has already been provided to the Judge, within 15 calendar days after receiving an order granting a request for Simplified Proceedings, the parties shall file notices of appearance with the Judge. Each notice of appearance shall

provide the following information for the counsel or representative acting on behalf of the party: name, address, business telephone number, cell telephone number if available, fax number if available, and e-mail address if available. Notices of appearance shall be served on all parties in accordance with the provisions of § 2700.7.

(d) *Time for filing an answer under Subpart C.* If a party has requested Simplified Proceedings, the deadline for filing an answer under § 2700.29 is suspended. If a request for Simplified Proceedings is denied, the period for filing an answer will begin to run upon issuance of the Judge's order denying Simplified Proceedings.

**§ 2700.104 Discontinuance of Simplified Proceedings.**

(a) *Procedure.* If it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the Judge assigned to the case may, upon motion by any party or upon the Judge's own motion, discontinue Simplified Proceedings and order the case to continue under conventional rules.

(b) *Party motion.* At any time during the proceedings but no later than 30 days before the scheduled hearing, any party may move that Simplified Proceedings be discontinued and that the matter continue under conventional procedures. A motion to discontinue must explain why the case is inappropriate for Simplified Proceedings. The moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion. Parties opposing the motion shall have eight business days after service of the motion to file an opposition.

(c) *Ruling.* If Simplified Proceedings are discontinued, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

**§ 2700.105 Disclosure of Information by the Parties.**

Within 30 calendar days after a case has been designated for Simplified Proceedings, each party shall provide to all other parties copies of all documents, electronically stored information and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. Any material or object that cannot be copied, or the copying of which would be unduly burdensome, shall be described and its location specified. Materials required to be disclosed include, but are not limited to, inspection notes, citation documentation, narratives, photos, diagrams, preshift and onshift reports, training documents, mine maps, witness statements (subject to the provisions of 29 CFR 2700.61), and written opinions of expert witnesses, if any. If any items are withheld from disclosure on grounds of privilege, the disclosing party shall provide a log describing each item and stating the reason(s) why it was not produced.

**§ 2700.106 Pre-hearing conference.**

(a) *When held.* As early as practicable after the parties have received the materials set forth in § 2700.105, the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, by telephone, or electronic means.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Within a time determined by the Judge during the pre-hearing conference, the parties must provide each other with documents or materials intended for submission as exhibits at the hearing that have not already been provided in accordance with the provisions of § 2700.105. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties and will specify in the order the issues to be addressed by the parties at hearing.

**§ 2700.107 Discovery.**

Discovery will only be allowed under the conditions and time limits set by the Judge.

**§ 2700.108 Hearing.**

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart G of these rules, except for §§ 2700.56, 2700.57, 2700.58, 2700.59, 2700.65, and 2700.67, which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is relevant, and not unduly repetitious or cumulative. Testimony will be given under oath or affirmation. The parties are reminded that the Federal Rules of Evidence do not apply in Commission proceedings. Any evidence not disclosed as required by sections 2700.105 and 2700.106(b), including the testimony of witnesses not identified pursuant to section 2700.106(b), shall be inadmissible at the hearing, except where extraordinary circumstances are established by the party seeking to offer such evidence.

(d) *Court reporter.* A court reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* The Judge shall make a decision that constitutes the final disposition of the proceedings within 60 calendar days after the hearing. The decision shall be in writing and shall include all findings of fact and conclusions of law; the reasons or bases for them on all the material issues of fact, law, or discretion presented by the record; and an order. If a decision is announced orally from the bench, it shall be reduced to writing within 60 calendar days after the hearing. An order by a Judge approving a settlement proposal is a decision of the Judge.

**§ 2700.109 Review of Judge's decision.**

After the issuance of the Judge's written decision, any party may petition the Commission for review of the Judge's written decision as provided for in subpart H.

**§ 2700.110 Application.**

The rules in this subpart will govern proceedings before a Judge in a case designated for Simplified Proceedings under §§ 2700.102 and 2700.103. The provisions of subparts A and I apply to Simplified Proceedings when consistent with these rules in subpart J. The provisions of subpart C apply to Simplified Proceedings except for § 2700.29, which does not apply. The provisions of subpart G apply to Simplified Proceedings except for §§ 2700.56, 2700.57, 2700.58, 2700.59, 2700.65, and 2700.67, which do not apply. The provisions of subpart H apply to Simplified Proceedings except for § 2700.76, which does not apply. The provisions of subparts B, D, E and F do not apply to Simplified Proceedings.

Dated: May 11, 2010.

**Mary Lu Jordan,**

*Chairman, Federal Mine Safety and Health Review Commission.*

[FR Doc. 2010–11739 Filed 5–19–10; 8:45 am]

BILLING CODE 6735–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9 and 63

**[EPA–HQ–OAR–2010–0239; FRL–9143–5]**

**RIN 2060–AP48**

## National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category and Addition to Source Category List for Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of public comment period.

**SUMMARY:** On April 28, 2010, EPA published a proposed rule for mercury emissions from the gold mine ore processing and production area source category. We are announcing an extension of the public comment period to June 28, 2010.

**DATES:** Submit comments on or before June 28, 2010.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA EPA–HQ–OAR–2010–0239, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0239. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hardcopy at the Air and Radiation Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck French, Metals and Minerals Group, Sectors Policies and Programs Division (D243–02), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7912; facsimile number (919) 541–3207; electronic mail address *french.chuck@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** issued on April 28, 2010, when EPA published the proposed rule (75 FR 22470). Several parties requested that EPA extend the comment period. EPA has granted this request and is extending the comment period to June 28, 2010. To submit comments, or access the official public docket, please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of the April 28, 2010 (75 FR 22470) **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### List of Subjects in 40 CFR Parts 9 and 63

Environmental protection, Air pollution control, Hazardous substances, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: May 14, 2010.

**Gina McCarthy,**

*Assistant Administrator.*

[FR Doc. 2010–12099 Filed 5–19–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 52

**[EPA-HQ-OAR-2003-0064, FRL-9151-3]**

**RIN 2060-AP80**

## Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

*Correction*

Proposed Rule document 2010–11578 was inadvertently published in the Rules and Regulations section of the issue of May 14, 2010, beginning on page 27191. It should have appeared in the Proposed Rules section.

[FR Doc. C1–2010–11578 Filed 5–19–10; 8:45 am]

BILLING CODE 1505–01–D

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 49**

**[FAR Case 2009–031; Docket 2010-0090, Sequence 1]**

**RIN 9000–AL56**

## Federal Acquisition Regulation; FAR Case 2009–031, Terminating Contracts

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide clarification to the prescription for the FAR clause at 52.249–1, Termination for Convenience of the Government (Fixed Price) (Short Form), located in FAR 49.502(a), to apprise contracting officers that there are alternative clauses that can be used for terminations up to the simplified acquisition threshold. In addition, references to the FAR clauses at 52.212–4 and 52.213–4 are added in the prescription for FAR 52.249–1 at FAR 49.502(a) and in FAR 49.002, Applicability.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before July 19, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR Case 2009–031 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–031" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–031". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–031" on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions*: Please submit comments only and cite FAR Case 2009–031, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082 for clarification of content. Please cite FAR case 2009–031. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Defense Contract Management Agency (DCMA) submitted a request for revisions to FAR part 49 and the associated FAR clauses in 52.549 regarding termination of contracts. As a result, the Councils are proposing to amend FAR 49.502(a) to clarify when the FAR clause at 52.249–1, Termination for Convenience of the Government (Fixed Price) (Short Form), is used.

The Councils believe that clarification is needed in the prescription for the clause, to apprise contracting officers that there are alternative clauses that can be used for terminations up to the simplified acquisition threshold. The language in FAR 49.002 is revised to include a reference to FAR 12.403 and the language at FAR 49.502(a) is revised to include references to the FAR clauses at 52.212–4, Contract Terms and Conditions—Commercial Items, and at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other than Commercial Items). These clauses should be used for the majority of simplified acquisition terminations. However, the FAR clause at 52.249–1 may be appropriate in certain situations where these two clauses are not applicable.

The FAR clauses at FAR 52.212–4 (basic clause) and 52.213–4 allow for the contractor to be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination for convenience, plus reasonable charges the contractor can demonstrate to the satisfaction of the Government using its standard record keeping system have resulted from the termination. There is no need for partial payments under these circumstances.

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

### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this proposed rule merely clarifies existing FAR policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009–031) in all correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

**List of Subjects in 48 CFR Part 49.**

Government procurement.

Dated: May 14, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 49 as set forth below:

## PART 49—TERMINATION OF CONTRACTS

1. The authority citation for 48 CFR part 49 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**49.002 Applicability.**

2. Amend section 49.002 by removing from paragraph (a) "(see also 13.302–4)" and adding "(see also 12.403 and 13.302–4)" in its place.

3. Amend section 49.502 by revising paragraph (a)(1) to read as follows:

**49.502 Termination for convenience of the Government.**

(a) *Fixed-price contracts that do not exceed the simplified acquisition threshold (short form)*—(1) *General use.* The contracting officer shall insert the clause at 52.249–1, Termination for

Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed the simplified acquisition threshold, except—

(i) If use of the clause at 52.249–4, Termination for Convenience of the Government (Services) (Short Form) is appropriate;

(ii) In contracts for research and development work with an educational or nonprofit institution on a no-profit basis;

(iii) In contracts for architect-engineer services;

(iv) If one of the clauses prescribed or cited at 49.505(a) or (c), is appropriate; or

(v) When the clause at 52.212–4 or 52.213–4 is used. (See 12.403(a) or 13.302–5(d)(1)).

* * * * *

[FR Doc. 2010–12136 Filed 5–19–10; 8:45 am]

BILLING CODE 6820–EP–S

# Notices

Federal Register

Vol. 75, No. 97

Thursday, May 20, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Request for Extension and Revision of a Currently Approved Information Collection Under the Clear Title Program

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection in support of the reporting and recordkeeping requirements under the "Clear Title" regulations as authorized by section 1324 of the Food Security Act of 1985, as amended (Act). This approval is required under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** We will consider comments that we receive by July 19, 2010.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E-Mail: comments.gipsa@usda.gov.*
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instructions for submitting comments.

*Instructions:* All comments should be identified as "P&SP, Clear Title Information Collection," and should reference the date and page number of this issue of the **Federal Register**. Information collection package and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604 during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the Management and Budget Services Staff of GIPSA at (202) 720–7486 to arrange to inspect comments.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the information collection activities and the use of the information, contact Catherine Grasso by telephone at (202) 720–7201, or by e-mail at *Catherine.M.Grasso@usda.gov.*

**SUPPLEMENTARY INFORMATION:** GIPSA administers the Clear Title Program under the Act (7 U.S.C. 1631) for the Secretary of Agriculture (Secretary). Regulations implementing the Clear Title Program require that States implementing a central filing system for notification of liens on farm products have such systems certified by the Secretary. These regulations are contained in 9 CFR 205, "Clear Title—Protection for Purchasers of Farm Products." Nineteen States have certified central filing systems currently.

*Title:* "Clear Title" Regulations to implement section 1324 of the Food Security Act of 1985.

*OMB Number:* 0580–0016.

*Expiration Date of Approval:* February 28, 2011.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The information is needed to carry out the Secretary's responsibility for certifying a State's central filing system under section 1324 of the Act. Section 1324 of the Act enables States to establish central filing systems to notify potential buyers, commission merchants, and selling agents of security interests (liens) against farm products. The Secretary has delegated authority to GIPSA for certifying these systems. Currently, 19 States have certified central filing systems. The purpose of this notice is to solicit comments from the public concerning our information collection.

*Estimate of Burden:* Public reporting and recordkeeping burden for this collection of information is estimated to be 5 to 40 hours per response (amendments to certified systems require less time, new certifications require more time).

*Respondents (Affected Public):* States seeking certification of central filing systems to notify buyers of farm products of any mortgages or liens on the products.

*Estimated Number of Respondents:* Less than 1 per year. Since 2004, one State requested an amendment to its certification. The Food Conservation and Energy Act of 2008, otherwise known as the 2008 Farm Bill, however, amended the Act to allow States to maintain master debtor lists with social security numbers or taxpayer identification numbers that are encrypted for security purposes and how the encrypted list may be distributed. This amendment and subsequent regulations may result in a larger number of amendments in the next several years.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5–40 hours.

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), GIPSA specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

**Authority:** 44 U.S.C. 3506 and 5 CFR 1320.8.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2010–12002 Filed 5–19–10; 8:45 am]

BILLING CODE 3410–KD–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[AMS–CN–10–0038, CN–10–002]**

### Cotton Classing, Testing and Standards: Notice of Request for an Extension and Revision to a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension and revision to the currently approved information collection Cotton Classing, Testing, and Standards.

**DATES:** Comments received by July 19, 2010 will be considered.

**ADDITIONAL INFORMATION OR COMMENTS:** Interested persons are invited to submit written comments concerning this proposal to Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through *http://www.regulations.gov.* All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection through *http://www.regulations.gov* or at Cotton and Tobacco Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250 during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224, telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail at *Shethir.riva@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Cotton Classing, Testing, and Standards.

*OMB Number:* 0581–0008.

*Expiration Date of Approval:* December 30, 2010.

*Type of Request:* Extension and Revision of a Currently Approved Information Collection.

*Abstract:* Information solicited is used by the USDA to administer and supervise activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The information requires personal data, such as name, type of business, address, and description of classification services requested. These programs are conducted under the United States Cotton Standards Act (7 U.S.C. 51b), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 473c), and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622h) and regulations appear at 7 CFR part 28.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies.

The information collected is used only by authorized employees of the USDA, AMS. The cotton industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

*Respondents:* Cotton merchants, warehouses, and gins.

*Estimated Number of Respondents:* 893.

*Estimated Number of Responses per Respondent:* 2.01.

*Estimated Number of Responses:* 1,793.

*Estimated Total Annual Burden on Respondents:* 136.15.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224. All comments received will be available for public inspection during regular business hours at the same address or at *http://www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 14, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–12028 Filed 5–19–10; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[AMS–CN–10–0037; CN–10–003]**

### Cotton Classification and Market News Service: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection Cotton Classification and Market News Service.

**DATES:** Comments received by July 19, 2010.

**ADDITIONAL INFORMATION OR COMMENTS:** Interested persons are invited to submit written comments concerning this proposal to Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through *http://*

*www.regulations.gov.* All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at *http://www.regulations.gov* or at the Cotton and Tobacco Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250 during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224, telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail at *Shethir.riva@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Cotton Classification and Market News Service.

*OMB Number:* 0581–0009.

*Expiration Date of Approval:* December 30, 2010.

*Type of Request:* Extension and Revision of a Currently Approved Information Collection.

*Abstract:* The Cotton Classification and Market News Service program provides market information on cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act (7 U.S.C. 471–476), authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the current crop (7 U.S.C. 471) and (b) Collect, authenticate, publish and distribute by radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The cotton industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.12 hours per response.

*Respondents:* Cotton Merchandisers, Textile Mills, Ginners.

*Estimated Number of Respondents:* 873.

*Estimated Number of Responses per Respondent:* 7.27.

*Estimated Number of Responses:* 6,347.50.

*Estimated Total Annual Burden on Respondents:* 769.80.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be submitted electronically through *http://www.regulations.gov.* Comments also may be sent to Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Washington, DC 20250–0224. All comments received will be available for public inspection during regular business hours at the same address or through *http://www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 14, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–12032 Filed 5–19–10; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS-2010-0029]**

### Availability of an Environmental Assessment for a Biological Control Agent for Hemlock Woolly Adelgid

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of hemlock woolly adelgid (*Adelges tsugae*). The environmental assessment considers the effects of, and alternatives to, the release of an insect, *Laricobius osakensis*, into the continental United States for use as a biological control agent to reduce the severity of hemlock woolly adelgid infestations. We are making the environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before June 21, 2010.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0029*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0029, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0029.

*Reading Room:* You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday

through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

**FOR FURTHER INFORMATION CONTACT:** Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1237; (301) 734-8453.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of an insect, *Laricobius osakensis*, into the continental United States for use as a biological control agent to reduce the severity of hemlock woolly adelgid (HWA) infestations.

HWA, an introduced insect pest destructive to forest and ornamental hemlock trees, was first discovered in Virginia in 1951. HWA now infests 18 States due to the movements of infested nursery plants as well as non-human modes of dispersal that include birds, deer, and wind. HWA feeds at the bases of hemlock needles, causing them to dry out and resulting in needle loss. This prevents trees from producing new buds for the next year's growth, and leads to branch dieback and, often, the eventual death of the tree. HWA infestation is fatal to eastern hemlocks of all ages, regardless of health prior to infestation, with tree mortality occurring between four and ten or more years after infestation, depending on environmental conditions.

Existing HWA management options include chemical control and silvicultural control, which, in this instance, would involve close management of trees on a site-by-site basis. However, these management measures can be expensive, temporary, or have non-target impacts. Thus, a permit application has been submitted to APHIS for the purpose of releasing an insect, *L. osakensis*, into the continental United States for use as a biological control agent to reduce the severity of HWA infestations.

APHIS' review and analysis of the proposed action are documented in detail in an environmental assessment (EA) titled "Proposed Field Release of *Laricobius osakensis* (Coleoptera: Derodontidae), a Predatory Beetle for Biological Control of Hemlock Woolly Adelgid (*Adelges tsugae*), in the Continental United States" (December 2009). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 14th day of May 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–12024 Filed 5–19–10; 8:45 am]

BILLING CODE 3410–34–S

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS-2010-0028]**

### Availability of an Environmental Assessment for a Biological Control Agent for Asian Citrus Psyllid

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of Asian citrus psyllid (*Diaphorina citri Kuwayama*). The environmental assessment considers the effects of, and alternatives to, the release of an insect, *Tamarixia radiata*, into the continental United States for use as a biological control agent to reduce the severity of Asian citrus psyllid infestations. We are making the environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before June 21, 2010.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0028*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0028.

*Reading Room:* You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

**FOR FURTHER INFORMATION CONTACT:** Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1237; (301) 734-8453.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of an insect, *Tamarixia radiata*, into the continental United States for use as a biological control agent to reduce the severity of Asian citrus psyllid (ACP) infestations.

ACP, a serious pest of citrus, was first discovered in Florida in 1998. By 2001 it had spread to 31 counties within the State, primarily due to the movements of infested nursery plants. In that year ACP was also accidentally introduced into Puerto Rico and Texas. It was subsequently discovered in Hawaii in 2006, Guam in 2007, in Alabama, Georgia, Louisiana, Mississippi, South Carolina, and California in 2008, in portions of one county in Arizona in 2009, and in the U.S. Virgin Islands in 2010.

ACP is of particular concern since it is a carrier of Huanglongbing disease (citrus greening), which is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease that attacks the vascular system of its host plant, causing yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback. Citrus greening greatly reduces production, destroys the economic value of citrus fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening. In areas of the world where citrus greening is established, citrus trees decline and die within a few years and may never produce usable fruit.

In addition to transmitting citrus greening, ACP can cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. Large populations of ACP feeding on a citrus shoot can kill the growing tip.

Alternative ACP management options include chemical control and the release of an alternative biological control agent, an encyrtid wasp, (*Diaphorencyrtus aligarhensis*). However, these management measures can be expensive, temporary, or have non-target impacts. Thus, a permit application has been submitted to APHIS for the purpose of releasing an insect, *T. radiata*, into the continental United States for use as a biological control agent to reduce the severity of ACP infestations.

APHIS' review and analysis of the proposed action are documented in detail in an environmental assessment (EA) titled "Proposed Release of a Parasitoid (*Tamarixia radiate* Waterston) for the Biological Control of Asian Citrus Psyllid (*Diaphorina citri* Kuwayama) in the Continental United States" (November 2009). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 14th day of May 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–12026 Filed 5–19–10; 8:45 am]

**BILLING CODE 3410–34–S**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eleven Point Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to initiate review of proposed forest management projects so that recommendations may be made to the Forest Service on which should be funded through Title II of the Secure Rural Schools and Community Self Determination Act of 2000, as amended in 2008.

**DATES:** The meeting will be held Thursday, June 17, 2010, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Twin Pines Conservation Education Center located on U.S. Highway 60, Rt. 1, Box 1998, Winona, MO. Written comments should be sent to David Whittekiend, Designated Federal Official, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO. Comments may also be sent via e-mail to *dwhittekiend@fs.fed.us* or via facsimile to 573–364–6844.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest Supervisors Office, 401 Fairgrounds Road, Rolla, MO. Visitors are encouraged to call ahead to 573–341–7404 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: This being the first meeting of this newly chartered Resource Advisory Committee, much of the meeting will focus on the responsibilities of the committee. Discussion of operating guidelines the committee may adopt for conducting business will be on the agenda. Potential projects will also be discussed. Persons who wish to bring related matters to the attention of the Committee may file written statements with David Whittekiend (address above) before or after the meeting.

Dated: May 14, 2010.

**David Whittekiend,**

*Forest Supervisor.*

[FR Doc. 2010–12087 Filed 5–19–10; 8:45 am]

**BILLING CODE 3410–11–M**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, May 28, 2010; 11:30 a.m. EDT.

**PLACE:** Via Teleconference, Public Dial In: 1–800–597–7623, Conference ID # 76198308.

**Meeting Agenda**

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda

II. State Advisory Committee Issues

- Colorado SAC
- Oregon SAC
- Consideration of Additional Nominee to the New Jersey SAC

III. Program Planning

- Approval of Briefing Report on Health Care Disparities
- Approval of Findings & Recommendations on Educational Effectiveness of Historically Black Colleges & Universities Briefing Report
- Approval of 2011 Business Meeting Calendar
- Update on Status of NBPP Enforcement Report—Some of the discussion of this agenda item may be held in closed session.
- Update on Status of Title IX Project—Some of the discussion of this

agenda item may be held in closed session.

• Discussion of Briefing Concept Paper on Attack against Asian-American Students at South Philadelphia High School

IV. Adjourn

**FOR FURTHER INFORMATION CONTACT:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: May 18, 2010.

**David Blackwood,**

*General Counsel.*

[FR Doc. 2010–12309 Filed 5–18–10; 4:15 pm]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 85–16A18]**

### Export Trade Certificate of Review

**ACTION:** Notice of Application (#85–16A18) to Amend the Export Trade Certificate of Review Issued to U.S. Shippers Association, Application No. 85–00018.

**SUMMARY:** The Export Trading Company Affairs unit, Office of Competition and Economic Analysis, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmitted by E-mail to *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 85–16A18."

The original Certificate for U.S. Shippers Association was issued on June 3, 1986 (51 FR 20873, June 9, 1986) and last amended on December 16, 2008 (73 FR 78291, December 22, 2008). A summary of the current application for an amendment follows.

### Summary of the Application

*Applicant:* U.S. Shippers Association ("USSA"), 3715 East Valley Drive, Missouri City, Texas 77459.

*Contact:* John S. Chinn, Telephone: (734) 927–4328.

*Application No.:* 85–16A18.

*Date Deemed Submitted:* May 7, 2010.

*Proposed Amendment:* USSA seeks to amend its Certificate to reflect the following changes:

1. Add the following new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Sekisui Specialty Chemicals America, LLC, Dallas, TX (controlling entity: Sekisui America Corporation, Mt. Laurel, NJ); Thomas M. Johnson, Park Ridge, NJ.

2. USSA also seeks to add Cray Valley USA, LLC, Exton, PA (controlling entity: TOTAL Holdings USA, Inc., Houston, TX) and Sartomer USA, LLC, Exton, PA (controlling entity: TOTAL Holdings USA, Inc., Houston, TX) as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)). These two entities are the surviving entities following a reorganization of Sartomer Company, Inc., Exton, PA (previously a Member of USSA's Certificate).

3. Delete the following Members from USSA's Certificate: Atotech USA, Inc., Rockhill, SC; Bostik, Inc., Wauwatosa, WI; Cook Composites and Polymers Co., Kansas City, MO; Hutchinson FTS, Inc., Troy, MI; Paulstra CRC Corporation, Grand Rapids, MI; TOTAL Lubricants USA, Inc., Linden, NJ; TOTAL PETROCHEMICALS USA, INC., Houston, TX; Carrie M. Bowden, Missouri City, TX; Dawn K. Peterson, Katy, TX; Sartomer Company, Inc., Exton, PA.

Dated: May 14, 2010.

**Joseph E. Flynn,**

*Director, Office of Competition and Economic Analysis.*

[FR Doc. 2010–12066 Filed 5–14–10; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–893]**

### Certain Frozen Warmwater Shrimp From the People's Republic of China: Extension of Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**SUMMARY:** The Department of Commerce ("Department") is extending the time limit for the final results of the administrative review of certain frozen warmwater shrimp from the People's Republic of China ("PRC"). The review covers the period February 1, 2008, through January 31, 2009.

**DATES:** *Effective Date:* May 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905.

**Background**

On March 26, 2009, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain frozen shrimp from the Socialist Republic of Vietnam and the PRC. *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China,* 74 FR 13178 (March 26, 2009). On March 12, 2010, the Department published the preliminary results of review. *See Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part,* 75 FR 11855 (March 12, 2010).

**Statutory Time Limits**

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 120 day period to 180 days after the preliminary results if it determines it is not practicable to complete the review within the foregoing time period.

**Extension of Time Limit for Preliminary Results of Review**

We determine that it is not practicable to complete the final results of the administrative review of certain frozen warmwater shrimp from the PRC within the 120 day time limit because the Department requires additional time to analyze case and rebuttal briefs.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the final results of this review, which is currently due on July 10, 2010, by 30 days to 150 days after the date on which the preliminary results were published. Therefore, the final results are now due no later than August 9, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 14, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–12141 Filed 5–19–10; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XK54**

### Marine Mammals; File No. 13602

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

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has applied for an amendment to Scientific Research Permit No. 13602.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before June 21, 2010.

**ADDRESSES:** The application 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 home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 13602 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments on this application 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 email 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 this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Jennifer Skidmore, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 13602 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (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).

Permit No. 13602, issued on September 4, 2009 (74 FR 46569), authorizes the permit holder to conduct research on captive and rehabilitating non-listed marine mammals to compare the energetic responses and diving physiology of odontocetes and pinnipeds to determine key physiological factors required for survival and to assist in management decisions for wild populations. The permit expires on September 7, 2014.

The permit holder is requesting authorization to include physiological research on up to 18 captive Hawaiian monk seals (*Monachus schauinslandi*) in facilities in the United States, and opportunistic energetic assessments on stranded ESA-listed marine mammals under NMFS jurisdiction undergoing rehabilitation in California, using methods currently approved in Permit No.13602. In addition to the energetic assessments, the following research would be conducted on captive Hawaiian monk seals: deuterium oxide and Evan's blue administration, blood sampling, blubber ultrasound; and administration of thyroid stimulating hormone and fecal sampling. The applicant requests the transfer and use of tissues (brain and skeletal muscle) from Hawaiian monk seal carcasses and other dead ESA-listed marine mammal species for assessment of oxygen stores and aerobic dive limits. The amendment is requested for the duration of the permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 14, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–12124 Filed 5–19–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–954]**

### Certain Magnesia Carbon Bricks From the People's Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* May 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker at (202) 482–0413, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**Background**

On March 12, 2010, the Department of Commerce ("Department") published in the **Federal Register** its preliminary determination in the antidumping duty investigation of certain magnesia carbon bricks ("bricks") from the People's Republic of China ("PRC"). *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 75 FR 11847 (March 12, 2010) ("*Preliminary Determination*"). On April 21, 2010, the Department published in the **Federal Register** its amended preliminary determination in the antidumping duty investigation of bricks from the PRC. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 75 FR 20813 (April 21, 2010).

On April 15, 2010, Petitioner [1] filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of the merchandise under consideration. On April 23, 2010, RHI Refractories Liaoning Co., Ltd ("RHI"), a mandatory respondent in this investigation, submitted comments on Petitioner's critical circumstances allegation. On April 27, 2010, RHI submitted information on its exports from January 2009 through February 2010, as requested by the Department.

In accordance with 19 CFR 351.206(c)(1), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination (as was done in this case), the Department will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Because the critical circumstances allegation in this case was submitted after the *Preliminary Determination,* the Department will normally issue its preliminary findings of critical circumstances not later than 30 days after the allegation was filed. *See* 19 CFR 351.206(c)(2)(ii).

**Legal Framework**

Section 733(e)(1) of the Tariff Act of 1930, as amended ("Act"), provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' * * * have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." 19 CFR 351.206(i) defines "relatively short period" generally as the period starting on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later. This section of the regulations further provides that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time. *See* 19 CFR 351.206(i).

**Allegation**

In its allegation, Petitioner contends that, based on the dumping margins assigned by the Department in the *Preliminary Determination,* importers knew or should have known that the merchandise under consideration was being sold at less than fair value ("LTFV"). Petitioner also contends that, based on the preliminary determination of injury by the U.S. International Trade Commission ("ITC"), there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports. In its allegation, Petitioner included import statistics for the four different harmonized tariff subheadings provided in the scope of this investigation for the period February 2009 through December 2009. *See* letter from Petitioner, regarding "Allegation of Critical Circumstances," dated April 15, 2010 ("Petitioner's Allegation"), at 3–4.

**Analysis**

In determining whether the above statutory criteria have been satisfied in this case, we examined: (1) The evidence presented in Petitioner's April 15, 2010, allegation; (2) evidence obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

*History of Dumping*

In determining whether a history of dumping and material injury exists, the Department generally has considered current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country.[2] In its April 15, 2010, submission, Petitioner made no statement concerning a history of dumping bricks from the PRC. However, the ITC notes in its preliminary determination that there are antidumping orders in the European Union and Turkey on bricks from the PRC, dated October 6, 2005 and

[1] Resco Products, Inc.

[2] *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59119 (November. 17, 2009) ("*OCTG Prelim*") unchanged in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April19, 2010).

September 1, 2007, respectively.[3] There is no evidence on the record that these orders are not still in place. Therefore, the Department finds that there is a history of injurious dumping of the merchandise under consideration from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

*Imputed Knowledge of Injurious Dumping*

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.[4] The Department preliminarily determined margins of 130.96 percent for the non-selected separate rate applicants, 236.00 percent for the PRC-wide entity, 129.17 percent for RHI, and 132.74 percent for Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co., Ltd. (collectively, "Mayerton"). Therefore, as we preliminarily determined margins greater than 25 percent for all producers and exporters, we preliminarily find, with respect to all producers and exporters, that there is a reasonable basis to believe or suspect that importers knew, or should have known, that exporters were selling subject merchandise at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.[5] Here, the ITC found that that "there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury by reason of imports from China and Mexico of certain magnesia carbon bricks. * * * "[6] Therefore, the Department preliminarily finds that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of subject merchandise from the PRC.

*Massive Imports Over a Relatively Short Period*

Pursuant to 19 CFR 351.206(h)(2), the Department will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. The Department normally considers a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later. *See* 19 CFR 351.206(i). For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.,* the "comparison period"). *Id.*

In its April 15, 2010, allegation, Petitioner maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when they filed the Petition on July 29, 2009. *See* Petitioner's Allegation at 4. Petitioner also included in its allegation U.S. import data, which used a five-month base period (March 2009 through July 2009) and a five-month comparison period (August 2009 through December 2009) in showing whether imports were massive. The Department, however, has used a seven-month base and comparison period in its analysis, the maximum amount of data which could be collected.[7]

Based on the date the Petition was filed, *i.e.,* July 29, 2009, the Department agrees with Petitioner that at this time importers, exporters, or producers knew or should have known an antidumping duty investigation was likely, and therefore July falls within the base period.

A. RHI

The Department requested monthly shipment information from RHI, a mandatory respondent in this investigation. We determine that, based on a seven-month comparison period, RHI's imports were massive. Specifically, RHI's import data show an increase of greater than 15 percent of brick imports from the PRC from the base to the comparison period.[8] Thus, pursuant to 19 CFR 351.206(h), we determine that this increase, being greater than 15 percent, shows that imports in the comparison period were massive for RHI.

B. Mayerton

In this investigation, the Department selected Mayerton and RHI as mandatory respondents.[9] After the *Preliminary Determination,* on April 1, 2010, Mayerton stated that it would no longer participate in the instant investigation. *See* letter from Mayerton, regarding "Withdrawal by Mayerton of Further Participation in the Investigation," dated April 1, 2010. Because Mayerton is no longer participating in this investigation, we were unable to obtain shipment data from Mayerton for purposes of our critical circumstances analysis, and thus, there is no verifiable information on the record with respect to its export volumes.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding under the Act, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the

[3] *See Certain Magnesia Carbon Bricks From China and Mexico,* Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Preliminary), USITC Publication 4100 (September 2009), at VII–5.

[4] *See, e.g., Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal From the People's Republic of China,* 70 FR 5606, 5607 (February 3, 2005) ("*Magnesium Metal CC Prelim*"), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China,* 70 FR 9037 (February 24, 2005).

[5] *See Magnesium Metal CC Prelim,* 70 FR at 5607.

[6] *See Investigation Nos. 701–TA–468 and 731–TA–116667 (Preliminary) Certain Magnesia Carbon Bricks From China,* 74 FR 49889 (September 29, 2009).

[7] *See, e.g., Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber From the People's Republic of China,* 72 FR 19690, 19692 (April 19, 2007).

[8] *See* Memo to The File, from Dana Griffies, Import Policy Analyst, through Scot T. Fullerton, Program Manager, regarding "Investigation of Magnesia Carbon Bricks From the People's Republic of China: Critical Circumstances Analysis," dated concurrently with this Memo ("Critical Circumstances Memo").

[9] *See* Memorandum to James C. Doyle, Director, Office IX, from Paul Walker, Senior Case Analyst, through Scot Fullerton, Program Manager, Office IX; regarding "Antidumping Duty Investigation of Certain Magnesia Carbon Bricks From the People's Republic of China," dated October 6, 2009.

Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference.

Thus, for the purposes of critical circumstances, we have applied adverse facts available ("AFA") to Mayerton in accordance with sections 776(a) and (b) of the Act. Accordingly, as AFA we preliminarily find that there were massive imports of merchandise from Mayerton.

C. Separate Rate Applicants

As noted above, we requested seven months of shipment information from RHI, a mandatory respondent in this investigation, and determined that RHI's imports were massive. Because it has been the Department's practice to conduct its massive imports analysis of separate rate companies based on the experience of investigated companies,[10] we did not request monthly shipment information from the separate rate applicants. The Department has relied upon RHI's import data in determining whether there have been massive imports for the separate rate companies. Accordingly, based on RHI's import data, we find that imports in the post-petition period were massive for those companies because RHI's import volume is greater than 15 percent when comparing the base period to the comparison period. *See* Critical Circumstances Memo. Thus, pursuant to 19 CFR 351.206(h), we determine that this increase, being greater than 15 percent, shows that imports in the comparison period were massive for the separate rate companies.

D. PRC-Wide Entity

Because the PRC-wide entity did not cooperate with the Department by not responding to the Department's antidumping questionnaire, we were unable to obtain shipment data from the PRC-wide entity for purposes of our critical circumstances analysis, and thus there is no verifiable information on the record with respect to its export volumes.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding under the Act, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference. The PRC-wide entity did not respond to the Department's request for information. Thus, we are using facts available, in accordance with section 776(a) of the Act, and, pursuant to section 776(b) of the Act, we also find that AFA is warranted because the PRC-wide entity has not acted to the best of its ability in not responding to the request for information. Accordingly, as AFA we preliminarily find that there were massive imports of merchandise from the PRC-wide entity.[11]

**Critical Circumstances**

Record evidence indicates that importers of the merchandise under consideration knew, or should have known, that exporters were selling the merchandise at LTFV, and that there was likely to be material injury by reason of such sales. In addition, record evidence indicates that RHI, Mayerton, the separate rate applicants and the PRC-wide entity had massive imports during a relatively short period. Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from RHI, Mayerton, the separate rate applicants and the PRC-wide entity in this antidumping duty investigation.

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination.

**Public Comment**

As noted in the *Preliminary Determination,* case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven business days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs limited to issues raised in case briefs must be received no later than five business days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

**Suspension of Liquidation**

With respect to the RHI, Mayerton, the separate rate applicants and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, we will direct CBP to suspend liquidation of all unliquidated entries of bricks from the PRC that were entered, or withdrawn from warehouse, for consumption on or after December 14, 2010, which is 90 days prior to March 12, 2010, the date of publication in the **Federal Register** of our *Preliminary Determination* in this investigation.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 351.206(c)(2)(ii).

Dated: May 13, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–12144 Filed 5–19–10; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See, e.g., OCTG,* 74 FR at 59121.

[11] *See OCTG,* 74 FR at 59121.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XW51**

### Marine Mammals; File No. 15537

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Institute for Marine Mammal Studies (IMMS), P.O. Box 207, Gulfport, MS 39502 (Dr. Moby Solangi, Responsible Party), has applied in due form for a permit to obtain stranded, releasable California sea lions (*Zalophus californianus*) from the National Marine Mammal Stranding Response Program for the purposes of public display.

**DATES:** Written or telefaxed comments must be received on or before June 21, 2010.

**ADDRESSES:** The application and related documents are available for review 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, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application 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 email comment.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Amy Sloan, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant is requesting a permit to take releasable stranded California sea lions (two males and six females) from west coast stranding facilities for public display purposes. IMMS is the only marine mammal public display facility in the states of Mississippi and Alabama. The receiving facility, IMMS is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program that is consistent with professional recognized standards of informal education in aquaria and zoos across America, including the Association of Zoos and Aquariums; and (3) holds an Exhibitor's License, number 65–C–0540, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131-59). IMMS will also consider non-releasable sea lions and each animal will be evaluated on a case by case basis. The permit is requested for five years.

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 14, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–12123 Filed 5–19–10; 8:45 am]

**BILLING CODE 3510–22–S**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, May 26, 2010, 9 a.m.–11 a.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public.

**MATTERS TO BE CONSIDERED:**

1. Pending Decisional Matters: (a) Baby Walkers Final Rule; and (b) Revocation of the Ban of Certain Baby Walkers.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: May 14, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–12278 Filed 5–18–10; 4:15 pm]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, May 26, 2010; 2 p.m.–4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the public.

**MATTERS TO BE CONSIDERED:**

**Compliance Status Report**

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: May 14, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–12279 Filed 5–18–10; 4:15 pm]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2010–OS–0065]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action would be effective without further notice on June 21, 2010, unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard at (703) 588–6830.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 10, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: May 17, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

## WUSU 04

**SYSTEM NAME:**

Uniformed Services University of the Health Sciences (USUHS) Applicant Record System (February 22, 1993; 58 FR 10920).

**CHANGES:**

**SYSTEM NAME:**

Delete entry and replace with "Applicant Record System."

**SYSTEM LOCATION:**

Delete entry and replace with "Uniformed Services University of the Health Sciences, Admissions Office, 4301 Jones Bridge Road, Bethesda, MD 20814–4799."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Individual's applying for admission to the University."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Identity information that includes Social Security Number (SSN), name, sex, race/ethnicity, address, birth date, and citizenship; academic and background data consisting of: (1) Official transcripts of all undergraduate and graduate education, (2) Medical College Admission Test scores and percentiles, (3) information regarding work experience, socio-economic background, extracurricular involvement in college, honors and awards achieved, and professional and/or societal contributions, letters of reference, biographies, personal statements (autobiographical in nature), service preference statement, and health data."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 2114 (Students; Selection; Status; Obligation); DoDI 6010.20 Admission Procedures for the Uniformed Services University of the Health Sciences; and E.O. 9397 (SSN), as amended."

**PURPOSE(S):**

Delete entry and replace with "To allow the Uniformed Services University of the Health Sciences to review admission applications and select students. Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research."

* * * * *

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with "Paper file folders and electronic storage media."

**RETRIEVABILITY:**

Delete entry and replace with "Individual name and Social Security Number (SSN)."

**SAFEGUARDS:**

Delete entry and replace with "Paper records are maintained in a controlled facility. Entry is limited to authorized personnel. Access to electronic records require two-factor authentication including Common Access Cards and passwords. Passwords are changed periodically."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Records of accepted applicants will be converted to student records. For non-matriculates, records are cut off at the end of the school year (May); and destroyed after three (3) years."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Associate Dean for Recruitment and Admissions, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Associate Dean for Recruitment and Admissions, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

The request should contain the full name, address and the signature of the individual."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to TRICARE Management Activity ATTN: Freedom of Information Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066.

The request should contain the full name, address and the signature of individual as well as the name and number of the system of records notice."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "The applicants and by admission personnel."

* * * * *

## WUSU 04

**SYSTEM NAME:**

Applicant Record System.

**SYSTEM LOCATION:**

Uniformed Services University of the Health Sciences, Admissions Office, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individual's applying for admission to the University.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Identity information that includes Social Security Number (SSN), name, sex, race/ethnicity, address, birth date, and citizenship; academic and background data consisting of: (1) Official transcripts of all undergraduate and graduate education, (2) Medical College Admission Test scores and percentiles, (3) information regarding work experience, socio-economic background, extracurricular involvement in college, honors and awards achieved, and professional and/or societal contributions, letters of reference, biographies, personal statements (autobiographical in nature), service preference statement, and health data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2114 (Students; Selection; Status; Obligation); DoDI 6010.20 Admission Procedures for the

Uniformed Services University of the Health Sciences; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

To allow the Uniformed Services University of the Health Sciences to review admission applications and select students. Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper file folders and electronic storage media.

**RETRIEVABILITY:**

Individual name and Social Security Number (SSN).

**SAFEGUARDS:**

Paper records are maintained in a controlled facility. Entry is limited to authorized personnel. Access to electronic records require two-factor authentication including Common Access Cards and passwords. Passwords are changed periodically.

**RETENTION AND DISPOSAL:**

Records of accepted applicants will be converted to student records. For non-matriculates, records are cut off at the end of the school year (May); and destroyed after three (3) years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Associate Dean for Recruitment and Admissions, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Associate Dean for Recruitment and Admissions, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

The request should contain the full name, address and the signature of the individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to TRICARE Management Activity ATTN: Freedom of Information Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066.

The request should contain the full name, address and the signature of individual as well as the name and number of the system of records notice.

**CONTESTING RECORD PROCEDURES:**

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The applicants and by admission personnel.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2010–12096 Filed 5–19–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2010–OS–0066]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The proposed action will be effective without further notice on June 21, 2010 unless comments are received which would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767–5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: May 17, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S380.50 CAHS**

**SYSTEM NAME:**

DLA Drug-Free Workplace Program Records (August 27, 1999; 64 FR 46889).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with "S380.50."

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with "Defense Logistics Agency (DLA) Human Resources Center–P (DHRC–P), 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6220.

Defense Logistics Agency, Human Resources Center–Columbus (DHRC–C), 3990 East Broad Street, Building 11, Columbus, OH 43213–5000.

Defense Logistics Agency, Human Resources Center–New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency, Human Resource Center–Department of Defense

(DHRC–D), 3990 East Broad Street, Building 11, Columbus, OH 43213–5000.

Offices of contractors who provide collection, laboratory analysis, and medical review services. Contact system manager for mailing addresses of contractors."

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "E.O. 12564, Drug-Free Federal Workplace; Public Law 100–71, Section 503, The Drug Testing Workplace Act; 42 U.S.C. 290dd–2, Confidentiality of records; 5 U.S.C. 7301, Presidential regulations; and E.O. 9397 (SSN), as amended."

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with "Records are retrieved by name of activity, name of employee or applicant, position title, position description number, last 4 or 5 numbers of the Social Security Number (SSN)."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Human Resources Specialist, Defense Logistics Agency, Human Resources Office, ATTN: DHRC–P, 8725 John J. Kingman Road, Suite 3516, Fort Belvoir, VA 22060–6221."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiries must include the individual's name; last 4 or 5 numbers of the Social Security Number (SSN); approximate date of record activity and position title."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiries must include the individual's name; last 4 or 5 numbers of the Social Security Number (SSN); approximate date of record; activity and position title."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

**S380.50**

**SYSTEM NAME:**

DLA Drug-Free Workplace Program Records.

**SYSTEM LOCATION:**

Defense Logistics Agency (DLA), Human Resources Center–P (DHRC–P), 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6220.

Defense Logistics Agency, Human Resources Center–Columbus (DHRC–C), 3990 East Broad Street, Building 11, Columbus, OH 43213–5000.

Defense Logistics Agency, Human Resources Center–New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency, Human Resource Center–Department of Defense (DHRC–D), 3990 East Broad Street, Building 11, Columbus, OH 43213–5000.

Offices of contractors who provide collection, laboratory analysis, and medical review services. Contact system manager for mailing addresses of contractors.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DLA employees, individuals who have applied to DLA for employment and individuals who are provided personnel support by DLA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records relating to program implementation and administration, including selection, notification, and testing of individuals; collection and chain of custody documents; urine specimens and drug test results; consent forms; rebuttal correspondence; and similar records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

E.O. 12564, Drug-Free Federal Workplace; Public Law 100–71, Section 503, The Drug Testing Workplace Act; 42 U.S.C. 290dd–2, Confidentiality of records; 5 U.S.C. 7301, Presidential regulations; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

The system is established to maintain records relating to the selection and testing of DLA employees and applicants for DLA employment for use of illegal drugs. The records will provide the basis for taking appropriate action in reference to employees who test positive for use of illegal drugs.

Records may be used by authorized contractors for the collection process; assigned Medical Review Officials; the Administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and agency supervisory or management officials having authority to take adverse personnel action against such an employee when test results are positive.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:**

In order to comply with provisions of 5 U.S.C. 7301, the DoD "Blanket Routine Uses" do not apply to this system of records.

Records may be disclosed to a court of competent jurisdiction when required by the United States Government to defend against a challenge to related adverse personnel action.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on paper and on electronic storage media.

**RETRIEVABILITY:**

Records are retrieved by name of activity, name of employee or applicant, position title, position description number, last 4 or 5 numbers of the Social Security Number (SSN).

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours.

**RETENTION AND DISPOSAL:**

Records relating to test selection, scheduling, collection, handling, and results will be destroyed when 3 years old; records relating to individual notification and acknowledgment will be destroyed when the individual separates from the testing designated position. Records relevant to litigation or disciplinary actions should be

disposed of no earlier than the related litigation or adverse action case file(s).

**SYSTEM MANAGER(S) AND ADDRESS:**

Human Resources Specialist, Defense Logistics Agency Human Resources Office, ATTN: DHRC–P, 8725 John J. Kingman Road, Suite 3516, Fort Belvoir, VA 22060–6221.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiries must include the individual's name; last 4 or 5 numbers of the Social Security Number (SSN); approximate date of record activity and position title.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiries must include the individual's name; last 4 or 5 numbers of the Social Security Number (SSN); approximate date of record activity and position title.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Individual's; agency employees involved in the selection and notification of individuals to be tested; laboratories that test urine specimens for the presence of illegal drugs; physicians who review test results; and supervisors, managers, and other officials.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2010–12097 Filed 5–19–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 21, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to ICDocketMgr@ed.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 14, 2010.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Vocational and Adult Education

*Type of Review:* New.

*Title:* Native American Career and Technical Education Program (NACTEP).

*Frequency:* Semi-Annually; Annually.

*Affected Public:* Federal Government. State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 30.

*Burden Hours:* 1,200.

*Abstract:* The Native American Career and Technical Education Program (NACTEP) is requesting approval to collect semi-annual, annual/continuation reports, and final performance reports from currently funded NACTEP grantees. This information is necessary to (1) manage and monitor the current NACTEP grantees, and (2) award continuation grants for years four and five of the grantees' performance periods. The continuation performance reports will include budgets, performance/statistical reports, Government Performance and Results Act (GPRA) reports, and evaluation reports. The data, collected from the performance reports, will be used to determine if the grantees successfully met their project goals and objectives, so that NACTEP staff can award continuation grants. Final performance reports are required to determine whether or not the grant can be closed our in compliance with the grant's requirements.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4244. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the

deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–12061 Filed 5–19–10; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 21, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 17, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title:* Part D Discretionary Grant Application-Individuals with Disabilities Education Act.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 800.

*Burden Hours:* 20,000.

*Abstract:* Under the Individuals with Disabilities Education Act discretionary grants are authorized to support technology, State personnel development, personnel preparation, parent training and information, and technical assistance activities. This grant application provides the forms and information necessary for applicants to submit an application for funding, and information for use by technical reviewers to determine the quality of the application. Note the following changes: (1) Modified OMB approved selection criteria for the Personnel Development to Improve Services and Results for Children with Disabilities program with EDGAR 75.210 selection criteria; (2) Modified OMB approved selection criteria for the Training and Information for Parents of Children with Disabilities program with EDGAR 75.210 selection criteria and redesignated/redisdtributed the [100] point value of the EDGAR selection criteria; and (3) Pages A–20, B–5, C–2, and E–31 of the application includes track-changes to the application package.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4296. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–12086 Filed 5–19–10; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–New England Region I—EPA–R01–OW–2010–0318; FRL–9153–4]**

### Massachusetts Marine Sanitation Device Standard—Receipt of Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice—Receipt of Petition.

**SUMMARY:** Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Gloucester, Rockport, Essex, Ipswich, Rowley, Newbury, Newburyport, Salisbury, Amesbury, West Newbury, Merrimac, Groveland, North Andover, Haverhill, Methuen, and Lawrence, collectively termed the Upper North Shore for the purpose of this notice.

**DATES:** "Comments must be submitted by June 21, 2010."

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OW–2010–0318, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: rodney.ann@epa.gov.*
- *Fax:* (617) 918–0538.

*Mail and hand delivery:* U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06–1, Boston, MA 02109–3912. Deliveries are only accepted during the Regional Office's

normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OW–2010–0318. 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 U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06–01, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918–1538.

**FOR FURTHER INFORMATION CONTACT:** Ann Rodney, U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06–01, Boston, MA 02109–3912. *Telephone:* (617) 918–1538, *Fax number:* (617) 918–0538; *e-mail address: rodney.ann@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Upper North Shore area.

The Upper North Shore No Discharge Area will encompass the coastal waters for the cities and towns of Gloucester, Rockport, Essex, Ipswich, Rowley, Newbury, Newburyport, Salisbury, Amesbury, West Newbury, Merrimac, Groveland, North Andover, Haverhill, Methuen, and Lawrence.

The proposed No Discharge Area for the UPPER NORTH SHORE:

| Waterbody/general area | From longitude | From latitude | To longitude | To latitude |
|---|---|---|---|---|
| The southern edge of the Upper North Shore NDA boundary is the Manchester/Gloucester municipal line at: | 70°42′50″ W | 42°34′21″ N | 70°35′59″ W | 42°33′02″ N |
| The northern edge of the Upper North Shore NDA boundary is MA/Seabrook, NH border at: | 70°48′47″ W | 42°52′19″ N | 70°43′57″ W | 42°52′35″ N |

| Waterbody/general area | Longitude | Latitude |
|---|---|---|
| On the Merrimack River, the inland edge of the NDA boundary is at the Essex Dam in Lawrence at: | 71°09′58″ W | 42°42′02″ N |
| On the Parker River, the inland edge of the NDA boundary is at the MBTA bridge in Newbury at: | 70°52′00″ W | 42°45′20″ N |
| On the Rowley River, the inland edge of the NDA boundary is at the MBTA bridge on the Rowley/Ipswich town line at: | 70°51′28″ W | 42°43′19″ N |
| On the Ipswich River, the inland edge of the NDA boundary is at County Street in Ipswich at: | 70°50′07″ W | 42°40′44″ N |
| On the Essex River, the inland edge of the NDA boundary is at Main Street in Essex at: | 70°46′43″ W | 42°37′55″ N |
| The eastern edge of the boundary is contiguous with the state/federal line also known as the Submerged Lands Act boundary line and Territorial Sea boundary. | | |

The boundaries were chosen based on easy line-of-sight locations and generally represent all navigational waters.

There are marinas, yacht clubs and public landings/piers in the proposed area with a combination of mooring fields and dock space for the recreational and commercial vessels. Massachusetts has certified that there are 13 pumpout facilities within the proposed area available to the boating public. A list of the facilities, locations, contact information, hours of operation, and water depth is provided at the end of this petition.

Massachusetts has provided documentation indicating that the total vessel population is estimated to be 5,555 in the proposed area. It is estimated that 1525 of the total vessel population may have a Marine Sanitation Device (MSD) of some type.

In the proposed area is the Great Marsh, one of the important natural resources designated by the Commonwealth as an Area of Critical Environmental Concern (ACEC) with 25,500 acres extending from Newbury to Gloucester. The Great Marsh comprises the largest salt marsh system (over 10,000 acres) north of Long Island, New York. The 2,900 acre Parker River National Wildlife Refuge, within the ACEC, is known as an important site on the Atlantic fly-way migration route. Over 300 species of birds have been sighted here, including 75 rare species.

Six species of shellfish are harvested in the area, including soft-shell clams, surf clams, blue mussels, razor clams, oysters, and ocean quahogs. In 2007 and 2008, two million pounds of shellfish were harvested in Greater Essex with a value of $2.5 million for the communities of Gloucester, Essex, and Ipswich.

The coastal area along the Upper North Shore of Massachusetts is important for the tourism and recreation industries of the region, including Salisbury Beach State Reservation, Sandy Point State Reservation, Halibut Point State Park, Maudslay State Park, and more than 25 marinas or boat yards are adjacent to the proposed NDA. This area is a popular destination for boaters due to its natural environmental diversity and would benefit from a No Discharge Area.

**Pumpout Facilities Within Proposed No Discharge Area**

UPPER NORTH SHORE

| Name | Location | Contact info. | Hours | Mean low water depth |
|---|---|---|---|---|
| Gloucester Cape Ann Marina. | 75 Essex Ave, Annisquam River. | 978–283–3293 VHF 10 | 8am–4pm | 6 ft. |
| Gloucester Harbormaster | 19 Harbor Loop | 978–282–3012 VHF 16 | On call | N/A. |
| Rockport Harbormaster | 34 Broadway | 978–546–9589 VHF 9, 16 | On call | N/A. |
| Ipswich Harbormaster | 15 Elm Street, Plum Island Sound. | 978–356–4343 VHF 9, 16 | On call | N/A. |
| Rowley Harbormaster | 497 Main Street | VHF 9 | Thur–Tue 10am–6pm | NA. |
| Rowley Perley's Marina | 109 Warehouse Lane | 978–948–2812 VHF 9, 16 | Mon–Fri 8am–6pm; Sat–-Sun 8am–5pm. | 4 ft. |
| Newbury Riverfront Marina | 292 High Road | 978–465–6090 VHF 9 | 8am–5pm (6pm weekend) | 4 ft. |
| Newburyport Cashman Park. | Merrimack River | 978 462–3746 VHF 12, 16 | Self Service Memorial Day/End of October. | 6 ft. |
| Newburyport Harbormaster | 60 Pleasant Street | 978–462–3746 VHF 12, 16 | Fri 1pm–5pm; Sat, Sun & Holidays 9am–5pm. | N/A. |
| Amesbury Marina at Hatter's Point. | 60 Merrimac Street | 978–388–7333 VHF 9 | 8am–9pm | 4 ft. |
| West Newbury Harbormaster. | Merrimack River Town Dock. | 978–363–1213 VHF 9, 16 | On call 9am–5pm | NA. |
| Salisbury Harbormaster | Town Wharf | 978–499–0740 VHF 12 | On call | NA. |

Dated: May 13, 2010.

**Ira W. Leighton,**

*Acting Regional Administrator, New England Region.*

[FR Doc. 2010–12118 Filed 5–19–10; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 13, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 19, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail judith–b.herman@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–1139.

Title: Residential Fixed Broadband Services Testing and Measurement.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents and Responses: 11,000 respondents, 11,000 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion and biennial reporting requirements.

Obligation to Respond: Voluntary. Statutory authorities for this information collection is contained in American Reinvestment and Recovery Act (ARRA) of 2009, Public Law No. 111–5 and the Broadband Data Improvement Act, Public Law No. 110–385.

Total Annual Burden: 11,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: Yes. However, no personally identifiable information (PII) will be transmitted to the Commission from the survey

contract vendor as a matter of vendor policy. SamKnows, Inc. maintains a series of administrative, technical and physical safeguards to protect against the transmission of personally identifying information. At point of registrations, individuals will be given full disclosure, highlighting what information will be collected, and importantly, what information will not be collected.

Nature and Extent of Confidentiality: Yes. See Privacy Act Impact Assessment above.

Needs and Uses: The Commission submitted this information collection to the Office of Management and Budget (OMB) on April 2, 2010 under the emergency processing provisions of 5 CFR 1320.13. The Commission obtained OMB approval on 4/30/2010. Emergency OMB approvals are only granted for six months. Therefore the Commission is now seeking the full three year clearance for this information collection.

There is no change in the Commission' estimated burden. There is no change in the reporting requirements.

The Commission's Office of Strategic Policy and Planning Analysis and the Consumer and Intergovernmental Affairs Bureau plan to conduct a hardware–based test and analysis of 11,000 consumer broadband connections to examine the performance of services across a number of parameters. This survey is crucial to comparing what consumers know – and need to know – about the speeds and performance, and terms and conditions of broadband and related services to services purchased.

The Commission has contracted with SamKnows, Inc. to measure the speeds and performance of a representative, cost–effective, statistically relevant sample of US fixed broadband households across geographies, technologies and providers. This measurement will occur on an opt–in, voluntary basis. This representative sample will be used to create a baseline level of performance and measurements for the FCC. The third party measurement contractor will deploy testing devices to begin measurement, and these results will be then used to inform measurement standards for performance of broadband services, in support of the FCC–led National Broadband Plan.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–12078 Filed 5–19–10; 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

May 14, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 19, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via e-mail to PRA@fcc.gov and Cathy.Williams@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 10,750 respondents and 21,500 responses.

Estimated Hours per Response: 1 – 17 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Total Annual Burden: 193,500 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1713 states cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. These records shall be maintained for at least a one–year period. Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–12079 Filed 5–19–10; 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

**[CG Docket No. 09–158; DA 10–803]**

## Comment Sought on Measures Designed To Assist U.S. Wireless Consumers To Avoid "Bill Shock"

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission seeks to gather information on the feasibility of instituting usage alerts and cut-off mechanisms similar to those required under the European Union (EU) regulations that would provide wireless voice, text, and data consumers in the United States a way to monitor, on a real-time basis, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage (*e.g.,* roaming services, voice service "minute plans," text message plans). Specifically, the Commission seeks comment on whether technological or other differences exist that would prevent wireless providers in this country from employing similar usage controls as those now required by the EU.

**DATES:** Comments are due on or before July 6, 2010. Reply comments are due on or before July 19, 2010.

**ADDRESSES:** Interested parties may submit comments and reply comments identified by [CG Docket No. 09–158], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic comment Filing System (ECFS), through the Commission's Web site: *http://www.fcc.gov/cgb/ecfs/,* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, which in this instance is [CG Docket No. 09–158]. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Smith, Consumer and Governmental Affairs Bureau, Policy Division, at (717) 338–2797 (voice), or e-mail *Richard.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** In its *2009 Consumer Information and Disclosure NOI,* the Commission sought comment on potential opportunities for protecting and empowering American consumers by ensuring access to relevant information about communications services.

*See 2009 Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP–Enabled Services,* CG Docket No. 09–158; CC Docket No. 98–870; WC Docket No. 04–36, Notice of Inquiry, 24 FCC Rcd 11380 (2009) (*2009 Consumer Information and Disclosure NOI*). This is a summary of the Commission's Public Notice DA 10–803. Pursuant to 47 CFR 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated above. This proceeding shall be treated as a permit-but-disclose proceeding under the *ex parte* rules, which are codified at 47 CFR 1.1200(a) and 1.1206. Therefore, *ex parte* presentations will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules, 47 CFR 1.1206(b). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

The full text of document DA 10–803 and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document DA 10–803 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at the contractor's Web site, *http://www.bcpiweb.com,* or by calling (800) 378–3160. Furthermore, document DA 10–803 and any subsequently filed documents in this matter may be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert [CG Docket No. 09–158] into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 10–803 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/policy/headlines.html.*

### Synopsis

In the *2009 Consumer Information and Disclosure NOI,* the Commission sought comment on potential opportunities for protecting and empowering American consumers by ensuring access to relevant information about communications services. Among other things, the Commission noted that advances in technology, including usage alerts delivered via text message, other usage controls, and online comparison tools, offer "new opportunities to improve the kind and degree of information available to consumers." On the issue of usage alerts, the Commission asked whether consumers can be provided with "more useful information about their service usage once they are using a plan to prevent them from incurring unexpected charges, or to adjust their plan as their usage patterns change." It also sought information concerning how widespread the practice of usage alerts is and, where such controls are used, whether the consumer is alerted prior to incurring additional charges, or only

after the consumer has exceeded some threshold level of charges or minutes. Finally, the Commission sought comment on the level of cost detail typically included in usage alert messages.

In June 2009, the EU adopted regulations governing the transparency of retail roaming charges incurred by European wireless customers for voice calls, text messaging, and data services when traveling to other EU markets. Certain of these provisions, commonly referred to as the "bill shock" provisions, are designed to ensure that a consumer is fully aware of the roaming charges he or she is incurring so that the consumer does not receive a higher than expected bill for these services. A number of EU mobile service providers had already implemented procedures to combat the problem of "bill shock" prior to the adoption of the June 2009 regulations. Under the new EU regulations, when a wireless consumer places a voice call or text message in an EU market other than the consumer's home market, the consumer's home market provider must send to the consumer, free of charge, a text message detailing roaming prices for sending and receiving voice calls and text messages. The consumer may elect not to receive this automatic notification service, but the service must be provided again, free of charge, upon request by the consumer. The new EU regulations also require that wireless providers notify a consumer using a data roaming service when the consumer has reached 80 percent of an agreed upon limit (either a default limit or a customer-designated limit). When a consumer exceeds the established monetary or volume roaming limit, the provider must send another notification explaining the applicable costs and procedures if the consumer wishes to continue using the data roaming service. At that point, the provider must cease providing the service pending further instruction from the consumer.

In this document, the Commission seeks to gather information on the feasibility of instituting usage alerts and cut-off mechanisms similar to those required under the EU regulations that would provide wireless voice, text, and data consumers in the United States a way to monitor, on a real-time basis, their usage of a wireless communications service, as well as the various charges they may incur in connection with such usage (*e.g.,* roaming services, voice service "minute plans," text message plans). Specifically, the Commission seeks comment on whether technological or other differences exist that would prevent wireless providers in this country from employing similar usage controls as those now required by the EU.

The Commission also seeks comment on the extent to which consumers currently have the means at their disposal to monitor their wireless usage and are fully aware of the consequences of exceeding their predetermined allocations of voice minutes, text message limits, or data usage. To what extent are U.S. providers already offering such features, and at what cost to the consumer and/or to the provider? Do certain usage controls lend themselves more to one type of service (such as voice) than to another (such as data)? To what extent is such information currently accessible via wireless devices by people with disabilities, and in particular by people who are blind or low vision who need on-screen text and other visual indicators to be accompanied by audio output? Would a requirement for certain types of usage controls prevent or help consumers with hearing, visual, cognitive or other disabilities in receiving the information they need to effectively monitor their usage? The Commission seeks comment on these and other issues relevant to whether it should adopt usage control measures that will help consumers to avoid receiving higher than expected bills for their wireless communications services.

All comments should refer to CG Docket No. 09–158. Further, the Commission strongly encourages parties to develop responses that adhere to the organization and structure of the questions in the Public Notice DA 10–803.

**Colleen Heitkamp,**

*Division Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission.*

[FR Doc. 2010–12140 Filed 5–19–10; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2010.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. Cordia Bancorp Inc., Washington, DC;* to become a bank holding company through the acqusition of up to 52.3 percent of the voting shares of Bank of Virginia, Midlothian, Virginia.

Board of Governors of the Federal Reserve System, May 14, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–12025 Filed 5–19–10; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Allround Logistics Inc. (OFF & NVO), 1809 Fashion Court, Suite 101, Joppa,

MD 21085. *Officers:* Margoth T. Starr, Vice President/Secretary (Qualifying Individual), Roland Meier, President. *Application Type:* Add NVO Service and QI Change.

Best Container Express, Inc. (NVO), 17238 S. Main Street, Gardena, CA 90248. *Officers:* Richard D. Kim, President (Qualifying Individual), Chang H. Choi, Manager. *Application Type:* Business Structure Change.

Brauner International Corporation (OFF), 66 York Street, Jersey City, NJ 07302. *Officers:* Matthew Brauner, President/Treasurer (Qualifying Individual), Harold Brauner, Chairman. *Application Type:* QI Change.

Century Distribution Systems, Incorporated (OFF), 8730 Stony Point Parkway, Suite 310, Richmond, VA 23235. *Officers:* Mark T. Gorman, President (Qualifying Individual), Iain C. Aitchison, CEO. *Application Type:* New OFF License.

Dapex Inc. (NVO), 83–77 Woodhaven Blvd., Apt. 1D, Woodhaven, NY 11421. *Officer:* David Dvinov, President/Secretary (Qualifying Individual). *Application Type:* New NVO License.

Freight Logistics Services, LLC dba Kloosterboer International, Forwarding, LLC dba KIF, LLC dba FLS, LLC, dba Kloosterboer (OFF), 3440 Carillon Point, Kirkland, WA 98033. *Officers:* Sean Newbrey, General Manager (Qualifying Individual), Steve Abernathy, President. *Application Type:* Trade Name Change and QI Change.

Gruden USA Inc. dba Lybra Overseas Shipping (OFF & NVO), 51 Newark Street, Suite 302, Hoboken, NJ 07030. *Officers:* Carmella De Primo, Vice President (Qualifying Individual), Luca De Pieri, President/Secretary/Treasurer. *Application Type:* Trade Name Change and Add NVO Service.

IMOVEGREEN, LLC (OFF & NVO), 370 Concord Avenue, Bronx, NY 10454. *Officers:* Naama J. Yoffey, Secretary (Qualifying Individual), Jeffrey Sitt, President/CEO. *Application Type:* New OFF & NVO License.

Keith Roehl Guidroz, Sr. dba Gilscot Guidroz International, dba Guidroz International Transport (NVO), 409 Sala Avenue, Westwego, LA 70094. *Officer:* Keith Roehl Guidroz, Sr., Sole Proprietor (Qualifying Individual). *Application Type:* Trade Name Change and Add NVO Service.

Knight Brokerage, LLC (OFF & NVO), 5601 W. Buckeye Road, Phoenix, AZ 85043. *Officers:* Robin S. Hilton, Director of Global Transportation (Qualifying Individual), Greg Ritter, President. *Application Type:* New Off & NVO License.

Lars Courier, Inc. dba Lars International Freight Forwarders (NVO), 16900 North Bay Road, Apt. 1906, Sunny Isles, FL 33160, *Officers:* Rudy O. Vargas-Milian, Secretary (Qualifying Individual), Andres Panesso, President/Treasurer/Director. *Application Type:* New NVO License.

Lozada Corporation dba Lozada Transportation Services (OFF & NVO), 6526 Arlington Boulevard, Falls Church, VA 22042. *Officers:* Cristian K. Montecinos, Secretary (Qualifying Individual), Cesar Montecinos, President/Treasurer. *Application Type:* New OFF & NVO License.

Mark-It Express LLC (OFF), 4800 S. Central Avenue, Suite 102, Chicago, IL 60638. *Officer:* Anthony M. Apa, Managing Member, (Qualifying Individual). *Application Type:* New OFF License.

Matthew A. Keces (OFF & NVO), 3137 Bonn Drive, Laguna Beach, CA 92651. *Officer:* Matthew A. Keces, Sole Proprietor, (Qualifying Individual). *Application Type:* New OFF & NVO License.

MIC Freight Brokers, Inc (OFF), 8201 NW 66th Street, #6, Miami, FL 33166. *Officers:* Luis A. Marquez, President, (Qualifying Individual). Maria A. Garcia, Secretary. *Application Type:* New OFF License.

Miriam Family Cargo, Inc. (NVO), 18 NW 12th Avenue, Miami, FL 33128. *Officers:* Miriam Y. Bennett, President/Secretary, (Qualifying Individual). Randy R. Bennett, Vice President. *Application Type:* New NVO License.

Ocean Line Logistics Inc. (OFF & NVO), 582 W. Huntington Drive, Suite M, Arcadia, CA 91007. *Officers:* Wei Jiang, Vice President, (Qualifying Individual). Peixin Li, President. *Application Type:* Add OFF Services.

Project Rail, LLC dba Vectora Transportation (OFF & NVO), 610 Wesley Avenue, Oak Park, IL 60304. *Officers:* Christopher M. Ball, President, (Qualifying Individual). Graham Y. Brisben, Manager. *Application Type:* New OFF & NVO License.

Quisqueya Cargo Express Inc (NVO), 421 W. Tilghman Street, Allentown, PA 18102. *Officer:* Fraiser Polanco, President/VP/Secretary/Treasurer, (Qualifying Individual). *Application Type:* New NVO License.

Seagull Maritime Agencies Private Limited (NVO), E–40/3, Okhla Industrial Area, Phase II, New Delhi 110020 India. *Officers:* Ashutosh L. Korde, President/CEO, (Qualifying Individual), Sidharth Jena, CFO. *Application Type:* New NVO License.

Skelton Sherborne Inc (OFF & NVO), 1225 North Loop West, Suite 432, Houston, TX 77008. *Officers:* Lydia R. Ramos, Secretary, (Qualifying Individual). Bradley V. Skelton, Director/Treasurer. *Application Type:* QI Change.

The Export Connection, Inc. (OFF), 7580 Sierra Ridge Lane, Lake Worth, FL 33463. *Officers:* Jari K. Hakkarainen, President/Director, (Qualifying Individual). Lilian E. Hakkarainen, Vice President/Secretary, *Application Type:* New OFF License.

The Padded Wagon, Inc. (NVO), 163 Exterior Street, Bronx, NY 10451. *Officers:* Edmond J. Dowling, President, (Qualifying Individual). Aine K. Dowling, Secretary. *Application Type:* New NVO License.

World Cargo Service, Inc. (NVO), 6905 NW 73rd Court, Miami, FL 33166. *Officers:* Gregorio J. Zambrano, President, (Qualifying Individual). Diana J. Rodriguez, Vice President. *Application Type:* QI Change.

WP Logistics Inc. (NVO), 13025 Cerise Avenue, Hawthorne, CA 90250. *Officers:* Cindy Yamamoto, Secretary, (Qualifying Individual). Seok (Peggy) K. Tan, President/Treasurer. *Application Type:* Trade Name Change.

Dated: May 14, 2010.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2010–12052 Filed 5–19–10; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Orders revoking the following licenses are 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:* 017970N.
*Name:* Diarama Export, Inc.
*Address:* 2754 NW North Drive, Miami, FL 33142.
*Order Published:* FR: 4/22/2010 (Volume 75, No. 77 Pg. 20999).

*License Number:* 019271N.
*Name:* Xima Freight Services, Inc.
*Address:* 1525 NW 82nd Avenue, Miami, FL 33126.

*Order Published:* FR: 5/7/2010 (Volume 75, No. 88 Pg. 25258).

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2010–12058 Filed 5–19–10; 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 |
|---|---|---|
| 004662N | Sanyo Logistics Corporation, 3625 Del Amo Blvd., Suite 105, Torrance, CA 90503 | April 8, 2010. |
| 009741N | Covan International, Inc., 1 Covan Drive, Midland City, AL 36350 | April 15, 2010. |
| 017845N | Uniworld Express, Inc., 520 Carson Plaza Ct., Suite 211, Carson, CA 90746 | April 24, 2010. |
| 020849N | Master Freight America, Corp., 2025 NW 102nd Avenue, Unit 111, Miami, FL 33172 | March 11, 2010. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2010–12056 Filed 5–19–10; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked 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, effective on the corresponding date shown below:

*License Number:* 1198F.
*Name:* World Freight Forwarders, Inc.
*Address:* 1430 Morton Drive, Maysville, KY 41056.
*Date Revoked:* April 12, 2010.
*Reason:* Surrendered license voluntarily.

*License Number:* 13787N.
*Name:* Trans Caribe Express Shippers, Inc.
*Address:* 163 Tremont Avenue, East Orange, NJ 07018.
*Date Revoked:* April 29, 2010.
*Reason:* Failed to maintain a valid bond.

*License Number:* 015941N.
*Name:* Cargo Plus, Inc.
*Address:* 8333 Wessex Drive, Pennsauken, NJ 08109.
*Date Revoked:* April 25, 2010.
*Reason:* Failed to maintain a valid bond.

*License Number:* 017207F.
*Name:* Legend Express Co.
*Address:* 1506 S. Paloma Street, Los Angeles, CA 90021.
*Date Revoked:* May 5, 2010.
*Reason:* Surrendered license voluntarily.

*License Number:* 17493N.
*Name:* Bayanihan Cargo International Inc.
*Address:* 925 Linden Avenue, #D, South San Francisco, CA 94080.
*Date Revoked:* April 30, 2010.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019651F.
*Name:* Acorn International Forwarding Co.
*Address:* 2200 Pacific Coast Highway, Suite 219, Hermosa Beach, CA 90254.
*Date Revoked:* April 30, 2010.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021725N.
*Name:* World Wide Cargo Partners, LLC.
*Address:* 7900 Stoneridge Drive, Suite #117, Pleasanton, CA 94588.
*Date Revoked:* April 20, 2010.
*Reason:* Surrendered license voluntarily.

*License Number:* 021121F.
*Name:* Worldwide Logistics of Columbus LLC.
*Address:* 6663 Huntley Road, Suite N, Columbus, OH 43229.
*Date Revoked:* April 30, 2010.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2010–12055 Filed 5–19–10; 8:45 am]

**BILLING CODE 6730–01–P**

## GENERAL SERVICES ADMINISTRATION

### Notice of a Computer Matching Program

**AGENCY:** General Services Administration

**ACTION:** Notice.

**SUMMARY:** Pursuant to subsection o(2) of the Privacy Act, 5 U.S.C. 552a, GSA is providing notice of a proposed computer match. The purpose of this match is to identify individuals who are improperly receiving transit benefits.

**DATES:** *Effective Date:* June 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privaccyact@gsa.gov*.

**ADDRESSES:** GSA Privacy Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection o(2) of the Privacy Act, 5 U.S.C. 552a, GSA is providing notice of a proposed computer match. The purpose of this match is to identify individuals who are improperly receiving transit benefits. To accomplish this purpose, the GSA, Office of Inspector General (OIG) will match two internal systems of record—transit benefit records (GSA/Transit–1) and payroll records (GSA/PPFM–9), to identify people receiving transit benefits from GSA who are not current GSA employees.

*SYSTEM NAME:*

Computer Matching Program within GSA between two internal systems.

*a. Participating Agencies:*

General Services Administration (GSA).

*b. Purpose of the Matching Program:*

The purpose of this match is to identify individuals who are improperly receiving transit benefits. Only current GSA employees are entitled to receive transit benefits from GSA. The OIG proposes to compare records in two GSA systems of records, transportation benefit records and payroll records, to identify any person receiving transit benefits from GSA who is not a GSA employee.

*c. Authority for Conducting the Matching program:*

E.O. 13150, Federal Workforce Transportation; 5 U.S.C. 7905, Federal Employees Clean Air Incentives Act; 5 U.S.C. Appendix 3, the Inspector General Act; and 26 U.S.C. 132(f).

*d. Categories of Records and Individuals to be Covered by the Matching Program:*

The first, GSA/Transit–1, Transportation Benefits Records, 73 FR 22393 (April 25, 2008), contains identifying information and records of employees who apply for transit subsidies for use of public transportation and vanpools to and from the workplace. The second, GSA/PPFM–9, Payroll Accounting and Reporting System, 73 FR 22398 (April 25, 2008), contains the GSA payroll records for an employee's entire service life, from initial hire through final payment and submission of retirement records to the Office of Personnel Management.

*e. Description of Computer Matching Program:*

The General Services Administration (GSA), Office of Inspector General (OIG) has proposed this Computer Matching Agreement to identify individuals who are improperly receiving transit benefits. Only current GSA employees are entitled to receive transit benefits from GSA. The OIG proposes to compare records in two GSA systems of records, transportation benefit records and payroll records, to identify any person receiving transit benefits from GSA who is not a GSA employee. No action will be taken based solely on the results of the match; rather, the OIG will evaluate the results of the match and other relevant information to help identify and/or recover any erroneous payments.

The GSA will provide the subject of each verified match at least 30 days to contest the findings before a final determination is made about the validity of the claim and recovery action is initiated. The subject will be given written notice of adverse information and the basis for questioning his/her eligibility. The notice will include instructions on how to refute the questioned payment.

All information obtained and/or generated as part of this computer matching program will be safeguarded in accordance with the provisions of the Privacy Act, other applicable laws, and GSA record safeguarding requirements, including CIO P 2100 1.F, GSA Information Technology (IT) Security Policy, and CIO 2104.1, GSA Information Technology (IT) General Rules of Behavior. Compliance with these requirements will ensure no unauthorized access to or disclosure of this information.

*f. Inclusive Dates of the Matching Program:*

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

*g. For Questions, Contact:*

Director, Office of Forensic Auditing, Office of Inspector General, 1800 F Street, NW., Room G-242, Washington, DC, 20405. Telephone (202) 273–4989.

Dated: May 13, 2010.

**Cheryl M. Paige,**

*Director, Office of Information Management.*

[FR Doc. 2010–12038 Filed 5–19–10; 8:45 am]

BILLING CODE 6820–34–S

## GENERAL SERVICES ADMINISTRATION

### Federal Management Regulation (FMR); Notice of GSA Bulletin FMR B–26

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of a bulletin.

**SUMMARY:** This notice announces GSA Bulletin FMR B–26. GSA Bulletin FMR B–26 provides guidance to Federal agencies relative to the accountability and control of Executive agency personal property. This guidance is of a general nature, and intended to steer agencies towards considering controls where reasonable controls may be lacking or non-existent. GSA Bulletin FMR B–26 may be found at *http://www.gsa.gov/bulletin.*

**DATES:** The bulletin announced in this notice became effective on May 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501–1777. Please cite FMR Bulletin B–26.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

GSA has the responsibility to provide guidance to agencies on property management accountability systems. This bulletin is the first document issued by GSA's Office of Travel, Transportation, and Asset Management which addresses only this subject. Further guidance on this topic in the form of bulletins or regulations is planned.

Section 524 of Title 40 of the United States Code (40 U.S.C. 524) requires that executive agencies maintain adequate inventory controls and accountability systems for property under their control. Section 121(b)(2) of 40 U.S.C. requires the Administrator of General Services to work with the Comptroller General and other executive agencies to develop accounting systems for Federal property. The term "system" includes information technology components as well as the non-automated processes and procedures used to account for Federal property.

**B. Procedures**

Bulletins regarding the Federal Management Regulation (FMR) are located on the Internet at *http://www.gsa.gov/bulletin* as FMR bulletins.

Dated: May 11, 2010.

**Becky Rhodes,**

*Deputy Associate Administrator.*

[FR Doc. 2010–12040 Filed 5–19–10; 8:45 am]

BILLING CODE 6820–14–P

## GENERAL SERVICES ADMINISTRATION

### Privacy Act of 1974; Notice of new System of Records

**AGENCY:** General Services Administration.

**ACTION:** New Notice.

**SUMMARY:** GSA proposes to establish a new system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

**DATES:** *Effective Date:* June 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privaccyact@gsa.gov.*

**ADDRESSES:** GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:** GSA proposes to establish a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system will provide for the collection of information

to track and manage the Art in Architecture program, the National Artist Registry and the fine arts collection. The privacy information within the system will be accessed and used by GSA employees in the Art in Architecture and Fine Arts programs.

Dated: May 13, 2010.

**Cheryl M. Paige,**

*Director, Office of Information Management.*

**SYSTEM NAME:**

GSA/PBS-7 (The Museum System - TMS)

**SYSTEM LOCATION:**

The system is maintained for GSA under contract, and the records are maintained in electronic form. The system and records are located at the vendor location in PBS Enterprise Service Center (ESC) facility located at 14426 Albemarle Point Place, Suite 120, Building 3, Chantilly, VA 20151. Contact the System Manager for additional information.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals in the Art in Architecture and Fine Arts programs, including those in the fine arts collection, and in the National Artist Registry.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains information needed for managing the Art in Architecture and Fine Arts programs, which includes access to information on artists represented in the fine arts collection and artists in the National Registry. Records may include but are not limited to: (1) biographical data such as name, birth date, and educational level; and (2) contact information such as telephone number, street address and email address.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 501 *et seq.*).

**PURPOSE:**

To establish and maintain an electronic system to manage and track all details pertaining to the full life cycle of Art in Architecture projects and manage the National Artist Registry in support of the Art in Architecture program. The system will also support the PBS Fine Arts program to safeguard the fine arts collection against waste, loss and unauthorized use or misappropriation.

**ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM.**

System information may be accessed and used by employees of the Art in Architecture and Fine Art programs to manage, track, verify, and update system information.

Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA, a GSA employee, or the United States is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. Nationality and year of birth may be disclosed to the public when relevant to an artist's work.

i. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING, AND DISPOSING OF SYTEM RECORDS:**

**STORAGE:**

All records are stored electronically.

**RETRIEVABILITY:**

Records are retrievable based on any information captured, including but not limited to: name, date of birth, place of birth, and current address.

**SAFEGUARDS:**

System records are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with passwords, and the database is maintained behind a firewall certified by the National Computer Security Association.

**RETENTION AND DISPOSAL:**

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

**SYSTEM MANAGER AND ADDRESS:**

Systems Development Division, Public Building Service, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to access their own records should contact the system manager at the address above.

**CONTESTING RECORD PROCEDURE:**

Individuals wishing to amend their records should contact the system manager at the address above.

**RECORD SOURCE CATEGORIES:**

The sources for information in the system are data from legacy systems, information submitted by individuals or their representatives, information gathered from public sources and information from the GSA staff directory.

[FR Doc. 2010–12039 Filed 5–19–10; 8:45 am]

**BILLING CODE 6820–34–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Eisenberg Center Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by July 19, 2010.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Proposed Project

*Eisenberg Center Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality*

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) renew, under the Paperwork Reduction Act of 1995, AHRQ's Generic Clearance to collect information from users of work products and services initiated by the John M. Eisenberg Clinical Decisions and Communications Science Center (Eisenberg Center).

AHRQ is the lead agency charged with supporting research designed to improve the quality of healthcare, reduce its cost, improve patient safety, decrease medical errors, and broaden access to essential services. *See* 42 U.S.C. 299. AHRQ's Eisenberg Center is an innovative effort aimed at improving communication of findings to a variety of audiences ("customers"), including consumers, clinicians, and health care policy makers. The Eisenberg Center compiles research results into a variety of useful formats for customer stakeholders. The Eisenberg Center also conducts its own program of research into effective communication of research findings in order to improve the usability and rapid incorporation of findings into medical practice. The Eisenberg Center is one of three components of AHRQ's Effective Health Care Program, see 42 U.S.C. 299b–7. For the period 2005 until September 2008, the Eisenberg Center was operated through a contractual arrangement with the Oregon Health and Science University (OHSU), Department of Medicine, located in Portland, Oregon. In September 2008, the contract for operation of the Eisenberg Center was awarded to Baylor College of Medicine (BCM), located in Houston Texas.

The collections proposed under this clearance include activities to assist in the development of materials to be disseminated through the Eisenberg Center and to provide feedback to AHRQ on the extent to which these products meet customer needs. These materials include Summary Guides that summarize and translate the findings of comparative effectiveness reviews (CER) and research reports for purposes of summarizing research findings for various decision-making audiences, such as consumers, clinicians, or policymakers. The guides are designed to help these decision makers use research evidence to maximize the benefits of health care, minimize harm, and optimize the use of health care resources. In addition, each year of the project the Eisenberg Center will develop one computerized, interactive decision aid for those clinical problems identified from selected CERs. The intent is for the decision aid to increase the patient/consumer's knowledge of the health condition, options, and risk/benefits, lead to greater assurance in making a decision, increase the congruence between values and choices, and ethance involvement in the decision making process. Information collections conducted under this generic clearance are not required by regulation and will not be used to regulate or sanction customers. Surveys will be entirely voluntary, and information provided by respondents will be combined and summarized so that no individually identifiable information will be released. The Eisenberg Center will produce from 17 to a maximum of 33 Summary Guides per audience (*i.e.,* clinician, policymaker, consumer) per year, depending on the information needed for each product with each audience.

In accordance with OMB guidelines for generic clearances for voluntary customer surveys and Executive Order 12862, AHRQ has established an independent review process to assure the development, implementation, and analysis of high quality customer surveys within AHRQ. Specifically, AHRQ understands that each activity conducted must be submitted to OMB with a supporting statement and accompanying instruments. Information collection may not proceed until approved by OMB.

### Method of Collection

Information collections conducted under this clearance will be collected via the following methods:

- *Focus Groups.* Focus groups may include clinical professionals, patients or other health care consumers, or health policy makers. They will be used to provide input regarding the needs for products and for the development of Decision Aids and Summary Guides. Focus groups may also be used to test draft products to determine if intended information and messages are being delivered through products that are produced and disseminated through the Eisenberg Center.
- *In-person or Telephone Interviews.* Interviews will be conducted with individuals from one or more of the three groups identified above. The purpose of these interviews is to (1) to provide input regarding the development of Decision Aids and Summary Guides, (2) to determine if intended information and messages are being delivered effectively through products that are produced and disseminated through the Eisenberg Center, and (3) to engage the subject in cognitive testing to (a) determine if changes in topical knowledge levels can be identified following exposure to Eisenberg Center informational or instructional products, and (b) identify strengths and weaknesses in products and services for purposes of making improvements that are practical and feasible.
- *Customer Satisfaction Survey for the Decision Aids.* Baseline survey data will be collected on both clinician and patient characteristics, characteristics of the health care condition, and selected outcome measures such as knowledge and decisional self-efficacy. Following delivery of the decision aid, a user survey will be completed to explore subjects' impressions of the tool,

including ease of use, clarity of presentation, length, balance of information, rating of interactive features, and overall satisfaction. Both clinicians and patients/consumers will be surveyed. For patients, the customer satisfaction survey will include decisional outcome measures (*e.g.,* decisional conflict, desire for involvement in decision-making), measures of attitudes and self-efficacy, and indicators of choice intention or actual choice made. If the aid is evaluated within a clinical context, measures of physician-patient interaction will also be considered. Additionally, clinicians may be interviewed about the impact of the aid on clinical flow.

• *Customer Satisfaction Surveys for the Summary Guides.* These surveys will be offered to health care professionals, consumers, and policy makers that use the online Summary Guides. Respondents will report via Likert-type or numerical response scales how specific informational or educational products or materials influenced health care or clinical practice behaviors.

• *Follow-up CME Surveys.* Continuing Medical Education (CME) credit will be offered to physicians who wish to participate in online activities developed around the Summary Guides for clinicians. Three months after completing the educational activity, physicians will be asked to complete a follow-up survey to assess realized changes in clinical practice, barriers to making change, and self-assessed impacts on patient care.

• *Solicited Topic Nominations.* Visitors to the Web site will have the opportunity to provide information about suggested topics that might be addressed through the research and dissemination efforts of the EHC program.

• *Web site Registration.* Visitors to the Web site will be able to register personal contact information (*e.g.,* name, e-mail address) if wishing to receive updated information and materials as they become available.

• *Glossary Feedback Survey.* Visitors to the Web site who access the health care glossary will be asked to suggest missing terms and provide additional comments on definitions or usage sentences, if desired.

This information will be used to develop, improve and/or maintain high quality products and services to lay and health professional publics.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden for the respondents time to participate in this research. These estimates assume a maximum of 33 Summary Guides per year and separate Guides for clinicians, policy makers and consumers and are thus slight overestimates.

Focus groups will be used for needs assessment and will be conducted with clinicians and consumers for development of the Summary Guides, and additionally with policymakers for those Guides in which policy recommendations are applicable. Focus groups will be conducted with no more than 1,056 persons per year and will last about 1½ hours.

Once the Summary Guides are developed they will be subjected to in-person or telephone interviews for purposes of usability and product testing with clinicians, policy makers and consumers. In-person telephone interviews will be conducted twice with about 1,386 persons annually and will take about 66 minutes on average. Two rounds of interviews will be conducted with all consumer representatives during product development, with a second round of interviews conducted occasionally with clinicians and policy makers, as needed.

Customer satisfaction surveys for the Summary Guides will be conducted with approximately 6,600 representatives from the audience to be targeted by the Summary Guides annually (*i.e.,* clinician, policymaker or consumer) and will take 5 minutes to complete.

Customer satisfaction surveys will also be administered to approximately 50 clinicians and 500 patients in evaluating the Decision Aid. These surveys will take about 10 minutes to complete, and will be administered before and after implementation of the Decision Aid in the study populations.

Clinicians that have completed CME accrediting requirements and are requesting CME credit will be asked to complete the follow-up CME Survey three months following completion of the online activity. This data collection will be completed with about 1,320 clinicians annually and will require 5 minutes to complete.

Approximately 2,500 solicited topic nomination forms will be completed annually by healthcare professional and consumer visitors to the Web site and will require about 5 minutes to complete. Web site Registration will be completed by all persons wanting to stay up-to-date with the latest information from the Eisenberg Center, about 6,000 annually, and requires about 5 minutes to complete. The Glossary Feedback Survey will be completed by about 200 persons annually that access the glossary and takes 5 minutes to complete. The total burden hours are estimated to be 6,203.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents time to participate in this research. The cost burden is estimated to be $290,227 annually.

**Exhibit 1. Estimated Annualized Burden Hours**

| Type of data collection | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Focus Groups | 1,056 | 1 | 1.5 | 1,584 |
| In-person/Telephone Interviews | 1,386 | 2 | 1.1 | 3,050 |
| Customer Satisfaction Surveys for the Decision Aid | 550 | 2 | 10/60 | 184 |
| Customer Satisfaction Surveys for the Summary Guides | 6,600 | 1 | 5/60 | 550 |
| Follow-up CME Surveys | 1,320 | 1 | 5/60 | 110 |
| Solicited Topic Nominations | 2,500 | 1 | 5/60 | 208 |
| Web site Registration | 6,000 | 1 | 5/60 | 500 |
| Glossary Feedback Survey | 200 | 1 | 5/60 | 17 |
| Total | 19,612 | ([1]) | ([1]) | 6,203 |

[1] Not applicable.

**Exhibit 2. Estimated Annualized Cost Burden**

| Type of data collection | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Focus Groups | 1,056 | 1,584 | $48.98 | $77,584 |
| In-person/Telephone Interviews | 1,386 | 3,050 | 46.82 | 142,801 |
| Customer Satisfaction Surveys for the Decision Aid | 550 | 184 | 25.53 | 4,698 |
| Customer Satisfaction Surveys for the Summary Guides | 6,600 | 550 | 39.55 | 21,753 |
| Follow-up CME Surveys | 1,320 | 110 | 77.64 | 8,540 |
| Solicited Topic Nominations | 2,500 | 208 | 48.07 | 9,999 |
| Web site Registration | 6,000 | 500 | 48.07 | 24,035 |
| Glossary Feedback Survey | 200 | 17 | 48.07 | 817 |
| Total | 19,612 | 6,203 | ([1]) | 290,227 |

[1] Not applicable.

* Based upon the mean and weighted mean wages for clinicians (29–1062 family and general practitioners), policy makers (11–0000 management occupations, 11–3041 compensation & benefits managers, 13–1072 compensation, benefits & job analysis specialists, 11–9111 medical and health service managers, 13–2053 insurance underwriters and 15–2011 actuaries) and consumers (00–0000 all occupations). Focus groups include 528 clinicians ($77.64/hr) and 528 consumers ($20.32/hr); in-person/telephone interviews includes 528 clinicians, 330 policy makers ($39.91/hr) and 528 consumers; customer satisfaction surveys for the decision aid includes 50 clinicians and 500 consumers; customer satisfaction surveys for the summary guides includes 1,650 clinicians, 1,650 policy makers and 3,300 consumers; follow-up CME surveys includes 1,320 clinicians; solicited topic nominations include 1,125 clinicians, 250 policy makers and 1,125 consumers; Web site registration includes 2,700 clinicians, 600 policy makers and 2,700 consumers; glossary feedback survey includes 90 clinicians, 20 policy makers and 90 consumers, National Compensation Survey: Occupational wages in the United States May 2008, "U.S. Department of Labor, Bureau of Labor Statistics."

**Estimated Annual Costs to the Federal Government**

The maximum cost to the Federal Government is estimated to be $1,439,003 annually. Exhibit 3 shows the total and annualized cost by the major cost components.

**Exhibit 3. Estimated Total and Annualized Cost**

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Project Development | $1,019,970 | $339,990 |
| Data Collection Activities | 735,405 | 245,135 |
| Data Processing and Analysis | 1,889,505 | 629,835 |
| Project Management | 557,380 | 185,793 |
| Overhead | 114,750 | 38,250 |
| Total | 4,317,010 | 1,439,003 |

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 10, 2010.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2010–11993 Filed 5–19–10; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–D–0226]**

### Draft Guidance for Industry, Third Parties and Food and Drug Administration Staff; Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program." This draft guidance is intended to provide information on the implementation of a section of the Food and Drug Administration Amendments Act of 2007 (FDAAA), which amends a section of the Federal Food, Drug, and Cosmetic Act (the act). This guidance document describes how FDA's Center for Devices and Radiological Health (CDRH) and Center for Biologics Evaluation and Research (CBER) are implementing this provision of the law. This draft guidance is not final nor is it in effect at this time.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit

written or electronic comments on the draft guidance by August 18, 2010. Submit written or electronic comments on the collection of information July 19, 2010.

**ADDRESSES:** Submit written requests for single copies of the draft guidance document entitled "Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program" to the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA), Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Room 4613, Silver Spring, MD 20993 or to the Office of Communications, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Kimberly A. Trautman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Room 3422, Silver Spring, MD 20993, 301–796–5515, or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

This draft guidance is intended to provide information on the implementation of section 228 of FDAAA, which amends section 704(g)(7) of the act (21 U.S.C. 374(g)(7)). Under this draft guidance, device manufacturers whose establishment has been audited under one of the regulatory systems implemented by the Global Harmonization Task Force (GHTF) founding members[1] using ISO 13485:2003 "Medical devices—Quality management systems—Requirements for regulatory purposes," may voluntarily submit the resulting audit report to FDA. If, based on that report, FDA determines there is minimal probability—in light of the relationship between the quality system deficiencies observed and the particular device and manufacturing processes involved—that the establishment will produce nonconforming and/or defective finished devices, then FDA intends to use the audit results as part of its risk assessment to determine whether that establishment can be removed from FDA's routine work plan for 1 year. The medical device ISO 13485:2003 Voluntary Audit Report Submission Program outlined in this draft guidance is another way in which FDA may leverage audits performed by other GHTF regulators and accredited third parties in order to assist the agency in setting risk-based inspectional priorities.

This notice of availability and draft guidance satisfy the public notice requirement of section 704(g)(7)(F) of the act, which provides that FDA shall give public notice of the ISO standard(s) under which FDA accepts voluntary submissions of audit reports.

## II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on "Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Draft Guidance for Industry, Third Parties and FDA Staff: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program" you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1705 to identify the guidance you are requesting.

A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov* or at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

## IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Title*: Draft Guidance for Industry, Third Parties and FDA Staff: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program.

*Description*: Section 228 of the Food and Drug Administration Amendments Act of 2007 (FDAAA), amended section 704(g)(7) of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 374(g)(7)) to add the following provision:

"(F) For the purpose of setting risk-based inspectional priorities, the Secretary shall accept voluntary

[1] The GHTF founding members auditing systems include the Canadian Medical Devices Conformity Assessment System; the European Union Notified Body accreditation system; the Therapeutics Goods Administration of Australia Inspectorate; and the Japanese Medical Device Ministry of Health, Labour and Welfare system.

submissions of reports of audits assessing conformance with appropriate quality system standards set by the International Organization for Standardization (ISO) and identified by the Secretary in public notice. If the owner or operator of an establishment elects to submit audit reports under this subparagraph, the owner or operator shall submit all such audit reports with respect to the establishment during the preceding 2-year periods."

The "Draft Guidance for Industry, Third Parties and FDA Staff: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program" will describe how FDA's CDRH and CBER are implementing this provision of the law and providing public notice as required. The proposed collections of information are necessary to satisfy the previously mentioned statutory requirements for implementing this voluntary submission program.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Type of Respondent | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Domestic or foreign device manufacturer whose establishment was audited under ISO 13485:2003 | 1,600 | 1 | 1,600 | 2 | 3,200 |

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

Based on FDA's experience with the founding regulatory members of GHTF, FDA expects that the vast majority of manufacturers who will participate in the Voluntary Audit Report Submission Program will be manufacturers who are certified by Health Canada under ISO 13485:2003.[2] In 2008, approximately 2,650 manufacturers or manufacturing sites had been certified by Health Canada.

In addition, FDA only expects firms who do not have major deficiencies or observations in their ISO 13485:2003 audits to be willing to submit their audit reports to FDA under the Voluntary Audit Report Submission Program. FDA analyzed its inspection data from Fiscal Year (FY) 2008 (October 1, 2007 to October 1, 2008) and determined that the total number of inspections finalized in FY2008 for medical devices was 1,965. The breakdown for the 1,965 compliance decisions is as follows:

TABLE 2.—COMPLIANCE DECISION BREAKDOWN

| Compliance Decision[1] | Number | Approximate Percentage |
|---|---|---|
| Official Action Indicated | 148 | 8% |
| Voluntary Action Indicated | 775 | 40% |
| No Action Indicated | 1,025 | 52% |
| Pending Final Decision | 17 | 1% |

[1] June 15, 2006, Compliance Program 7382.845 Inspection of Medical Device Manufacturers Part V *http://www.fda.gov/cdrh/comp/guidance/7382.845.html#p5p5.pdf*.

Because FDA only expects firms who do not have major deficiencies or observations to be willing to submit their audit reports to FDA under the Voluntary Audit Report Submission Program, FDA only expects to receive audit reports that would have been classified by FDA as No Action Indicated (NAI).

Assuming that the percentage breakdown of compliance decisions for all inspections conducted in FY2008 can be extrapolated and applied to audits of manufacturers certified under ISO 13485:2003 by Health Canada, FDA can estimate the number of Canadian establishments that would have had an inspection classified as an NAI. Since 52 percent of all compliance decisions resulted in a NAI decision, FDA estimates that 1,378 of the facilities certified under ISO 13485:2003 by Health Canada (52 percent of the total 2,650 facilities) would have had an inspection classified as an NAI. Since FDA only expects to receive audit reports that would have been classified by FDA as NAI, FDA expects 1,378, or approximately 1,400, audit reports to be submitted.

Since FDA expects that the vast majority of manufacturers who will participate in the Voluntary Audit Report Submission Program will be manufacturers certified by Health Canada under ISO 13485:2003, FDA expects the number of reports to be submitted from manufacturers certified by regulatory systems established by other founding GHTF members to be minimal. For purposes of calculating the reporting burden, FDA estimates that approximately 10 percent of total audit reports submitted under this program will be from these other manufacturers. Since 90 percent of the audit reports are expected to be submitted by manufacturers certified by Health Canada (approximately 1,400 audit reports as calculated previously in this document), then the total number of audit reports FDA expects to receive in a year is 1,556, or approximately 1,600, audit reports.

FDA further estimates that the gathering, scanning, and submission of the audit reports, certificates, and related correspondence would take approximately 2 hours.

This draft guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 820 have been approved

[2] The majority of these manufacturers are also certified under ISO 13485:2003 by the European Union Notified Body accreditation system.

under OMB control number 0910–0073 and the collections of information for the Inspection by Accredited Persons Program have been approved under OMB control number 0910–0569.

**V. 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.

Dated: May 17, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–12098 Filed 5–19–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

*Date:* June 15, 2010.

*Open:* 8:30 a.m. to 12 p.m.

*Agenda:* To discuss administrative details relating to the Council's business and special reports.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Closed:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Laura K. Moen, PhD, Director, Division of Extramural Research Activities, NIAMS/NIH, 6701 Democracy Blvd., Ste. 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12151 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Mechanisms of Protein Homeostasis.

*Date:* June 14, 2010.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, 3201, Bethesda, MD 20817. (Telephone Conference Call)

*Contact Person:* Brandt R. Burgess, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethdesda, MD 20892–7616, 301–451–2584, *bburgess@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Emergence and Evolution of Coronavirus Pathogens.

*Date:* June 15, 2010.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, 3201, Bethesda, MD 20817. (Telephone Conference Call)

*Contact Person:* Brandt R. Burgess, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethdesda, MD 20892–7616, 301–451–2584, *bburgess@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12156 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Reducing Cardiovascular Disease Risk Through Treatment of Obstructive Sleep Apnea.

*Date:* June 3, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

*Contact Person:* David A Wilson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Planning Grants for Clinical Trials of Novel Therapies in Lung Transplantation.

*Date:* June 3, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Keary A Cope, PhD, Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, (301) 435–2222, *copeka@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Phase II Clinical Trials of Novel Therapies for Lung Diseases.

*Date:* June 10, 2010.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:*

YingYing Li-Smerin, MD, PhD, Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, lismerin@nhlbi.nih.gov.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Coordination Core for Programs to Increase Diversity Among Individuals Engaged in Health-Related Research (PRIDE).

*Date:* June 16, 2010.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Stephanie J. Webb, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Cellular and Molecular Mechanisms of Arterial Stiffening and Its Relationship to Development of Hypertension.

*Date:* June 17, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Robert T. Su, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301–435–0297, *sur@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Investigator and Research Scientist Career Development Awards.

*Date:* June 17–18, 2010.

*Time:* 8 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Marriott Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892, 301–594–8394, *mooreb@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12150 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Neuroscience and Neurodegeneration Study Section, June 3, 2010, 8 a.m. to June 4, 2010, 5 p.m., Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005 which was published in the **Federal Register** on May 7, 2010, 75 FR 25273–25275.

The meeting will be one day only, June 3, 2010, from 8 a.m. to 6:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 17, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12145 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 4, 2010, 2 p.m. to June 4, 2010, 4 p.m., Grand Hyatt Seattle, 721 Pine Street, Seattle, WA 98101 which was published in the **Federal Register** on May 11, 2010, 75 FR 26261–26262.

The meeting has been changed to a telephone assisted meeting at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time have been changed to June 11, 2010, from 1 p.m. to 2 p.m. The meeting is closed to the public.

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12143 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Improved Diagnostics for Lyme Borreliosis, Funding Opportunity Announcement (FOA) CK10–005; Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

**TIME AND DATE:** 12 p.m.–3 p.m., June 22, 2010 (Closed).

**PLACE:** Teleconference.

**STATUS:** The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

**MATTERS TO BE DISCUSSED:** The meeting will include the initial review, discussion, and evaluation of applications received in response to "Improved Diagnostics Lyme Borreliosis," FOA CK10–005.

**FOR MORE INFORMATION CONTACT:** Christine J. Morrison, PhD, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–12167 Filed 5–19–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Advisory Committee to the Director, NIH.

*Date:* June 10, 2010.

*Closed:* 8:30 a.m. to 9:30 p.m.

*Agenda:* The ACD review of the Pioneer and Innovator Awards.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 9:30 a.m. to 5 p.m.

*Agenda:* Among the topics proposed for discussion are: (1) NIH Director's Report; (2) Work Group for Human Embryonic Stem Cell Review; (3) Work Group on Outside Awards for NIH Employees.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20852.

*Contact Person:* Penny W. Burgoon, PhD, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 114, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Office of the Director's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12160 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel.

*Date:* June 1, 2010.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NCRR, OR, One Democracy Plaza, 6701 Democracy Blvd., Rm. 1064, Bethesda, MD 20892.

*Contact Person:* Guo Zhang, MD, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1064, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12159 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Minority Health and Health Disparities.

*Date:* June 8, 2010.

*Closed:* 8 a.m. to 9 a.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Open:* 9 a.m. to 5 p.m.

*Agenda:* The agenda will include opening remarks, administrative matters, Director's Report, NIH Health Disparities update, and other business of the Council.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Heath Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: May 14, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–12153 Filed 5–19–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

**AGENCY:** Health Resources and Services Administration (HRSA), HHS .

**ACTION:** Notice of Non-competitive Award of Part C Funds for the Rural Health Group.

**SUMMARY:** HRSA will be awarding non-competitively Part C funds to support comprehensive primary care services for persons living with HIV/AIDS, including primary medical care, laboratory testing, oral health care, outpatient mental health and substance abuse treatment, specialty and subspecialty care, referrals for health and support services and adherence monitoring/education services to the Rural Health Group in order to ensure continuity of critical HIV medical care and treatment services, and to avoid a disruption of HIV clinical care to clients in Henderson, North Carolina, and the surrounding counties.

**SUPPLEMENTARY INFORMATION:**

*Grantee of record:* Maria Parham Medical Center, Henderson, North Carolina.

*Intended recipient of the award:* Rural Health Group, Roanoke Rapids, North Carolina.

*Amount of the award:* $426,562 to ensure ongoing clinical services to the target population.

**Authority:** Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff-51.

*CFDA Number:* 93.918.

*Project period:* April 1, 2010, to June 30, 2011. The period of support for this award is from April 1, 2010, to June 30, 2011.

### Justification for the Exception to Competition

Critical funding for HIV medical care and treatment services to clients in northern North Carolina will be continued through a non-competitive award to the Rural Health Group, because it has the fiscal and administrative infrastructure to administer the Part C Grant. This is a temporary replacement award, as the previous grant recipient serving this population notified HRSA that it could not continue providing services after March 31, 2010. HRSA's HIV/AIDS Bureau identified the Rural Health Group as the best qualified entity for this temporary grant, because it is a community health center funded by section 330 of the Public Health Service Act. As of January 1, 2010, the Maria Parham Medical Center has contracted with the Rural Health Group to provide services temporarily, and the program staff has been transferred to the Rural Health Group. The Rural Health Group can ensure comprehensive services are provided including primary medical care including antiretroviral therapies; prevention education and medication adherence teaching; referrals for mental health, substance abuse and dental services; and on-site medical HIV case management services. The additional funding provided would enhance retaining the targeted population in care. The Rural Health Group is able to provide critical services with the least amount of disruption to the service population while the service area is re-competed.

This supplement will cover the time period from April 1, 2010, through June 30, 2011. This service area will be included in the upcoming competition for the Part C HIV Early Intervention Services for project periods starting July, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Treat, by e-mail *ktreat@hrsa.gov,* or by phone at 301–443–7602.

Dated: May 12, 2010.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2010–12047 Filed 5–19–10; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0085]**

### Preventive Controls for Fresh Produce; Request for Comments; Extension of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; extension of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to July 23, 2010, the comment period for a notice that appeared in the **Federal Register** of February 23, 2010 (75 FR 8086). In that notice, FDA established a docket to obtain comments and information about current practices and conditions for the production and packing of fresh produce. The agency is extending this comment period to give interested parties additional time to

provide the information requested by FDA in that notice.

**DATES:** Submit electronic or written comments by July 23, 2010.

**ADDRESSES:** Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2024.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of February 23, 2010 (75 FR 8086), FDA announced the opening of a docket to obtain information about current practices and conditions for the production and packing of fresh produce. FDA established this docket to provide an opportunity for interested persons to provide comments and information and share views that will inform the development of safety standards for fresh produce at the farm and packing house and strategies and cooperative efforts to ensure compliance.

FDA is extending the comment period until July 23, 2010. The agency believes that this additional time is necessary to give interested parties sufficient time to respond to the general topic categories set forth in the February notice.

The agency will consider information submitted to the docket in developing safety standards for fresh produce.

## II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments 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.

Dated: May 17, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–12081 Filed 5–19–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Privacy Act of 1974; Report of Systems of Record Notices

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

**ACTION:** *Privacy Act:* Notice to add a new routine use to all SAMHSA Systems of Record Notices (SORNs) and Retire 2 Outdated SORNs.

**SUMMARY:** In accordance with the requirements of the Privacy Act SAMHSA proposes to add a new routine use to its inventory of SORNs subject to the Privacy Act of 1974 (Title 5 United States Code [U.S.C.] 552a) authorizing disclosure of individually identifiable information to assist in efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in these systems of records. The new routine use will be prioritized in the next consecutive numbered order of routine uses in each system notice and will be included in the next published notice as part of SAMHSA's normal SORN review process.

SAMHSA also deleted two outdated, obsolete SORNs.

**Routine Uses of Records**

The following SORNs have been updated to include the routine use below:

"*To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.*"

09–30–0023 *Records of Contracts Awarded to Individuals,* HHS/SAMHSA/OA; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

09–30–0027 *Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Service, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Services Programs,* HHS/SAMHSA/OA; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

09–30–0033 *Correspondence Files,* HHS/SAMHSA/OA; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

09–30–0036 *Alcohol, Drug Abuse, and Mental Health Epidemiologic Data,* HHS/SAMHSA/OA; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

09–30–0049 *Consultant Records Maintained by SAMHSA Contractors,* HHS/SAMHSA/OA; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

09–30–0051 *SAMHSA Information Mailing System (SIMS),* HHS/SAMHSA/OA; Published in the **Federal Register**, Vol. 66, No. 62, Friday, March 30, 2001 (p. 17434).

09–30–0052 *SAMHSA Opioid Treatment Waiver Notification System (OTWNS);* Published in the **Federal Register**, Vol. 67, No. 80, Thursday, April 25, 2002 (pages 20542–20544).

**Retired Systems of Records Notices**

The following SORNs have been retired (*e.g.,* deleted):

09–30–0029 *Records of Guest Workers,* HHS/SAMHSA/OPS; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

09–30–0047 *Patient Records of Chronic Mentally Ill Merchant Seaman Treated at Nursing Homes in Lexington, Kentucky (1942 to the Present),* HHS/SAMHSA/CMHS; Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

**DATES:** *Effective Date:* The new routine use and SORN deletions will be effective on April 12, 2010.

**SUPPLEMENTARY INFORMATION:** On May 22, 2007, the Office of Management and Budget (OMB) released Memoranda (M) 07–16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information.* HHS convened a leadership committee composed of members from the Office of the Chief Information Officer (OCIO), the office of Assistant Secretary for Public Affairs (ASPA), and the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in order to formulate a response plan for the newly established requirements. The final response plan was signed by the HHS Chief Information Officer (CIO), Mike Carleton, and submitted to OMB on September 19. As required by the memorandum, and to comply with the

"Incident Reporting and Handling Requirements," all Operations and Staff Divisions are instructed to incorporate the suggested routine use language as a part of their normal SORN review process.

## Contact Information

The public should address comments to: Bill Reed, SAMHSA Chief Information Officer, 1 Choke Cherry Road, Room 3–1097, Rockville, MD, 20857, Telephone: (240) 276–1134.

Comments received will be available for review at this location, by appointment, during regular business hours (Monday through Friday 9 a.m.—3 p.m., Eastern Time Zone).

Dated: May 6, 2010.

**Bill Reed,**

*SAMHSA Chief Information Officer, breed@samhsa.hhs.gov.*

## PRIVACY ACT SYSTEM NOTICE: 09–30–0023[i]

### SYSTEM NAME:

Records of Contracts Awarded to Individuals (HHS/SAMHSA/OPS).

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

Director, Division of Contracts Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Rm., 7–1053, Rockville, Maryland 20857.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

An individual who receives a contract as well as individuals who apply or compete for an award but do not receive the award and their consultants.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae, salary information, evaluations of proposals by contract review committees.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501–05 (42 U.S.C. 290aa *et seq.*). CSAT: Center for Substance Abuse Treatment, Section 507–12 (42 U.S.C. 290bb *et seq.*). CSAP: Center for Substance Abuse Prevention, Section 515–8 (42 U.S.C. 290bb–21 *et seq.*). CMHS: Center for Mental Health Services, Section 520–35 (42 U.S.C. 290bb–31 *et seq.*). Protection and Advocacy for Individuals with Mental Health Illness Act of 1986 as amended (42 U.S.C. 10801 *et seq.*); Refugee Education Assistance Act 1980, section 501(c) (8 U.S.C. 1522 note). Public Law 96–422; Executive Order 12341; and Disaster Relief Act of 1974, section 413. Public Law 93–288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Public Law 100–107.

### PURPOSE(S) OF THE SYSTEM:

To document the history of each contract procurement action and award made within SAMHSA to an individual. The records are also used by contract review committee members when evaluating a proposal submitted by an individual.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) to another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) to the Treasury Department, Internal Revenue Service (IRS), to request his/her mailing address to locate him/her or in order to have a credit report prepared;

(d) to agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;

(e) to debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) to the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, Social Security number, and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

4. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of contract applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

5. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

6. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

7. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and

other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

8. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (F)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, and amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Documents are filed in manual files in enclosed and/or locked file cabinets.

**RETRIEVABILITY:**

Records are retrieved by contract number and cross indexed by individual's name.

**SAFEGUARDS:**

1. Authorized Users: Federal contract and support personnel, Federal contract review staff and outside consultants acting as peer reviewers of the project.

2. Physical Safeguards: All folders are in file cabinets in a room that is locked after business hours in a building with controlled entry (picture identification). Files are withdrawn from cabinet for Federal staff who have a need to know by a sign in and out procedure.

3. Procedural Safeguards: Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 of the General Administration Manual.

**RETENTION AND DISPOSAL:**

a. Procurement or purchase copy, and related papers:

(1) Transactions of more than $25,000 are destroyed 6 years and 3 months after final payment.

(2) Transactions of $25,000 or less are destroyed 3 years after final payment.

b. Other copies of records used by the Division of Contracts Management for administrative purposes are destroyed upon termination or completion.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Contracts Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Rm. 7–1053, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

To determine if a record exists, write to the appropriate System Manager at the address above or appear in person to the Division of Contracts Management. An individual may learn if a record exists about himself/herself upon written request with notarized signature. The request should include, if known, contractor's name, contract number, and approximate date contract was awarded. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures that have been made from that individual's records, if any.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Contract proposals and supporting contract documents, contract review committees, site visitors.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

## PRIVACY ACT SYSTEM NOTICE: 09–30–0027 [ii]

**SYSTEM NAME:**

Grants and Cooperative Agreements: Alcohol, Drug Abuse, and Mental Health Services Evaluation, Service, Demonstration, Education, Fellowship, Training, Clinical Training, and Community Services Programs (HHS/SAMHSA/OA)

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Director, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 4–1057, Rockville, Maryland 20857.

Director, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 5–1015, Rockville, Maryland 20857.

Director, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 6–1057, Rockville, Maryland 20857.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Principal investigators, program directors, trainees, fellows, and other employees of applicant or grantee institutions.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Grant and cooperative agreement applications and review history, including curriculum vitae, salary information, summary of review committee deliberations and supporting documents, progress reports, financial records, and payback records of clinical training awardees.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

SAMHSA: Public Health Service Act, Sections 301 (42 U.S.C. 241), 303 (42 U.S.C. 242(a), 322 (42 U.S.C. 249(c), 501 (42 U.S.C. 290aa), 503 (42 U.S.C. 290aa–2), and 505 (42 U.S.C. 290aa–4). CSAP: Center for Substance Abuse Prevention, Section 515–18 (42 U.S.C. 290bb–21 *et seq.*). CSAT: Center for Substance Abuse Treatment, Section 507–12 (42 U.S.C. 290bb *et seq.*). CMHS: Center for Mental Health Services, Sections 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 *et seq.*). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 *et seq.*); Refugee Education Assistance Act of 1980, Section 501 (c) (8 U.S.C. 1522

note), Public Law 96–422; Executive Order 12341; and Disaster Relief Act of 1974, Section 413, Public Law 93–288, as amended by Section of 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–107.

**PURPOSE(S) OF THE SYSTEM:**

Records are maintained as official documentation relevant to the review, award, and administration of grant programs. Specifically, records are: (1) Used by staff program and management specialists for purpose of awarding and monitoring grant funds; and (2) used to maintain communication with former trainees/fellows who have incurred an obligation for clinical training under Public Health Service Act, Section 303 (42 U.S.C. 242a).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to qualified experts not within the definition of Department employees for opinion during the application review process.

2. Disclosure may be made to SAMHSA contractors for the purpose of providing services related to the grant review or for carrying out quality assessment, program evaluation, and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (*e.g.,* the Department of Justice) or State (*e.g.,* the State's Attorney's Office), charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto for litigation.

4. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) to another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) to the Treasury Department, Internal Revenue Service (IRS), to request his/her mailing address to locate him/her or in order to have a credit report prepared;

(d) to agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;

(e) to debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) to the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, social security number and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for the purpose of preparing a commercial credit report on the individual. Part (a) applies to any claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

9. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of grant/cooperative agreement applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

10. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

11. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

12. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

13. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or

confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Non-computerized documents are filed in folders in enclosed file cabinets and open shelves. Computerized records exist in tape and disk form.

**RETRIEVABILITY:**

By grant numbers and cross-indexed by name.

**SAFEGUARDS:**

1. *Authorized Users:* Access is limited to the Director, Division of Grants Management, SAMHSA, and staff authorized by him/her: grants specialists, grants technicians, program officials, assigned computer personnel, and possibly contractor staff including the project director and research associates.

2. *Physical Safeguards:* Records are maintained in a secured area. During normal work hours, area is staffed by authorized personnel who must show identification for entry. At other times, the computer area is locked. Hard copy files are stored in rooms which are locked at night. A 24-hour security guard patrols building.

3. *Procedural Safeguards:* Computer records are password protected; passwords are changed periodically. Contractors working on computerized records are given passwords to access data only on a need-to-know basis.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual and Part 6, "Automated Information Systems Security" of the Information Resources Management Manual.

**RETENTION AND DISPOSAL:**

a. *Alcohol, Drug Abuse, and Mental Health Services Evaluation, Services and Demonstration Grants:* A copy of the final report is offered to the National Archives and Records Administration when 10 years old. Other records are held two years after termination of support Suitland Road, Suitland, MD, 20409. Records are destroyed when 6 years and 3 months old.

b. *Education Grants:* Records are held 2 years after completion of grants activities and final audit and then transferred to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 13 years old.

c. *Training Program Grants:* Records are held 1 year after termination of support and final audit and then retired transferred to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 3 years old.

d. *Fellowships, Community Services Program Grants and Other Related Grants:* Records are held 2 years after termination of support and final audit and then retired to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 5 years old.

**SYSTEM MANAGER(S) AND ADDRESS:**

Same as System Location.

**NOTIFICATION PROCEDURE:**

To determine if a record exists, write to the appropriate System Manager at the above address. Verifiable proof of identity is required.

**RECORD ACCESS PROCEDURES:**

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and should provide the official grant number when possible. An individual may also request an accounting of disclosures of his/her record, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the appropriate System Manager at the address specified above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Applicants, grantees, fellows, trainees, personnel at grantee institution on whom the record is maintained, Federal advisory committees, site visitors, consultants, references.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918)

## PRIVACY ACT SYSTEM NOTICE: 09–30–0033 [iii]

**SYSTEM NAME:**

Correspondence Files (HHS/SAMHSA/OA).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of the Administrator, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room, 8–1065, Rockville, Maryland 20857.

Office of the Director, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room, 4–1057, Rockville, Maryland 20857.

Office of the Director, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room, 5–1015, Rockville, Maryland 20857.

Office of the Director, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room, 4–1057, Rockville, Maryland 20857.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who request information on SAMHSA programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Correspondence.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

SAMHSA: Public Health Service Act, Sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501–05 (42 U.S.C. 290aa *et seq.*). CSAP: Center for Substance Abuse Prevention, Section 515–8 (42 U.S.C. 290bb–21 *et seq.*). CSAT: Center for Substance Abuse Treatment, Section 507–12 (42 U.S.C. 290bb *et seq.*). CMHS: Center for Mental Health Services, Sections 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 *et seq.*). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 1801 *et seq.*); Refugee Education Assistance Act of 1980, Section 501(c) (8 U.S.C. 1522

note), Public Law 96–422; Executive Order 12341; and Disaster Relief Act of 1974, Section 413, Public Law 93–288, as amended by Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act Public Law 100–107.

**PURPOSE(S) OF THE SYSTEM:**

To provide reference retrieval and control to assure timely and appropriate attention.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Correspondence records maintained in hard copy; control records maintained on computer printout, tape, and disk.

**RETRIEVABILITY:**

Hard copy records indexed alphabetically by name and date of outgoing correspondence, by subject, and/or by computerized numerical code. Records are cross-referenced in detail on computer.

**SAFEGUARDS:**

1. *Authorized Users:* Authorized correspondence control staff in each location and managers and supervisors on a need-to-know basis.

2. *Physical Safeguards:* Records are maintained in file cabinets in a locked, secure location; computer system records are secured through the use of passwords which are changed frequently.

3. *Procedural Safeguards:* Only authorized personnel have access to files and passwords.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual and Part 6, "Automated Information Systems Security" in the HHS Information Resources Management Manual.

**RETENTION AND DISPOSAL:**

Records which are pertinent are held 5 years and then transferred to the Washington National Records Center (WNRC) located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 10 years old. Other material is destroyed when 2 years old. Control forms are destroyed when 1 year old.

**SYSTEM MANAGER(S) AND ADDRESS:**

Same as system location; each system manager maintains full responsibility for their specific correspondence system.

**NOTIFICATION PROCEDURE:**

An individual may learn if a record exists about himself or herself by contacting the appropriate System Manager as listed under system location above. Give name and approximate date of records requested. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (*e.g.,* driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the appropriate official at the address specified under Notification Procedures above and reasonably identify the record. Specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Records are derived from incoming and outgoing correspondence.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

## PRIVACY ACT SYSTEM NOTICE: 09–30–0036 [iv]

**SYSTEM NAME:**

Alcohol, Drug Abuse, and Mental Health Epidemiologic Data (HHS/SAMHSA/OA).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are located at facilities which collect or provide service evaluations for this system under contract to the agency. Contractors may include, but are not limited to, research centers, clinics, hospitals, universities, research foundations, national associations, and coordinating centers. Records may also be located at the Office of Applied Studies, the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. A current list of sites is available by writing to the appropriate System Manager at the address below.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are the subjects of epidemiologic, methodologic, services evaluations, and longitudinal studies and surveys of mental health and alcohol and drug use/abuse and mental, alcohol, and/or drug abuse disorders. These individuals are selected as representative of the general adult and/or child population or of special groups. Special groups include, but are not limited to, normal individuals serving as controls; clients referred for or receiving medical, mental health, and alcohol and/or drug abuse related treatment and prevention services; providers of services; demographic sub-groups as applicable, such as age, sex,

ethnicity, race, occupation, geographic location; and groups exposed to hypothesized risks, such as relatives of individuals who have experienced mental health and/or alcohol, and/or drug abuse disorders, life stresses, or have previous history of mental, alcohol, and/or drug abuse related illness.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains data about the individual as relevant to a particular study. Examples include, but are not limited to, items about the health/mental health and/or alcohol or drug consumption patterns of the individual; demographic data; Social Security numbers (voluntary); past and present life experiences; personality characteristics; social functioning; utilization of health/mental health, alcohol, and/or drug abuse services; family history; physiological measures; and characteristics and activities of health/mental health, alcohol abuse, and/or drug abuse care providers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

SAMHSA: Public Health Service Act, Section 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), 501 (42 U.S.C. 290aa), 502 (42 U.S.C. 290aa–2), and 505 (42 U.S.C. 290aa–4). CSAP: Center for Substance Abuse Prevention, Section 515–18 (42 U.S.C. 290bb–21 *et seq.*). CSAT: Center for Substance Abuse Treatment, Section 507–12 (42 U.S.C. 290bb *et seq.*). CMHS: Center for Mental Health Services, Sections 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 *et seq.*). Protection and Advocacy for Individuals with Mental Illness Act of 1980, Section 501(c) (8 U.S.C. 1522 note), Public Law 96–422; Executive Order 12341; and Disaster Relief Act of 1974, Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–107.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of the system of records is to collect and maintain a data base for health services evaluation activities of the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. Analyses of these data involve groups of individuals with given characteristics and do not refer to special individuals. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental, alcohol, and/or drug abuse disorders, their diagnosis, treatment and prevention, and the promotion of good physical and mental health.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. A record may be disclosed for an evaluation purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; *e.g.,* disclosure of alcohol or drug abuse patient records will be made only in accordance with 42 U.S.C. 290(dd–2).

(b) has determined that the study purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the health services evaluation project, unless the recipient has presented adequate justification of an analytical or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another health services research or evaluation project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the evaluation project, if information that would enable study subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and

(d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., disclosure may be made to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of the individual's participation in activities of a Federal Government supported research project).

4. The Department contemplates that it will contract with a private firm for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

5. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on index cards, file folders, computer tapes and disks, microfiche, microfilm, and audio and video tapes. Normally, the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

**RETRIEVABILITY:**

During data collection stages and follow up, if any, retrieval by personal identifier (e.g., name, social security number (in some studies), or medical record number), is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

**SAFEGUARDS:**

1. *Authorized Users:* Access to identifiers and to link files is strictly

limited to those authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, *e.g.,* interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans.

2. *Physical Safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. *Procedural Safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When a SAMHSA component or a contractor provides anonymous data to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual and Part 6, "Automated Information Systems Security" of the HHS Information Resources Management Manual.

**RETENTION AND DISPOSAL:**

Records may be retired to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409, and subsequently disposed of in accordance with the SAMHSA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing to the appropriate System Manager at the address below.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of the Director, Office of Applied Studies, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 7–1047, Rockville, Maryland 20857.

Office of the Director, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 4–1057, Rockville, Maryland 20857.

Office of the Director, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 5–1015, Rockville, Maryland 20857.

Office of the Director, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 6–1057, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

To determine if a record exists, write to the appropriate System Manager at the address above. Provide individual's name; current address; date of birth; date, place and nature of participation in specific evaluation study; name of individual or organization administering the study (if known); name or description of the study (if known); address at the time of participation; and a notarized statement by two witnesses attesting to the individual's identity.

**RECORD ACCESS PROCEDURE:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

**CONTESTING RECORD PROCEDURE:**

Contact the appropriate official at the address specified under System Manager(s) above and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), by written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, such as health, mental health, alcohol, and/or drug abuse care providers; relatives; guardians; and clinical medical research records.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918).

## PRIVACY ACT SYSTEM NOTICE: 09–30–0049 [v]

**SYSTEM NAME:**

Consultant Records Maintained By SAMHSA Contractors (HHS/SAMHSA/OPS).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

A current list of contractor sites is available by writing to the System Manager at the address below.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Consultants who participate in Substance Abuse and Mental Health Services Administration (SAMHSA) conferences, meetings, evaluation projects, or technical assistance at site locations arranged by contractors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Names, addresses, Social Security numbers, qualifications, curricula vitae, travel records, and payment records for consultants.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

SAMHSA: Public Health Service Act, as amended, Section 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501–05 (42 U.S.C. 290aa *et seq.*). CSAP: Center for Substance Abuse Prevention, Section 515–8 (42 U.S.C. 290bb–21 *et seq.*). CSAT: Center for Substance Abuse Treatment, Section 507–12 (42 U.S.C. 290bb *et seq.*). CMHS: Center for Mental Health Services, Section 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 *et seq.*). Protection and Advocacy for

Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 *et seq.*); Refugee Education Assistance Act of 1980, Section 501(c) (8 U.S.C. 1522 note), Public Law 96–422; Executive Order 12341; and Disaster Relief Act of 1974, Section 413, Public Law 93–288, as amended by Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–107.

**PURPOSE(S) OF THE SYSTEM:**

This umbrella system of records covers a varying number of separate sets of records used in different projects. These records are established by contractors to organize programs, obtain and pay consultants, and to provide necessary reports related to payment to the Internal Revenue Service for these programs for SAMHSA. SAMHSA personnel may use records when a technical assistance consultant is needed for a specialized area of research, review, advice, etc.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. Disclosure may be made to private contractors for the purposes of handling logistics for conferences, reviews, development of training materials, and of obtaining the services of consultants. Relevant records will be disclosed to such a contractor or may be developed by the contractor for use in the project. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to the Department of Treasury, Internal Revenue Service, and applicable State and local governments those items to be included as income to an individual.

5. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm.

**RETRIEVABILITY:**

Information will be retrieved by name.

**SAFEGUARDS:**

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Only SAMHSA personnel working on these projects and personnel employed by SAMHSA contractors to work on these projects are authorized users as designated by the system managers.

2. *Physical Safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities.

3. *Procedural Safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual, and Part 6, "Automated Information Systems Security" in the HHS Information Resources Management Manual.

**RETENTION AND DISPOSAL:**

Records are destroyed 3 years after they are no longer used, or, if payment is involved, 3 years after closeout of the contract.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Contracts Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 7–1053, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

To determine if a record exists, write to the appropriate System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; (c) SAMHSA project officer, and (d) approximate date(s) of participation.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

Individuals may also request an accounting of disclosures of their records, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Information gathered from individual consultants and from assignment or travel documents.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 64, No. 11, Tuesday, January 19, 1999 (pages 2909–2918)

## PRIVACY ACT SYSTEM NOTICE: 09–30–0051 [vi]

**SYSTEM NAME:**

SAMHSA Information Mailing System (SIMS).

**SYSTEM CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

This system of records is maintained by the Office of Communications,

1 Choke Cherry Road, Rockville, Maryland 20857. The system of records will also be maintained at the site of the contractor managing SAMHSA's National Clearinghouse on Alcohol and Drug Abuse. Additional information about that contractor site is available by writing to the System Manager at the address below.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The individuals listed in the system are individuals who voluntarily request publications and other information from the SAMHSA Web site.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Request forms for SAMHSA publications include categories for personal information, such as name, phone number (home phone number may be provided), address (home address may be provided), title, level of education, topics/areas of interest related to SAMHSA programs, occupation, type of organization in which employed, and ethnic group.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Public Law 102–321 ("ADAMHA Reorganization Act"), Section 501 on July 10, 1992, as amended by Public Law 106–310.

**PURPOSE(S) OF THE SYSTEM:**

To establish a mailing list of States, political subdivisions, educational agencies and institutions, treatment providers, organizations, and individuals to provide SAMHSA publications and other print materials identified as of interest to them. In addition, it is used to provide them information about new and upcoming publications.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. SAMHSA intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of SAMHSA only if necessary to further the implementation and operation of this program.

4. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

**RETRIEVABILITY:**

The records are retrieved by name; they may be sorted by topic of interest, State, organizational affiliation in order to direct information of relevance to them.

**SAFEGUARDS:**

*Authorized Users:* Only SAMHSA personnel working on this project and personnel employed by SAMHSA contractors to work on this project are authorized users as designated by the system manager.

*Physical Safeguards:* Physical paper records are stored in lockable metal file cabinets or security rooms.

*Procedural Safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.

*Technical Safeguards:* Electronic records are protected by use of passwords.

*Implementation Guidelines:* HHS Chapter 45–13 of the General Administration Manual, "Safeguarding Records Contained in Systems of Records and the HHS Automated Information Systems Security Program Handbook, Information Resources Management Manual."

**RETENTION AND DISPOSAL:**

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the SAMHSA Records Control Schedule, Appendix B–311 (NCI–90–76–5) Item 3.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director, Office of Communications, Office of the Administrator, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room, 8–1033, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

Individuals may submit a request with a notarized signature on whether the system contains records about them to the above system manager.

**RECORD ACCESS PROCEDURES:**

Individuals have direct access to their personal record on the SIMS system, via the Internet, utilizing a discrete password of their own selection. Should this not be feasible or desired, and, in all other cases, requests from individuals for access to their records should be addressed to the system manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Information is provided by individuals, among others, who request SAMHSA publications. Furnishing of the information is voluntary.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 66, No. 62, Friday, March 30, 2001 (p. 17434).

**PRIVACY ACT SYSTEM NOTICE: 09–30–0052** [vii]

**SYSTEM NAME:**

Opioid Treatment Waiver Notification System (OTWNS).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of Pharmacologic and Alternative Therapies, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Room 5–1015, 1 Choke Cherry Road, Rockville, Maryland 20857.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

An individual practitioner (physician) or a practitioner in a group practice who submits a written notification of intent to use schedule III, IV, or V opioid drugs for the maintenance or detoxification treatment of opiate addiction under 21 U.S.C. 823(g)(2).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Physician name, address, phone, facsimile, state medical license number, DEA registration number, credentialing and specialized training information. In addition, for those practitioners in group practices, the group practice EIN.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Controlled Substance Act (21 U.S.C. 823(g)(2)).

**PURPOSE(S):**

To determine (as required by 21 U.S.C. 823 (g)(2)) whether practitioners who submit notifications meet all of the requirements for a waiver under 21 U.S.C. 823(g)(2)(B). The established criteria for a waiver include: a written notification that states the practitioner's name, the practitioner's registration under 21 U.S.C. 823(f), the practitioner's physician license under State law, and the qualifying physician criteria. The record system will also allow disclosure with consent of limited information to the Treatment Facility Locator.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

A. Medical specialty societies to verify practitioner qualifications.

B. Other Federal law enforcement and regulatory agencies for law enforcement and regulatory purposes.

C. State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes.

D. Persons registered under the Controlled Substance Act (Pub. L. 91–513) for the purpose of verifying the registration of customers and practitioners.

E. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

F. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

G. SAMHSA intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of SAMHSA if necessary to further the implementation and operation of this program.

H. Disclosure limited to the individual's name, address, and phone number will also be made to the SAMHSA Treatment Facility Locator pursuant to express consent.

I. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:**

Documents are filed in manual files in enclosed and/or locked file cabinets and in secured computers. The same basic data is maintained in an automated system for quick retrieval.

**RETRIEVABILITY:**

Records are retrieved by the individual practitioner's name and cross indexed by the practitioner's DEA registration number.

**SAFEGUARDS:**

1. *Authorized Users:* Federal contract and support personnel.

2. *Physical Safeguards:* All folders are in file cabinets in a room that is locked after business hours in a building with controlled entry (picture identification). Files are withdrawn from cabinet for Federal staff who have a need to know by a sign in and out procedure.

3. *Procedural Safeguards:* Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual.

**RETENTION AND DISPOSAL:**

Records are retained for a period of five years and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Nicholas Reuter, Office of Pharmacologic and Alternative Therapies, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Room 6–70, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURES:**

To determine if a record exists, write to the appropriate System Manager at the address above or appear in person to the Division of Contracts Management. An individual may learn if a record exists about himself/herself upon written request with notarized signature. An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, if any.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under notification procedures above and identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Individual practitioner notifications of intent to use Schedule III, IV, or V opioid drugs for the Maintenance and Detoxification Treatment of Opiate Addiction under 21 U.S.C. 823(g)(2).

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[1] Published in the **Federal Register**, Vol. 67, No. 80, Thursday, April 25, 2002 (pages 20542–20544).

[FR Doc. 2010–12147 Filed 5–19–10; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2010–0020]**

### Homeland Security Science and Technology Advisory Committee

**AGENCY:** Science and Technology Directorate, DHS.

**ACTION:** Committee Management; Notice of Closed Federal Advisory Committee Meeting.

**SUMMARY:** On April 12, 2010, the Homeland Security Science and Technology Advisory Committee announced in the **Federal Register** that the Committee would meet on April 20–22, 2010 in Frederick, MD. This notice supplements that original meeting notice.

**DATES:** The Homeland Security Science and Technology Advisory Committee met on April 20, 2010 from 8:30 a.m. to 5 p.m., April 21, 2010 from 9 a.m. to 5 p.m. and on April 22, 2010 from 9:30 a.m. to 1 p.m.

**ADDRESSES:** The meeting was held at the National Biodefense Analysis and Countermeasures Center, 110 Thomas Johnson Drive, Suite 400, Frederick, MD 21702.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tiwanda Burse, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202–254–6877.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

The mission of the Homeland Security Science and Technology Advisory Committee is to provide a source of independent scientific and technical planning advice for the Under Secretary of Homeland Security for Science and Technology.

The Homeland Security Science and Technology Advisory Committee met for the purpose of receiving sensitive and classified (Secret-level) briefings and presentations regarding relationships between Science & Technology and selected National Biodefense Analysis and Countermeasures related topics, which are matters relevant to homeland security. The meeting was closed to the public.

The Federal Advisory Committee Act requires that notices of meetings of advisory committees be announced in the **Federal Register** 15 days prior to the meeting date. A notice of the meeting of the Homeland Security Science and Technology Advisory Committee was published in the **Federal Register** on April 12, 2010, 8 days prior to the meeting due to unavoidable delays in finalizing the agenda.

Dated: May 10, 2010.

**Ervin Kapos,**

*Designated Federal Officer.*

[FR Doc. 2010–12090 Filed 5–19–10; 8:45 am]

**BILLING CODE 9110–9F–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2010–0030]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0086

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day Notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0086, Great Lakes Pilotage, without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit on or before June 21, 2010.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2010–0030] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–5806. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611): ATTN: Paperwork Reduction Act Manager, US Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated

collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2010–0030]. For your comments to OIRA to be considered, it is best if they are received on or before June 21, 2010.

*Public participation and request for comments:* We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

*Submitting comments:* If you submit a comment, please include the docket number [USCG–2010–0030], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

*Viewing comments and documents:* Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0030" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day Notice (75 FR 6677, February 10, 2010) as required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

**Information Collection Request**

*Title:* Great Lakes Pilotage.

*OMB Control Number:* 1625–0086.

*Type of Request:* Extension of a currently approved collection.

*Respondents:* The three U.S. pilot associations regulated by the Office of Great Lakes Pilotage.

*Abstract:* The Office of Great Lakes Pilotage is seeking an extension of OMB's approval for subject data collection requirements for the three U.S. pilot associations it regulates. This extension would require continued submission of data to an electronic collection system, identified as the Great Lakes Electronic Pilot Management System, which will eventually replace the manual paper submissions currently used to collect data on: bridge hours; vessel delay, detention, cancellation, and moveage; pilot travel and availability; revenues; and related data. This extension ensures the required data crucial from both an operational and rate-making standpoint is available in a timely manner and allows immediate accessibility.

*Forms:* None.

*Burden Estimate:* The estimated burden remains the same at 18 hours a year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: May 10, 2010.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 2010–12065 Filed 5–19–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: NAFTA Regulations and Certificate of Origin

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; revision of an existing information collection: 1651–0098.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: NAFTA Regulations and Certificate of Origin. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 5100) on February 1, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 21, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component,

including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

*Title:* NAFTA Regulations and Certificate of Origin.

*OMB Number:* 1651–0098.

*Form Numbers:* CBP Forms 434, 446, and 447.

*Abstract:* The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA. CBP is adding the Form 447, North American Free Trade Agreement Motor Vehicle Averaging Election, to this collection of information. The CBP Form 447 is used to gather the information required by 19 CFR part 181, section 11(2), Information Required When Producer Chooses to Average for Motor Vehicles. The Form 447 shall be completed for each category set out in the Regulation that is chosen by the producer of a motor vehicle referred to in 19 CFR part 181, section 13 (Special Regional Value Content Requirements) in filing an election pursuant to subsection 13(4).

*Current Actions:* This submission is being made to revise the burden hours as a result of adding Form 447.

*Type of Review:* Revision.

*Affected Public:* Businesses.

*Form 434, NAFTA Certificate of Origin:*

*Estimated Number of Respondents:* 40,000.

*Estimated Number of Responses per Respondent:* 3.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 30,000.

*Form 446, NAFTA Questionnaire:*

*Estimated Number of Respondents:* 400.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Time per Response:* 45 minutes.

*Estimated Total Annual Burden Hours:* 300.

*Form 447, NAFTA Motor Vehicle Averaging Election:*

*Estimated Number of Respondents:* 11.

*Estimated Number of Responses per Respondent:* 1.28.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 14.

Dated: May 17, 2010.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2010–12128 Filed 5–19–10; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0116

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request from the Office of Management and Budget (OMB) its renewal for the collection of information for 30 CFR part 774.

**DATES:** Comments on the proposed information collection must be received by July 19, 2010, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmregov.*

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request, contact John Trelease, at (202) 208–2783 or at the e-mail address listed in **ADDRESSES**.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)] This notice identifies an information collection that OSM will be submitting to OMB for renewal. The collection is contained in 30 CFR part 774 (Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights).

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

*Comments are Invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submission of the information collection request to OMB.

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.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting burden for the collection of information.

*Title:* Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights—30 CFR 774.

*OMB Control Number:* 1029–0116.

*Summary:* Sections 506 and 511 of Public Law 95–87 provide that persons seeking permit revisions; renewals; or transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

*Bureau Form Number:* None.

*Frequency of Collection:* On occasion.

*Description of Respondents:* Surface coal mining permit applicants and State regulatory authorities.

*Total Annual Responses:* 8,888.

*Total Annual Burden Hours:* 82,018.

Dated: May 17, 2010.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2010–12085 Filed 5–19–10; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS00560 L58530000.EU0000 241A; N–81926 et al.; 10–08807; MO#4500012627; TAS: 14X5232]**

### Notice of amendment to Notice of Realty Action: Competitive Online Auction of Public Lands in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of amendment.

**SUMMARY:** This notice amends a Notice of Realty Action (NORA) published in the **Federal Register** on Friday, September 11, 2009 (74 FR 46790), to add additional terms and conditions to the sale process.

**DATES:** Interested parties may submit written comments until July 6, 2010. The sale opening date for re-offering the 5 parcels will be determined after the close of the 45-day comment period. Articles printed in the local newspaper and advertisements on local radio and television stations will notify the public of the specific sale opening date. Sale information may also be found on the Bureau of Land Management (BLM) Web site: *https://www.blm.gov/nv/st/en/snplma/Land_Auction.html* and on the following General Services Administration (GSA) Web site: *www.auctionrp.com.*

**FOR FURTHER INFORMATION CONTACT:** Manuela Johnson at (702) 515–5224 or e-mail: *manuela_johnson@nv.blm.gov.*

**SUPPLEMENTARY INFORMATION:** The parcels being re-offered for sale are parcels that did not sell during the BLM Internet auction conducted November 18 through December 21, 2009. The five parcels to be offered for sale are identified by the following case file numbers: N–78190, N–81926, N–81927, N–81930, and N–86661. Information on each parcel can be found on the BLM and the GSA Web sites when the opening date for the sale is established. The sale by competitive online auction will be conducted by the GSA. Bidders may register on the GSA Web site, *https://www.auctionrp.com/.*

The NORA published on September 11, 2009, is amended to include the following bidder registration requirements and sale terms and conditions: All registered bidders must submit a bid guarantee in the amount of $10,000 for each parcel on which the bidder plans to submit a bid. The guarantee must be by certified check, bank draft, postal money order, or cashier's check made payable in U.S. dollars. The bid guarantee will be applied towards the required 20 percent bid deposit of the successful high bidder. Following the auction, all bid guarantees will be returned to the unsuccessful bidders. If a bidder purchases one or more parcels and defaults on any single parcel, the default may be against all of that bidder's parcels. The BLM may retain the $10,000 bid guarantee for each parcel and the sale of all parcels to that bidder may be cancelled. If a high bidder fails to submit the 20 percent deposit and defaults on a parcel, the second highest bidder will become the apparent high bidder. If the high bidder is unable to consummate the transaction for any other reasons, the second-highest bid may be considered for award. *All other aspects of the September 11, 2009 notice are correct as published.*

**Beth Ransel,**

*Assistant Field Manager, Division of Lands.*

**Authority:** 43 CFR 2711.

[FR Doc. 2010–12165 Filed 5–19–10; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2010–N092; 10120–1113–0000–F5]**

### Endangered Wildlife and Plants; Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit applications; request for comments.

**SUMMARY:** In accordance with the requirements of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct enhancement of survival activities with endangered species.

**DATES:** To ensure consideration, please send your written comments by June 21, 2010.

**ADDRESSES:** Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181.

**FOR FURTHER INFORMATION CONTACT:** Linda Belluomini, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

**SUPPLEMENTARY INFORMATION:** The following applicants have applied for recovery permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comments on these applications by local, State, and Federal agencies and the public.

**Permit No. TE–08913A**

*Applicant:* Greg S. Fitzpatrick, Corvallis, Oregon.

The applicant requests a permit to take (pursue and capture) the Fender's blue butterfly (*Icaricia icarioides fenderi*) in conjunction with surveys throughout its range in Oregon for the purpose of enhancing its survival.

**Permit No. TE–08964A**

*Applicant:* Dana Ross, Corvallis, Oregon.

The applicant requests a permit to take (pursue and capture) the Fender's blue butterfly (*Icaricia icarioides fenderi*) in conjunction with surveys throughout its range in Oregon for the purpose of enhancing its survival.

**Public Comments**

We are soliciting public review and comment on these recovery permit applications. 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.

Please refer to the permit number for the application when submitting comments. All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 10, 2010.

**Carolyn A Bohan,**

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 2010–12029 Filed 5–19–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZP02000.L51010000.FX0000. LVRWA09A2370; AZA 034425]**

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hyder Valley Solar Energy Project, Maricopa County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona, intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until June 21, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the following BLM Web site: *http://www.blm.gov/az/st/en.html*. In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments related to the Hyder Valley Solar Energy Project by any of the following methods:

- *E-mail: HyderValley_Solar@blm.gov*.
- *Mail:* Bureau of Land Management, Arizona State Office, Attention: Eddie Arreola, Supervisory Project Manager, Hyder Valley Solar EIS, One North Central Avenue, Suite 800, Phoenix, AZ 85004.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to our mailing list, contact Eddie Arreola, Supervisory Project Manager, telephone 602–417–9505; by mail or other delivery service Bureau of Land Management, Arizona State Office, Attention: Eddie Arreola, Supervisory Project Manager, Hyder Valley Solar EIS, One North Central Avenue, Suite 800, Phoenix, AZ 85004; or by e-mail at *Eddie_Arreola@blm.gov*.

**SUPPLEMENTARY INFORMATION:** The applicant, Pacific Solar Investments, Inc., has requested a right-of-way (ROW) authorization to construct and operate a 4,500 acre concentrated solar thermal (CST) power plant that could provide up to 350 megawatts (MW) of solar generation with options for wet or dry cooling and possibly with thermal storage capabilities. The project would include a 230-kilovolt (kV) transmission line, water supply facilities, a natural gas pipeline, an access road, and other related facilities in the Hyder Valley, north of Interstate 8, east of the town of Hyder, and west of the Oatman Mountains in Maricopa County, AZ. The facility would be expected to operate for approximately 30 years. A ROW grant for the construction, operation, and maintenance of this Project would be required from the BLM. Additional applicable permits from Federal, State, and local agencies will also be required.

The solar facility would consist of solar fields made up of single-axis-tracking parabolic trough solar collectors. Each collector contains a linear parabolic-shaped reflector to focus sun light on a heat collection element. The collectors would track the sun from east to west each day to ensure the sun is continuously focused on the collection element. A heat transfer fluid would be heated as it passes through the element and then circulated through a series of heat exchangers to generate high-pressure steam. The steam would power a generator to produce electricity. The plant would be made up of one or more power blocks. Each power block would be located near the center of its respective solar field and have its own generator.

Both wet-cooled and dry-cooled options are being considered for this Project, and will be addressed in the EIS. Maximum water use for the Project is initially estimated to be 1,750 to 2,800 acre-feet per year. A mechanical draft cooling tower, cooling water circulating pumps, circulating water piping, valves, and instrumentation would also be located within the facility. Multiple evaporation ponds would be constructed to hold discharge from the cooling towers and steam cycle that could no longer be recycled back into the plant.

Pacific Solar Investments is also considering the use of thermal energy storage. Thermal energy storage would provide the option of transferring some or all of the solar energy into molten salt contained in insulated tanks. Using heat exchangers and pumps designed for molten salt, the heat could subsequently be extracted to provide generation after sunset.

The Project would be connected to the electrical grid using a newly constructed 230-kV transmission line of approximately 5 to 7 miles long with a point of interconnection at a proposed Hyder substation. The proposed Hyder substation would be owned and operated by Arizona Public Service (APS). The length of the transmission line will depend on the exact location of the Hyder substation, which has not yet been determined by APS. The transmission line and other related facilities that would be developed specifically for this Project would be included in the EIS analysis and included in the ROW grant as appropriate.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified water resources as a preliminary issue; however, the analysis will include the site-specific impacts on air quality, geologic resources, soils, water resources, biological resources, cultural resources, paleontological resources, visual resources, land use, transportation, noise, socioeconomics, public health and safety, and other resources and issues identified during scoping and project collaboration.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted and tribal concerns, including impacts on Indian trust assets, will be considered. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this Project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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:** 40 CFR 1501.7.

**Raymond Suazo,**

*Acting State Director.*

[FR Doc. 2010–12138 Filed 5–19–10; 8:45 am]

BILLING CODE 4310–32–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–134–1610–DQ]**

### Notice of Intent To Extend the Call for Nominations for the Dominguez-Escalante National Conservation Area Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior (Secretary) is directed by the Omnibus Public Lands Management Act of 2009 to establish the Dominguez-Escalante National Conservation Area (D–E NCA) Advisory Council (Council). The Secretary is requesting nominations for 10 members to sit on the Council. The Council will advise the Secretary, through the Bureau of Land Management (BLM), on matters regarding the preparation and implementation of the D–E NCA Resource Management Plan (RMP). An initial nomination period ended January 4, 2010. Members of the public who submitted nomination packages during the first nomination period need not submit a second nomination package to be considered.

**DATES:** Submit nomination packages on or before June 21, 2010.

**ADDRESSES:** Send completed Council nominations to D–E NCA Interim Manager, Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506. Nomination forms may be obtained at the Grand Junction Field Office at the above address or at the Uncompahgre Field Office, Bureau of Land Management, 2465 S. Townsend Ave., Montrose, Colorado 81401.

**FOR FURTHER INFORMATION CONTACT:** Katie A. Stevens, D–E NCA Interim Manager, (970) 244–3049, *Katie_A._Stevens@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The D–E NCA and Dominguez Canyon Wilderness Area, located within the D–E NCA, was established by the Omnibus Public Land Management Act of 2009, Public Law 111–11 (Act). The D–E NCA is comprised of approximately 209,610 acres of public land, including approximately 66,280 acres designated as wilderness, located in Delta, Montrose, and Mesa Counties, Colorado, to be known as the "Dominguez Canyon Wilderness Area." The purposes of the D–E NCA are to conserve and protect, for the benefit and enjoyment of present and future generations the unique and important resources and values of the land. These resources and values include the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public lands, and the water resources of area streams based on seasonally available flows, that are necessary to support aquatic, riparian, and terrestrial species and communities. The Act also calls for the establishment of the D–E NCA Council, comprised of 10 members, to advise the Secretary, through the BLM, on matters regarding the preparation and implementation of an RMP for the area. These 10 members shall include, to the extent practicable:

(1) One member appointed after considering the recommendations of the Mesa County Commission;

(2) One member appointed after considering the recommendations of the Montrose County Commission;

(3) One member appointed after considering the recommendations of the Delta County Commission;

(4) One member appointed after considering the recommendations of the permittees holding grazing allotments within the D–E NCA or the wilderness; and

(5) Five members who reside in, or within reasonable proximity to Mesa, Delta, or Montrose Counties, Colorado, with backgrounds that reflect:

(A) The purposes for which the D–E NCA or wilderness was established; and

(B) The interests of the stakeholders that are affected by the planning and management of the D–E NCA and wilderness.

Any individual or organization may nominate one or more persons to serve on the Council. Individuals may nominate themselves for Council membership. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils. Nomination forms may be obtained from the BLM Grand Junction or Uncompahgre Field Offices, or may be downloaded from the following Web site: *http://www.blm.gov/co/st/en/fo/denca.html.*

Nomination packages must include a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information relevant to the nominee's qualifications.

The Grand Junction and Uncompahgre Field Offices will review the nomination packages in coordination with the affected counties and the Governor of Colorado before forwarding recommendations to the Secretary, who will make the appointments.

The Council shall be subject to the FACA, 5 U.S.C. App. 2; and the Federal Land Management Policy Act of 1976, 43 U.S.C. 1701 *et seq.*

**Linda Anañia,**

*Acting State Director.*

[FR Doc. 2010–12130 Filed 5–19–10; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Deadline for Submission of Applications To Be Included on the Roll of Western Shoshone Identifiable Group of Indians for Judgment Fund Distribution

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice establishes the deadline by which applications must be received for eligible individuals to be listed on the roll that will be used as the basis for distributing the judgment funds awarded by the Indian Claims Commission to the Western Shoshone Identifiable Group of Indians in Docket No. 326–K.

**DATES:** Applications must be received by close of business (5 p.m. Mountain Time) August 2, 2010.

**ADDRESSES:** Submit applications to Bureau of Indian Affairs Western Shoshone, Tribal Government Services, P.O. Box 3838, Phoenix, AZ 85030–3838.

**FOR FURTHER INFORMATION CONTACT:** Sharlot Johnson, Tribal Government Services, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, Phoenix, Arizona 85004, (602) 379–6786.

**SUPPLEMENTARY INFORMATION:** Under section 3(b)(1) of the Act of July 7, 2004, Public Law 108–270, 118 Stat. 805, the Secretary of the Interior (Secretary) will prepare a roll of all individuals who meet the eligibility criteria established under the Act and who file timely applications prior to the date listed in the **DATES** section of this **Federal Register** notice. The roll will be used as the basis for distributing the judgment funds awarded by the Indian Claims Commission to the Western Shoshone Identifiable Group of Indians in Docket No. 326–K. Department of the Interior regulations at 25 CFR 61.4(k) set out the eligibility requirements for inclusion on this roll. To be eligible a person must:

(i) Have at least ¼ degree of Western Shoshone blood;

(ii) Be living on July 7, 2004;

(iii) Be a citizen of the United States; and

(iv) Not be certified by the Secretary to be eligible to receive a per capita payment from any other judgment fund based on an aboriginal land claim awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before July 7, 2004.

The Secretary will use Indian census rolls prepared by the Agents or Superintendents at Carson or Western Shoshone Agencies between the years of 1885 and 1940 and other documents acceptable to the Secretary in establishing proof of eligibility of an individual to be listed on the judgment roll and receive a per capita payment under the Western Shoshone Claims Distribution Act.

In the preamble to the regulation governing the creation of the roll of Western Shoshone identifiable group of Indians for judgment fund distribution, the Bureau of Indian Affairs set out a non-regulatory formula for determining the application deadline. Because that formula has proven to be administratively impractical to administer, the Bureau of Indian Affairs, in conjunction with tribal leaders and the Western Shoshone Claims Steering Committee, has selected an application deadline that approximates what the deadline would be under the formula in the preamble, if that formula had worked as intended.

The information collection requirement contained in this notice has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The OMB control number is 1076–0165 and expires on November 30, 2011. Response is required to obtain a benefit. An agency may not sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB control number.

Dated: May 10, 2010.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2010–11923 Filed 5–19–10; 8:45 am]

BILLING CODE 4310–4J–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR–936000–L14300000–ET0000; HAG–10–0114; OR–44954]**

## Notice of Proposed Withdrawal Extension and Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6880, as corrected by PLO No. 6918, for an additional 20-year term. PLO No. 6880 withdrew approximately 11,675.51 acres of National Forest System land from mining in order to protect the scientific and ecological values, and the investment of Federal funds at the Pringle Falls Experimental Forest and Research Natural Area. The withdrawal created by PLO No. 6880 will expire on September 29, 2011, unless extended. This notice also gives an opportunity to comment on the proposed action and to attend a public meeting.

**DATES:** Comments must be received by August 18, 2010.

**ADDRESSES:** Comments should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, OR 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Susan Daugherty, USFS Pacific Northwest Region, (503) 808–2416, or Charles R. Roy, BLM Oregon/Washington State Office, (503) 808–6189.

**SUPPLEMENTARY INFORMATION:** The United States Forest Service has filed an application requesting that the Secretary of the Interior extend PLO No. 6880 (56 FR 49416 (1991)), as corrected by PLO No. 6918 (56 FR 66602 (1991)), for an additional 20-year term, subject to valid existing rights. PLO 6880, as corrected by PLO No. 6918, withdrew certain lands in Deschutes County, Oregon, from location and entry under the United States mining laws (30 U.S.C. ch. 2). The area described contains approximately 11,675.51 acres in Deschutes County. PLO No. 6880 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the scientific and ecological values, and the investment of Federal funds at the Pringle Falls Experimental Forest and Research Natural Area.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The Forest Service would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Charles R. Roy at the above address or phone number.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Oregon/Washington State Director at the address indicated above. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that a public meeting in connection with the proposed withdrawal extension will be held on July 6, 2010 from 5 p.m. to 7 p.m. at the Deschutes National Forest Headquarters located at 1001 SW. Emkay Drive, Bend, OR. A notice of the time and place of this meeting will be published in at least one local newspaper, no less than 30 days before the scheduled date of the meeting. Interested parties may make oral statements at the meeting and may file written statements with the BLM. All statements received will be considered before any recommendation concerning the proposed extension is submitted to

the Assistant Secretary for Land and Minerals Management for final action.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.4.

(Authority: 43 CFR 2310.3–1)

**Fred O'Ferrall,**

*Chief, Branch of Land, Mineral, and Energy Resources.*

[FR Doc. 2010–12155 Filed 5–19–10; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZC01000.L14300000.ES0000.241A, AZA 34298]**

### Notice of Realty Action; Recreation and Public Purposes Act Classification; Lease and Conveyance of Public Land; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Mohave County Community College District (College) filed an application to lease/purchase approximately 12.5 acres of public land in Mohave County, Arizona, under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, for the purpose of a community college. The Bureau of Land Management (BLM) has examined and found the land suitable to be classified for lease and/or conveyance under the provisions of the R&PP Act.

**DATES:** Interested parties may submit written comments regarding the proposed classification and lease or conveyance of this public land on or before July 6, 2010.

**ADDRESSES:** Mail written comments to Ruben Sanchez, BLM Field Manager, Kingman Field Office, 2755 Mission Boulevard, Kingman, Arizona, 86401.

**FOR FURTHER INFORMATION CONTACT:** Andy Whitefield, Environmental Protection Specialist, at the above address, or by e-mail at: *andy_whitefield@blm.gov,* or phone (928) 718–3746.

**SUPPLEMENTARY INFORMATION:** The BLM has examined and found suitable to be classified for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), the following described public land:

**Gila and Salt River Meridian**

T. 21 N., R. 18 W.,
Sec. 8, S½S½SW¼NW¼NW¼ and NW¼SW¼NW¼.

The area described contains approximately 12.5 acres, more or less, in Mohave County.

In accordance with the R&PP Act, the College filed an application to lease and/or purchase the above-described property to develop as a community college. The proposed facilities would consist of classrooms, offices, computer facilities, library and bookstore, athletic facilities, and related appurtenances for educational purposes. The community college would provide important educational services for a portion of Mohave County which has experienced rapid population growth. Additional detailed information pertaining to this application, plan of development, and site plan is located in case file AZA 34298 at the BLM Kingman Field Office at the address above.

The College is a political subdivision of the State of Arizona and is therefore a qualified applicant under the R&PP Act. The above-described land is not needed for any Federal purpose. Lease and/or conveyance of the land to the College would be in conformance with the BLM Kingman Resource Management Plan, approved March 1995, and would be in the public interest. The College has not applied for more than 640 acres for public purposes other than recreation in a year, the limit set in 43 CFR 2741.7(a)(2), and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

*Any lease or conveyance will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will be subject to the following terms, conditions, and reservations:*

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945);
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;
3. Right-of-way AZAR 032609 for a water pipeline granted to Valley Pioneers Water Company, its successors and assigns, pursuant to the Act of February 15, 1901 (43 U.S.C. 959);
4. Right-of-way AZAR 033291 for power line purposes granted to UniSource Energy Corporation, its successors and assigns, pursuant to the Act of March 4, 1911 (43 U.S.C. 961);
5. Right-of-way AZA 017931 for a road, granted to the Mohave County Board of Supervisors, its successors and assigns, pursuant to Section 501 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1761);
6. Right-of-way AZA 021363 held by UNS Electric for power line purposes, pursuant to Section 501 of FLPMA (43 U.S.C. 1761);
7. All valid existing rights documented on the official public land records at the time of lease or patent issuance;
8. An appropriate indemnification clause protecting the United States from claims arising out of the lessee/patentee's use, occupancy, or operations on the leased/patented lands; and
9. Any other terms or conditions deemed necessary or appropriate by the authorized officer.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

*Classification Comments:* Interested persons may submit comments involving the suitability of the land for development of a community college. Comments on the classification are restricted to whether: (1) The land is physically suited for the proposal or any other issues that would be pertinent to the environmental assessment (prepared under the National Environmental Policy Act of 1969) for this action; (2) The use will maximize the future use or uses of the land; (3) The use is consistent with local planning and zoning; and (4) The use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the classification decision, or any other factor not directly related to the suitability of the land for R&PP use as a community college.

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. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on July 19, 2010.

The land will not be available for lease or conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

**Ruben A. Sánchez,**

*Kingman Field Manager.*

[FR Doc. 2010–12158 Filed 5–19–10; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZG01000.L14300000.FO0000.241A; AZPHX–080687 and AZPHX–080893]**

### Notice of Realty Action: Opening of Public Lands; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** This Notice opens 1,920 acres, more or less, of public land located in Cochise County, Arizona, to location and entry under the public land laws, including the general mining laws.

**DATES:** *Effective Date:* May 20, 2010.

**ADDRESSES:** Bureau of Land Management Safford Field Office, 711 14th Avenue, Safford, Arizona 85546.

**FOR FURTHER INFORMATION CONTACT:** Tom Schnell, Assistant Field Manager for Nonrenewable Resources, at the above address or call 928–348–4420.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Enabling Act of June 20, 1910, as amended (36 Stat. 557), upon Arizona statehood, the surface and subsurface interest in the subject lands became State lands. In 1947 and 1948, two separate land exchanges (PHX–080893 and PHX–080687) transferred these lands back to the United States pursuant to the Taylor Grazing Act of June 28, 1934, as amended (48 Stat. 1269). The Taylor Grazing Act allowed states to retain the mineral rights in such land exchanges, but only if the lands were "mineral in character." The subject lands were deemed "mineral in character" based on the presence of State oil and gas leases. Therefore, the State of Arizona retained the subsurface estate and transferred only the surface estate to the United States.

In the 1990s, UOP, a general partnership that was operating a mine on the lands involved, challenged the State's determination that the lands were mineral in character and the State's retention of minerals when the lands were exchanged to the United States. As a result, the Department of the Interior's Office of Hearings and Appeals (Interior Board of Land Appeals or IBLA), required the Bureau of Land Management (BLM) to prepare a mineral report to determine whether the subject lands were mineral in character at the time of the land exchanges. Based on the BLM's mineral report, the IBLA issued a Summary Decision on September 1, 1999 (IBLA 97–227) which held that because the subject lands were non-mineral in character at the time of the 1947 and 1948 exchanges, the reservation of minerals by the State of Arizona was void, and that those minerals transferred by operation of law to the United States in the land exchanges. This Notice opens the lands to the public land and mining, mineral leasing, and mineral materials laws as specified below.

*The lands are described as follows:*

**Gila & Salt River Meridian**

T. 12 S., R. 29 E.,

Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;

Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;

Sec. 11.

The area described contains 1,920 acres, more or less, in Cochise County.

1. Beginning at 9 a.m. on May 20, 2010, the lands described above shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at 9 a.m. on May 20, 2010, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on May 20, 2010, the lands described above shall be open to location and entry under the United States mining laws, and to the mineral leasing and mineral materials laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of the lands under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000) shall vest no rights against the United States.

Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

**Scott C. Cooke,**

*Safford Field Manager.*

[FR Doc. 2010–12146 Filed 5–19–10; 8:45 am]

**BILLING CODE 4310–32–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–698]**

### In the Matter of: Certain DC–DC Controllers and Products Containing Same; Notice of Commission Decision Not To Review the Administrative Law Judge's Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination ("ID") (Order No. 19) granting complainants' motion to amend the complaint and notice of investigation.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on December 29, 2009, based on a complaint filed by Richtek Technology Corp. of Taiwan and Richtek USA, Inc. of San Jose, California ("Richtek"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain DC–DC controllers by reason of infringement of certain claims of U.S. Patent Nos. 7,315,190 ("the '190 patent"); 6,414,470; and 7,132,717, and by reason of trade secret misappropriation. 75 FR 446 (Jan. 5, 2010). The complaint named five respondents. On March 5, 2010, the ALJ granted Richtek's motion to allow Richtek to add three new respondents

and to correct the name of another; an ID issued. Order No. 6 (Mar. 5, 2010). On March 31, 2010, the Commission determined not to review that ID. 75 FR 17433–34 (Apr. 6, 2010).

On April 12, 2010, Richtek moved for leave to amend its complaint to assert dependent claims 8–11 of the '190 patent on the basis of newly discovered evidence produced by the respondents in this investigation. Independent claim 1 of the '190 patent (upon which claims 8–11 depend) had always been asserted in this investigation. On April 20, 2010, the respondents filed their opposition, arguing that Richtek's two-month delay in asserting these patent claims caused them prejudice. The next day, the Commission's investigative attorney filed a response indicating that she did not oppose the motion.

On April 22, 2010, the ALJ issued an ID granting Richtek's motion. Order No. 19 (Apr. 22, 2010). The ID found good cause for Richtek's delay and tacitly rejected the respondents' allegations of prejudice. *Id.* at 6–7.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: May 14, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–12101 Filed 5–19–10; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–564]**

## In the Matter of: Certain Voltage Regulators, Components Thereof and Products Containing Same; Enforcement Proceeding; Notice of Commission Determination Not To Review the Enforcement Initial Determination; Schedule for Briefing on the Issues of Remedy, Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The United States International Trade Commission hereby provides notice that it has determined not to review the Enforcement Initial Determination ("ID") issued by the presiding administrative law judge ("ALJ") on March 18, 2010 in the above-captioned investigation. Notice is further given that the Commission is requesting briefing on remedy, the public interest, and bonding with respect to the ID's findings and recommendations concerning enforcement measures.

**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 all nonconfidential 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 (*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 the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted the investigation underlying this enforcement proceeding on March 22, 2006, based on a complaint filed by Linear Technology Corporation ("Linear") of Milpitas, California. 71 FR 14545. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. **1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain voltage regulators, components thereof and products containing the same, by reason of infringement of certain claims of United States Patent No. 6,411,531 and of United States Patent No. 6,580,258 ("the '258 patent"). The complaint named Advanced Analogic Technologies, Inc. ("AATI") of Sunnyvale, California as the sole respondent. After Commission review of the administrative law judge's ("ALJ") final ID, the Commission determined that there was a violation of section 337 by AATI with respect to certain asserted claims of the '258 patent and issued a limited exclusion order ("LEO") consistent with its findings of violation. Subsequently, based on an enforcement complaint filed by Linear, the Commission instituted an enforcement proceeding by notice in the **Federal Register** on October 10, 2008.

On March 18, 2010, the ALJ issued the subject ID, finding that, due to infringement of claims 2 and 34 of the '258 patent by the accused products, AATI violated the LEO. AATI filed a petition for review of certain aspects of the ID, and Linear filed a contingent petition for review of the ID. AATI and Linear filed responses to each others' petitions, and the Commission investigative attorney filed a joint response to the private parties' petitions. Having reviewed the record of the enforcement proceeding, including the petition for review and the responses thereto, the Commission has determined not to review the ID.

In connection with the final disposition of this proceeding, the Commission may (1) modify the LEO and/or (2) issue a cease-and-desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of the subject articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. The Commission is particularly interested in receiving briefing regarding potential modifications to the LEO that ensure exclusion of the products for which a violation was found. 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 a modified 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. 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, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. All parties are requested to submit proposed remedial orders for the Commission's consideration. Complainants are 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 June 2, 2010. Reply submissions, if any, must be filed no later than the close of business on June 11, 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 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: May 14, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–12103 Filed 5–19–10; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–678]**

## In the Matter of Certain Energy Drink Products; Notice of Commission Decision Not To Review an Initial Determination of Violation of Section 337; Schedule for Submissions 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 not to review a final initial determination ("final ID") (Order No. 34) issued by the presiding administrative law judge ("ALJ") finding a violation of Section 337 of the Tariff Act of 1930, as amended ("section 337") in the above-identified investigation.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3065. Copies of the public version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*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.*

**SUPPLEMENTARY INFORMATION:** On June 17, 2009, the Commission instituted this investigation, based on a complaint filed by Red Bull GmbH of Fuschl am See, Austria, and Red Bull North America of Santa Monica, California (collectively, "Red Bull") filed on May 15, 2009, and supplemented on June 1, 2009. The respondents named in the notice of investigation were: Chicago Import Inc., of Chicago, Illinois ("Chicago Import"); Lamont Distr., Inc., a/k/a Lamont Distributors Inc., of Brooklyn, New York ("Lamont"); India Imports, Inc., a/k/a International Wholesale Club of Metairie, Louisiana ("India Imports"); Washington Food and Supply of DC, Inc., a/k/a Washington Cash & Carry of Washington, DC ("Washington Food"); Vending Plus, Inc., of Glen Burnie, Maryland; and Baltimore Beverage Co., Glen Burnie, Maryland. The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, by reason of the importation, the sale for importation, or the sale after importation, of certain energy drink products that infringe U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,2994,429; 3,479,607 and U.S. Copyright Registration No. VA0001410959. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 12, 2009, the Commission determined not to review an ID (Order No. 7) granting a motion to amend the notice of investigation to clarify that Vending Plus, Inc., and Baltimore Beverage Co., comprise a single entity, Vending Plus, Inc. d/b/a Baltimore Beverage Co. ("Vending Plus"). On September 30, 2009, the Commission determined not to review an ID (Order No. 11) granting a motion to amend the notice of investigation to include the following additional respondents: Posh Nosh Imports (USA), Inc., of South Kearny, New Jersey ("Posh Nosh"); Greenwich, Inc., of Florham Park, New Jersey ("Greenwich"); Advantage Food Distributors Ltd., of Suffolk, UK ("Advantage Food"); Wheeler Trading, Inc., of Miramar, Florida ("Wheeler Trading"); Avalon International General Trading, LLC, of Dubai, United Arab Emirates ("Avalon"); and Central Supply, Inc., of Brooklyn, NY ("Central Supply").

On January 5, 2010, the Commission determined not to review IDs (Order Nos. 21 and 22) finding Lamont and Avalon in default pursuant to Commission Rule 210.16. On January 20, 2010, the Commission determined not to review four IDs (Order Nos. 24, 25, 26, and 27) terminating the investigation as to respondents Wheeler Trading, Washington Food, India Imports, and Vending Plus on the basis of settlement agreements. On January 28, 2010, the Commission determined not to review IDs (Order Nos. 29 and 30) finding respondents Posh Nosh, Greenwich, Advantage Food, and Chicago Imports in default pursuant to Commission Rule 210.16. On February 16, 2010, the Commission determined not to review an ID (Order No. 32) finding respondent Central Supply in default pursuant to Commission Rule 210.16.

On December 2, 2009, Red Bull moved for summary determination on the issues of domestic industry,

importation, and violation of Section 337. Pursuant to Commission Rule 210.16(c)(2), 19 CFR 216(c)(2), Red Bull also stated that it was seeking a general exclusion order. On December 23, 2009, the Commission investigative attorney submitted a response, in support of a finding that domestic industry exists and that Section 337 has been violated by defaulting respondents Avalon, Posh Nosh, Greenwich, Advantage Food, Central Supply, and Chicago Import, but not by respondent Lamont. On January 13, 2010, and again on March 10, 2010, Red Bull filed without objection supplemental declarations and attachments to its motion for summary determination.

On March 31, 2010, the presiding administrative law judge issued the subject final ID, Order No. 34, granting Red Bull's motion for summary determination of violation with respect to respondents Avalon, Posh Nosh, Greenwich, Advantage Food, Central Supply, and Chicago Import. He also recommended a general exclusion order and a 100 percent bond to permit importation during the Presidential review period.

No petitions for review were filed. The Commission has determined not to review Order No. 34.

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:* 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. 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 HTSUS numbers under which the accused products are imported.

Written submissions must be filed no later than close of business on May 28, 2010. Reply submissions must be filed no later than the close of business on June 7, 2010. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 34. No further submissions on any of 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 investigation. All such requests should be directed to the Secretary to 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 sections 210.16 and 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.16; 210.42–46).

By order of the Commission.

Issued: May 14, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–12102 Filed 5–19–10; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[USITC SE–10–016]**

## Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** May 26, 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–149 (Third Review) (Barium Chloride 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 June 9, 2010.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: May 18, 2010.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2010–12329 Filed 5–18–10; 4:15 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

**[OJP (OJJDP) Docket No. 1521]**

### Final Plan for Fiscal Year 2010

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

**ACTION:** Notice of Final Plan for Fiscal Year 2010.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Final Plan for fiscal year (FY) 2010.

**FOR FURTHER INFORMATION CONTACT:** The Office of Juvenile Justice and Delinquency Prevention at 202–307–5911. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs (OJP) in the U.S. Department of Justice. Provisions within Section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), direct the OJJDP Administrator to publish for public comment a Proposed Plan describing the program activities that OJJDP proposes to carry out during FY 2010 under Parts D and E of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. Because the Office's discretionary activities extend beyond Parts D and E, the Acting Administrator of OJJDP published a proposed plan outlining a more comprehensive listing of the Office's programs. OJJDP invited the public to comment on the Proposed Plan for FY 2010, which was published in the **Federal Register** on December 1, 2009 (74 FR 62821). The deadline for submitting comments on the Proposed Plan was January 15, 2010.

The Acting Administrator reviewed and analyzed the public comments that OJJDP received, and a summary of OJJDP activities since the comment period ended appears later in this document. The Acting Administrator took these comments into consideration in developing this Final Plan, which describes the program activities that OJJDP intends to fund during FY 2010.

Since early in 2010, OJJDP has posted on its Web site (*http://www.ojjdp.ncjrs.gov*) solicitations for competitive programs to be funded under the Final Plan for FY 2010. These funding opportunities are announced via OJJDP's JUVJUST listserv and other methods of electronic notification. To obtain information about OJJDP and other OJP funding opportunities, visit Grants.gov's "Find Grant Opportunities" Web page at *http://www.grants.gov/applicants/find_grant_opportunities.jsp.* No proposals, concept papers, or other forms of application should be submitted in response to this Final Plan.

*Department Priorities:* OJJDP has structured this plan to reflect the high priority that the Administration and the Department have placed on addressing youth violence and victimization and improving protections for youth involved with the juvenile justice system. The programs presented here represent OJJDP's current thinking on how to advance the Department's priorities during this fiscal year. This Final Plan also incorporates feedback from OJJDP's ongoing outreach to the field seeking ideas on program areas and the most promising approaches for those types of areas.

*OJJDP's Purpose:* Congress established OJJDP through the JJDP Act of 1974 to help States and communities prevent and control delinquency and strengthen their juvenile justice systems and to coordinate and administer national policy in this area.

Although States, American Indian/Alaska Native (AI/AN) communities,[1] and other localities retain primary responsibility for administering juvenile justice and preventing juvenile delinquency, OJJDP supports and supplements the efforts of public and private organizations at all levels through program funding via formula, block, and discretionary grants; administration of congressional earmark programs; research; training and technical assistance; funding of demonstration projects; and dissemination of information. OJJDP also helps administer Federal policy related to juvenile justice and delinquency prevention through its leadership role in the Coordinating Council on Juvenile Justice and Delinquency Prevention.

*OJJDP's Vision:* OJJDP strives to be the recognized authority and national leader dedicated to the future, safety, and well-being of children and youth in, or at risk of entering, the juvenile justice system and to serving children, families, and community organizations that protect children from harm and exploitation.

*OJJDP's Mission:* OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization by supporting States, tribal jurisdictions, and communities in their efforts to develop and implement effective coordinated prevention and intervention programs and improve the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitation services tailored to the needs of juveniles and their families.

*Guiding Principles for OJJDP's National Leadership:* OJJDP provides targeted funding, sponsors research and demonstration programs, offers training and technical assistance, disseminates information, and uses technology to enhance programs and collaboration in exercising its national leadership role. In all of these efforts, the following four principles guide OJJDP:

(1) Empower communities and engage youth and families.

(2) Promote evidence-based practices.

(3) Require accountability.

(4) Enhance collaboration.

*1. Empower communities and engage youth and families.* Families and communities play an essential role in any effort to prevent delinquency and protect children from victimization. Communities must reach beyond the formal systems of justice, social services, and law enforcement to tap into the wisdom and energies of many others—including business leaders, the media, neighborhood associations, block leaders, elected officials, tribal leaders, clergy, faith-based organizations, and especially families and young people themselves—who have a stake in helping local youth become productive, law-abiding citizens. In particular, OJJDP must engage families and youth in developing solutions to delinquency and victimization. Their strengths, experiences, and aspirations provide an important perspective in developing those solutions.

To be effective, collaboration among community stakeholders must be grounded in up-to-date information. With Federal assistance that OJJDP provides, community members can partner to gather data, assess local conditions, and make decisions to ensure resources are targeted for maximum impact.

*2. Promote evidence-based practices.* To make the best use of public resources, OJJDP must identify "what works" in delinquency prevention and juvenile justice. OJJDP is the only Federal agency with a specific mission to develop and disseminate knowledge about what works in this field. Drawing on this knowledge, OJJDP helps communities replicate proven programs and improve their existing programs. OJJDP helps communities match program models to their specific needs and supports interventions that respond

[1] In this plan, the terms "tribes" and "tribal jurisdictions" refer to both American Indian and Alaska Native communities.

to the developmental, cultural, and gender needs of the youth and families they will serve.

*3. Require accountability.* OJJDP requires the national, State, tribal, and local entities whose programs OJJDP supports to explain how they use program resources, determine and report on how effective the programs are in alleviating the problems they are intended to address, and propose plans for remediation of performance that does not meet standards. OJJDP has established mandatory performance measures for all its programs and reports on those measures to the Office of Management and Budget. OJJDP requires its grantees and applicants to report on these performance measures, set up systems to gather the data necessary to monitor those performance measures, and use this information to continuously assess progress and fine-tune the programs.

*4. Enhance collaboration.* Juvenile justice agencies and programs are just one part of a larger set of systems that encompasses the many agencies and programs that work with at-risk youth and their families. For delinquency prevention and child protection efforts to be effective, they must be coordinated at the local, tribal, State, and Federal levels with law enforcement, social services, child welfare, public health, mental health, school, and other systems that address family strengthening and youth development. One way to achieve this coordination is to establish broad-based coalitions to create consensus on service priorities and to build support for a coordinated approach. With this consensus as a foundation, participating agencies and departments can then build mechanisms to link service providers at the program level—including procedures for sharing information across systems.

OJJDP took its guidance in the development of this Final Plan from the priorities that the Attorney General has set forth for the Department. At the same time, OJJDP drew upon its Strategic Plan for 2009–2011. The four primary goals at the heart of OJJDP's Strategic Plan echo the Attorney General's priorities. Those goals are: prevent and respond to delinquency, strengthen the juvenile justice system, prevent and reduce the victimization of children, and prevent and reduce youth violence to create safer neighborhoods.

**OJJDP's Summary of Public Comments on the FY 2010 Proposed Plan**

OJJDP published its Proposed Plan for FY 2010 in the **Federal Register** (74 FR 62821) on December 1, 2009. During the subsequent 45-day public comment period, OJJDP received 150 submissions. Since the close of public comment, OJJDP has carefully reviewed and considered each of the submissions in its development of the Final Plan for FY 2010.

Comments addressed many of the program areas and activities in which OJJDP is currently engaged. Far and away, detention and corrections reform was the single topic that elicited the most responses. More than a third of the comments dealt with some aspect of detention and corrections reform. In keeping with U.S. Department of Justice priorities, OJJDP will sponsor several detention and corrections reform programs in FY 2010. They include the National Training and Technical Assistance Center for Youth in Custody, which will provide education, training, and technical assistance for State, local, and tribal departments of juvenile justice and corrections, service providers, and private organizations that operate juvenile facilities. OJJDP will also partner with the Annie E. Casey Foundation to expand its Juvenile Detention Alternatives Initiative.

Other areas that drew frequent or substantive comments were reauthorization of the JJDP Act, disproportionate minority contact, mentoring, gender-specific issues, and family violence.

OJJDP looks to the field for guidance on emerging juvenile justice needs and issues of concern, and targets its allocation of funding and resources, based, in part, on the feedback the Office receives from policymakers and practitioners through such vehicles as the Proposed Plan. OJJDP wishes to note that in the interim period between publication of the Proposed Plan in December and this Final Plan, Congress identified the Office's funding streams for FY 2010 and OJJDP adjusted its funding priorities accordingly. As a result, OJJDP will not fund in 2010 some programs that appeared in the Proposed Plan, and OJJDP also has added new programs. Comments the Office received on the Proposed Plan, Administration priorities, and available funds informed these decisions.

Many respondents expressed their appreciation for being given the opportunity to review and comment on the Proposed Plan. OJJDP is encouraged by the volume and quality of the comments that the Office received for the 2010 Proposed Plan and looks forward to continued communication and collaboration with the juvenile justice field.

**OJJDP Final Plan for Fiscal Year 2010**

Each year OJJDP receives formula and block grant funding as well as discretionary funds for certain program areas. Based on the 2010 budget, OJJDP offers the following 2010 Final Plan for its discretionary funding. Programs are organized according to Department priorities and traditional OJJDP focus areas.

**Department and OJJDP Priorities**

OJJDP administers grant programs authorized by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. OJJDP also administers programs under other legislative authority and through partnerships with other Federal agencies. In keeping with OJJDP's mission, these programs are designed to help strengthen the juvenile justice system, prevent juvenile delinquency and violence, and protect and safeguard the nation's youth. The Administration and the Attorney General have identified children's exposure to violence, gang and community violence, and racial disparities within the juvenile justice system as focus areas for the Department.

*Programs To Address and Treat Children Exposed to Violence*

The Attorney General's Initiative on Children Exposed to Violence Program: Phase I will support community-based strategic planning to prevent and reduce the impact of children's exposure to violence in their homes, schools, and communities. Within the Department, a committee comprising OJJDP, the Office for Victims of Crime, the Office on Violence Against Women, the National Institute of Justice, Community Oriented Policing Services, and the Executive Office of United States Attorneys jointly manages and supports this project. Through strategic planning, communities will improve access to, delivery of, and quality of services for children and families and respond to their needs at any point of entry into the legal, social services, medical, law enforcement, and community-based support systems. This program will expand existing partnerships among municipal and tribal leadership; education; health, including public health and mental health; family support and strengthening; social services; early childhood education and development; domestic violence advocacy and services; victim support; substance abuse prevention and treatment; crisis intervention; child welfare; courts; legal services; and law

enforcement at the tribal, local, State, and Federal levels.

Within OJJDP, Safe Start projects enhance the accessibility, delivery, and quality of services provided young children who have been exposed to violence or who are at high risk. These programs focus on practice innovation, research and evaluation, training and technical assistance, and resource development and public awareness. In 2010, OJJDP efforts to address children exposed to violence include:

- The Safe Start Promising Approaches Project will develop and support practice enhancements and innovations to prevent and reduce the impact of children's exposure to violence in their homes and communities. The two components of this project are: (1) "Strategic Enhancement," which improves an ongoing evidence-based model, or (2) "Practice Innovation," which implements a strategy/intervention based on sound theory and evaluative literature, which has yet to be evaluated rigorously. OJJDP will also conduct a national evaluation of the project beginning in 2010.
- OJJDP will fund a 12- month, full-time fellow position located at OJJDP to focus on children's exposure to violence programming. The position is funded via a grant to the fellow's home institution in the amount of their salary and benefit costs for the duration of the fellowship.

OJJDP will conduct a second wave of the National Survey of Children Exposed to Violence to capture trend data and compare it to the results of the first survey. This project will document changes in the incidence and prevalence of children's exposure to a broad array of violence, crime, and abuse experiences.

*Community-Based Violence Prevention Demonstration Program*

Under this program, communities will develop multi-strategy, multi-disciplinary approaches to reduce gun violence. These programs will target the high-risk activities and behaviors of a small number of carefully selected members of the community who are likely to be involved in violent activities, specifically gun violence, in the immediate future. These programs will be closely coordinated with a broader administration initiative. These demonstration programs will support Federal, State, and local partnerships to replicate proven strategies to reduce violence, such as CeaseFire, which is widely credited with significantly reducing shootings and homicides in targeted Chicago communities. CeaseFire, which employs a public health approach, interrupts the cycle of violence and changes norms about behavior. OJJDP will consider for grant support under this program other community-based violence reduction models that are evidence-based. This demonstration program includes programs of research and evaluation and technical assistance. These programs are coordinated with the Bureau of Justice Assistance.

*Disproportionate Minority Contact*

Section 223(a)(22) of the JJDP Act of 1974, as amended, requires States to address delinquency prevention and system improvement efforts to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of minority youth who come into contact with the juvenile justice system. States fund these activities primarily through their Title II Formula and Title V Delinquency Prevention Grants funds. OJJDP continues to enhance the annual training and technical assistance it provides to the States to support their development of direct services (diversion, alternatives to secure confinement, advocacy, cultural competency training, *etc.*); legislative reforms; administrative, policy, and procedural changes; structured decisionmaking (detention screening, risk assessment, needs assessment instruments, *etc.*), and other activities. OJJDP staff will continue to conduct annual site visits to the States to monitor progress toward system change goals and to provide guidance. Additionally, OJJDP recently reorganized and added a new full-time DMC Coordinator, who will assist the States in their efforts to address and reduce DMC.

*Youth Gang Prevention and Intervention Program*

OJJDP will award grants to sites that replicate selected promising or effective secondary gang prevention and intervention programs in targeted communities as part of an existing community-based comprehensive anti-gang initiative. Sites will replicate one of the following programs: Aggression Replacement Training, Boys and Girls Clubs (BGCA) Gang Prevention Through Targeted Outreach, BGCA Gang Intervention Through Targeted Outreach, Broader Urban Involvement and Leadership Development Detention Program, and Movimiento Ascendencia.

**Tribal Youth**

Since 1998, Congress has appropriated more than $120 million for programs addressing tribal youth. OJJDP administers most of its tribal initiatives through the Tribal Youth Program (TYP). These programs fund initiatives, training and technical assistance, and research and evaluation projects designed to improve juvenile justice systems and delinquency-prevention efforts among federally recognized American Indian and Alaska Native tribes. Since 1999, 10 percent of the TYP appropriation has been used for research and evaluation activities and 2 percent has been used for training and technical assistance.

*U.S. Department of Justice Coordinated Tribal Assistance*

In response to concerns that tribes voiced during recent public listening sessions, DOJ developed the Coordinated Tribal Assistance Solicitation (CTAS) in 2010 that combined all of its existing competitive tribal solicitations into one document. The CTAS solicitation is posted on the Office of Justice Programs (OJP) Web page at *http://www.tribaljusticeandsafety.gov/docs/ctassolicitation.pdf*. Following are the OJJDP solicitations within the CTAS:

- Tribal Youth Program supports and enhances tribal efforts to prevent and control delinquency and improve their juvenile justice systems. Grantees develop and implement delinquency prevention programs, interventions for court-involved youth, improvements to the juvenile justice system, alcohol and substance abuse prevention programs, and emotional/behavioral program services.
- Tribal Youth Reconnection Program engages tribal youth who are chronically truant or at risk of dropping out of school in activities centered on cultural preservation, land reclamation, or green/sustainable tribal traditions.
- Tribal Youth Resiliency Program will support tribal efforts to develop and implement interventions that address the effects and issues of childhood trauma.
- Strengthening Initiative for Native Girls Program teaches native girls culturally appropriate skills to resist substance abuse, prevent teen pregnancy, prevent sexual abuse, foster positive relationships with peers and adults, learn self-advocacy, and build prosocial skills.
- Tribal Juvenile Detention Reentry Program provides services for youth residing within tribal juvenile detention centers or soon to be released from such a center. Services include risk and needs assessments, educational and vocational programs, mental health services, substance abuse programs,

family strengthening, recreational activities, and extended reentry aftercare to help them successfully reintegrate into the tribal community.

*Tribal Youth Field-Initiated Research and Evaluation Programs*

These field-initiated studies will further what is understood regarding the experiences, strengths, and needs of tribal youth, their families, and communities and what works to reduce their risks for delinquency and victimization. This initiative is especially interested in evaluations that identify effective and promising delinquency prevention, intervention, and treatment programs for tribal youth, including those that assist tribal youth in enhancing their own cultural knowledge and awareness.

*Child Protection Programs in Tribal Communities*

This program will provide resources and technical assistance to Native American communities to help them address child abduction and child exploitation. Under this program, the grantee will expand the critical services, best practices, tools, and other resources of the AMBER Alert and Internet Crimes Against Children programs to protect children ages 0 to 18 in tribal communities at risk for exploitation.

*Tribal Youth National Mentoring Program*

This national initiative will support the development, maturation, and expansion of mentoring services for tribal youth on tribal reservations that are underserved due to location, shortage of mentors, emotional or behavioral challenges of the targeted population, or other situations.

**Juvenile Justice System Reform**

OJJDP recognizes the need for States to have effective and efficient juvenile justice systems and for the Office to assist them in identifying and implementing promising and evidence-based practices. Reforming juvenile justice and improving systems across the country is a priority for OJJDP. Components of the juvenile justice system that OJJDP will focus on in 2010 include detention and corrections reform, juvenile indigent defense, and youth transitioning back to their communities from a detention and corrections facility.

To improve juvenile detention and corrections in FY 2010, OJJDP will work with communities through a multidisciplinary and comprehensive approach that focuses on youth to assess their risks and needs and assure they receive effective services and programs that do not compromise public safety.

*Juvenile Detention Alternatives Initiative*

In FY 2010, OJJDP will partner with the Annie E. Casey Foundation to jointly fund an expansion of the Juvenile Detention Alternatives Initiative (JDAI) that will provide training and technical assistance to States and communities implementing the initiative. In 1992, the Casey Foundation launched JDAI, in which sites across the country created and tested new alternatives to detention.

At its essence, JDAI demonstrates that jurisdictions can safely reduce their reliance on secure detention. JDAI communities also test the hypothesis that detention reforms will equip juvenile justice systems with values, skills, and policies that will improve results in other components of the system.

The objectives of JDAI sites are to:

- Eliminate the inappropriate or unnecessary use of secure detention;
- Minimize re-arrest and failure-to-appear rates pending adjudication;
- Ensure appropriate conditions of confinement in secure facilities;
- Redirect public finances to sustain successful reforms;
- Reduce racial and ethnic disparities.

*National Training and Technical Assistance Center for Youth in Custody*

Through this program, OJJDP will establish the National Training and Technical Assistance Center for Youth in Custody (the Center) to provide education, training, and technical assistance for State, local, and tribal departments of juvenile justice and corrections, service providers, and private organizations that operate juvenile facilities. The Center will emphasize the rehabilitative goals of the juvenile justice system and provide comprehensive training, technical assistance, and resources directly to justice facilities that detain or confine youth. The Center will also update and contribute to the knowledge base of best practices in detaining or confining youth.

*Juvenile Indigent Defense National Clearinghouse*

OJJDP is developing and will implement a model national clearinghouse for juvenile defense attorneys to provide publications and resources, policy development and leadership opportunities, training, and technical assistance around indigent defense issues. This program will improve the overall level of systemic advocacy, enhance the quality of juvenile indigent defense representation, and ensure professional and ongoing technical support to the juvenile indigent defense bar.

*Second Chance Act Adult and Juvenile Offender Reentry Demonstration Projects*

OJJDP, in collaboration with the Bureau of Justice Assistance, will support additional demonstration projects under the Second Chance Act Youth Offender Reentry Initiative, a comprehensive response to the increasing number of people who are released from prison, jail, and juvenile facilities each year and are returning to their communities. The goal of this initiative is to reduce the rate of recidivism for offenders released from a juvenile residential facility and increase public safety. Demonstration projects provide necessary services to youth while in confinement and following their release into the community. The initiative will focus on addressing the unique needs of girls reentering their communities.

**Girls' Delinquency**

According to data from the Federal Bureau of Investigation, from 1991 to 2000, arrest rates of girls increased more, or decreased less, than those of boys for the same offenses. By 2004, girls accounted for 30 percent of juvenile arrests. This apparent trend raises a number of questions, including whether it reflects an increase in girls' delinquency or changes in society's responses to girls' behavior. While OJJDP's Girls Study Group helped expand what is known about what works—and what does not—in preventing and intervening in girls' delinquency, the field lacks adequate information about evidence-based programs that effectively address girls' delinquency. In FY 2010, OJJDP is supporting research and evaluation to identify effective delinquency prevention, intervention, and treatment programs for girls. OJJDP will also provide training and technical assistance to the field on effective delinquency programming for girls.

*Evaluations of Girls' Delinquency Programs*

These evaluations will measure the effectiveness of delinquency prevention, intervention, and/or treatment programs to prevent and reduce girls' risk behavior and offending. Over the past two decades, the number of girls entering the juvenile justice system has dramatically increased. This trend

raised a number of questions for OJJDP, including whether this reflected an increase in girls' delinquency or changes in society's responses to girls' behavior. OJJDP's Girls Study Group recently completed a review of evaluations of girls' delinquency programs and found that most programs have not been evaluated, thereby limiting knowledge about the most appropriate and effective programs for girls.

*National Girls Institute*

The National Girls Institute will evaluate promising and innovative prevention, intervention, treatment, education, detention, and aftercare services for delinquent and at-risk girls. The Institute will translate the information learned through the Girls Study Group and other research and expert knowledge for practitioners and policymakers. The Institute will serve as OJJDP's national training and technical assistance provider for promising and evidence-based practices in girls' delinquency prevention, intervention, and treatment. The Institute will also provide information dissemination, collaboration, policy development, and other leadership functions.

**Research, Evaluation, and Data Collection**

OJJDP supports and promotes research, vigorous and informative evaluations of demonstration programs, and collection and analysis of statistical data. The goal of these activities is to generate credible and useful information to improve decisionmaking in the juvenile justice system. OJJDP sponsors research that has the greatest potential to improve the nation's understanding of juvenile delinquency and victimization and of ways to develop effective prevention and intervention programs to respond to it.

*Field-Initiated Research and Evaluation Program*

The 2010 Field Initiated Research and Evaluation program will support multiple grant awards for research and evaluations of programs and initiatives that focus on the juvenile justice system's response to delinquency and system improvement. The goal of the research questions posed will be to inform policy and lead to recommendations for juvenile justice system improvement.

*Juvenile Justice Evaluation Center*

This program will provide training and technical assistance to State, tribal, local, and non-profit entities that work in the juvenile justice and victimization field on how to prepare for and carry out an evaluation of their activities. The Juvenile Justice Evaluation Center will develop easily accessible tools and resources for the field and assist these agencies in developing evidence-based strategies and programs.

*National Juvenile Justice Data Collection Program*

OJJDP supports several key national juvenile data collection programs, some of which have existed for several years, and others that are new. These include:

- Census of Juveniles in Residential Placement, which collects information about all youth residing in facilities who are awaiting or have been adjudicated for a status or delinquent offense.
- Juvenile Residential Facility Census, which collects information about the security and services of facilities that hold youth for delinquent offenses, pre- and post-adjudication.
- Census of Juveniles on Probation, which collects a 1-day count of all youth on formal probation, including demographic characteristics and the offense for which they are being supervised.
- Census of Juvenile Probation Supervision Offices, which collects information about the offices that oversee youth who are on probation in the United States.

*National Juvenile Justice Data Analysis Program*

This program will support the juvenile justice community's need for current, high-quality data and statistical information. The grantee will maintain and update OJJDP's Statistical Briefing Book and its Easy Access data tools, conduct original research, produce publications, respond to information requests, and work with OJJDP to develop new data resources that respond to the needs of the juvenile justice field.

**Substance Abuse and Treatment**

OJJDP, often in partnership with other Federal agencies and private organizations, develops programs, research, or other initiatives to address juvenile use and abuse of illegal, prescription, and nonprescription drugs and alcohol. OJJDP's substance abuse efforts include control, prevention, and treatment programs.

*Family and Juvenile Drug Court Programs*

OJJDP will implement and enhance family drug courts that serve substance-abusing adults who are involved in the family dependency court system. The Center for Children and Family Futures will provide training and technical assistance to family drug courts. The Juvenile Drug Courts Mentoring and Support Services Initiative will build the capacity of States, State courts, local courts, units of local government, and tribal governments to develop and establish comprehensive support services that include mentoring, educational services, health services, employment services, community services, recreational activities, parenting programs, housing assistance to serve substance-abusing youth who are assigned to the juvenile drug court program.

OJJDP and the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT) will continue joint funding to integrate and implement the juvenile drug court and Reclaiming Futures program models. The National Council of Juvenile and Family Court Judges provides training and technical assistance.

*Enforcing Underage Drinking Laws Program*

The Enforcing Underage Drinking Laws (EUDL) Program supports States' efforts to reduce drinking by juveniles through its four components: Block grants to the 50 States, the 5 territories, and the District of Columbia; discretionary grants; technical assistance; and research and evaluation. Under the block grant component, each State, the District of Columbia, and the territories receive approximately $360,000 annually to support law enforcement activities, media campaigns, and coalition building. The EUDL discretionary grant component supports several diverse initiatives to help communities develop promising approaches to address underage drinking. EUDL training and technical assistance supports communities and States in their efforts to enforce underage drinking laws. EUDL funds and Federal partnerships also support evaluations of community initiatives within the EUDL discretionary grant component.

*Enforcing Underage Drinking Laws Assessment, Strategic Planning, and Implementation Initiative*

Under this discretionary component of the Enforcing Underage Drinking Laws program, States will implement an assessment and strategic planning process to develop targeted, effective activities to reduce underage access and consumption of alcohol. Grantees will assess local conditions and design a long-term strategic plan; implement selected and approved actions of that plan; collect, analyze, and report data;

and evaluate how the State responded to the recommendations, crafted its strategic plan, and implemented portions of the plan with the remaining funds.

**Mentoring**

OJJDP supports mentoring programs for youth at risk of failing in school, dropping out of school, or becoming involved in delinquent behavior, including gang activity and substance abuse. The goals of the programs are to reduce juvenile delinquency and gang participation, improve academic performance, and reduce the school dropout rate. Mentoring funds support mentoring programs that provide general guidance and support; promote personal and social responsibility; increase participation in education; support juvenile offenders returning to their communities after confinement in a residential facility; discourage use of illegal drugs and firearms; discourage involvement in gangs, violence and other delinquent activity; and encourage participation in community service activities. OJJDP will also sponsor several research projects that will evaluate mentoring programs or approaches and the effectiveness of specific mentoring practices.

*Second Chance Act Juvenile Mentoring Initiative*

The Second Chance Act Juvenile Mentoring Initiative will provide grants for mentoring and other transitional services to reintegrate juvenile offenders into their communities. The grants will be used to mentor juvenile offenders during confinement, through transition back to the community, and post-release; to provide transitional services to assist them in their reintegration into the community; and to support training in offender and victims issues. The initiative's goals are to reduce recidivism among juvenile ex-offenders, enhance community safety, and enhance the capacity of local partnerships to address the needs of juvenile ex-offenders returning to their communities.

*Group Mentoring Research and Evaluation Program*

OJJDP seeks to expand what is known about nontraditional mentoring programs as a prevention and intervention strategy for juvenile delinquency. OJJDP will evaluate the effectiveness of select group mentoring programs supported by local Boys and Girls Clubs. Increasing knowledge regarding the use of group and site-based mentoring programs is a primary goal for this evaluation.

*Mentoring Research Program*

This program seeks to enhance the understanding of mentoring as a prevention strategy for youth who are at risk of involvement or already involved in the juvenile justice system. While mentoring appears to be a promising intervention for youth, more evaluation work is needed to further highlight the components of a mentoring program that are most effective. It is expected that the results of this effort will encourage a more effective utilization of resources as well as enhance the implementation of evidence-based best practices for juvenile mentoring.

*Mentoring for Safe Schools/Healthy Students Initiatives*

The Safe Schools/Healthy Students Initiatives are a joint effort by the U.S. Departments of Education, Health and Human Services, and Justice to support schools in creating safer and healthier learning environments. Under this initiative current Safe Schools/Healthy Student sites will develop and implement community-based mentoring programs in conjunction with their overall comprehensive communitywide plan. Safe Schools supports the reduction of negative behavior in elementary and middle school youth (e.g., truancy, bullying) and enhances positive behavior and connection to their families, school personnel, and other community members through evidence-based mentoring initiatives.

*National and Multi-State Mentoring Programs*

These programs support national organizations and organizations with mentoring programs in at least five States to enhance or expand community programs that provide mentoring services to high-risk populations that are underserved due to location, shortage of mentors, special physical or mental challenges of the targeted population, or other analogous situations that the community in need of mentoring services identifies.

*Strategic Enhancement to Mentoring Programs*

Strategic Enhancement to Mentoring Programs focus on enhancing existing mentoring programs. The three enhancements include: (1) Involving the parents in activities or services, (2) providing structured activities and programs for the mentoring matches, and (3) developing and implementing ongoing training and support for mentors.

**Child Victimization**

Since its inception, OJJDP has consistently strived to safeguard children from victimization by supporting research, training, and community programs that emphasize prevention and early intervention. A commitment to children's safety is written into the Office's legislative mandate, which includes the Juvenile Justice and Delinquency Prevention Act of 1974, the Missing Children's Assistance Act of 1984, and the Victims of Child Abuse Act of 1990. OJJDP continues to improve the responses of the justice system and related systems, increase public awareness, and promote model programs for addressing child victimization in States and communities across the country.

*Children's Advocacy Centers*

OJJDP will continue funding for programs that improve the coordinated investigation and prosecution of child abuse cases. These programs include a national subgrant program for local children's advocacy centers, a membership and accreditation program, regional children's advocacy centers, and specialized technical assistance and training programs for child abuse professionals and prosecutors. Local Children's Advocacy Centers utilize multidisciplinary teams of professionals to coordinate the investigation, treatment, and prosecution of child abuse cases.

*Court Appointed Special Advocate Programs*

OJJDP will continue funding for Court Appointed Special Advocates (CASA) programs that provide children in the foster care system or at risk of entering the dependency system with high-quality, timely, effective, and sensitive representation before the court. CASA programs train and support volunteers who advocate for the best interests of the child in dependency proceedings. OJJDP funds a national CASA training and technical assistance provider and a national membership and accreditation organization to support State and local CASA organizations' efforts to recruit volunteer advocates, including minority volunteers, and to provide training and technical assistance to these organizations and to stakeholders in the child welfare system.

**Missing Children**

Authorized through the Missing Children's Assistance Act of 1984, as amended, these programs enhance the national response of State, local, and Federal law enforcement agencies, prosecutors, and nongovernmental

organizations to missing and exploited children. These programs serve as the primary vehicle for building a national infrastructure to support efforts to prevent the abduction and exploitation of our nation's children.

*Missing and Exploited Children Program Support*

OJJDP will continue funding for a national membership organization for nonprofit organizations serving the families of missing children and to assist in identifying and promulgating best practices in serving these children and families.

In FY 2010, OJJDP also will support programs that:

- Provide training and technical assistance to local, State, and tribal law enforcement agencies and other organizations charged with responding to missing children cases.
- Design and implement the AMBER Alert National Conference.
- Improve responses to child abductions across borders.
- Conduct research on children characterized as lost, injured, or missing to improve community responses to these cases.
- Conduct a national study of the incidence of missing children.

*Missing and Exploited Children Training and Technical Assistance Program*

This program will support training in areas such as child abuse investigations, child fatality investigations, and child sexual exploitation investigations. Authorized by the Missing Children's Assistance Act, this program will help State and local law enforcement, child protection, prosecutors, medical providers, and child advocacy center professionals develop an effective response to child victimization cases.

**Child Exploitation**

The increasing number of children and teens using the Internet, the proliferation of child pornography, and the increasing number of sexual predators who use the Internet and other electronic media to prey on children present both a significant threat to the health and safety of young people and a formidable challenge for law enforcement. OJJDP took the lead early on in addressing this problem. More than a decade ago, the Office established the Internet Crimes Against Children task force program. In FY 2010, OJJDP will launch the Youth with Sexual Behavior Problems Program to support localities in the development and implementation of treatment programs for youth ages 10 to 14 who have exhibited inappropriate sexual behaviors against another child and for their victims. The program will specifically address interfamilial and/or co-residential sexual misconduct for youth and provide adjunctive support services to child victims and families who have been victimized.

*Internet Crimes Against Children Program*

OJJDP will continue funding to support the operations of the 61 Internet Crimes Against Children (ICAC) task forces. The ICAC Task Force Program helps State and local law enforcement agencies develop an effective response to sexual predators who prey upon juveniles via the Internet and other electronic devices and child pornography cases. This program encompasses forensic and investigative components, training and technical assistance, victim services, and community education.

The ICAC Task Force Strategies for Protecting Children at High Risk for Commercial Sexual Exploitation Program will support select law enforcement agencies as they

- Improve training and coordination.
- Develop policies and procedures to identify commercial sexual exploitation victims.
- Investigate and prosecute cases against adults who sexually exploit children for commercial purposes.
- Adopt practices to intervene appropriately with and compassionately serve victims, including providing essential services in cases where technology is used to facilitate the exploitation of the victim.

In addition, OJJDP is supporting related ICAC activities and programs, including:

- Designing and implementing the 2011 ICAC National Training Conference.
- Research on Internet and other technology-facilitated crimes against children.
- Training for ICAC officers, prosecutors, judges, and other stakeholders.
- Technical assistance to support implementation of the ICAC program.

*Youth With Sexual Behavior Problems Program*

This program will assist localities in responding to instances of child sexual victimization by perpetrators who are younger than 18 years old, with a specific emphasis on interfamilial child victims and offenders. The program will develop communities' capacity to utilize a multidisciplinary approach when working with children who have been sexually abused by other children and adolescents. The program will also build communities' capacity to provide treatment and supervision resources to youthful perpetrators of sexual abuse against children. This program will be coordinated with OJP's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office.

**Juvenile Justice System Improvement**

OJJDP works to improve the effectiveness and efficiency of the juvenile justice system. A major component of these efforts is the provision of training and technical assistance (TTA) resources that address the needs of juvenile justice practitioners and support State and local efforts to build capacity and expand the use of evidence-based practices. Training and technical assistance is the planning, development, delivery, and evaluation of activities to achieve specific learning objectives, resolve problems, and foster the application of innovative approaches to juvenile delinquency and victimization. OJJDP has developed a network of providers to provide targeted training and technical assistance to policymakers and practitioners.

*Child Abuse Training for Judicial and Court Personnel*

OJJDP will continue funding for programs that provide targeted training and technical assistance to judicial and court personnel who work within the dependency system. The purpose of this initiative is to improve the juvenile and family courts' handling of child abuse and neglect cases and ensure timely decisionmaking in permanency planning for abused and neglected children. The initiative also aims to reduce and eventually eliminate racial disproportionality and disparate treatment in the dependency system.

*Engaging Law Enforcement To Reduce Juvenile Crime, Victimization, and Delinquency*

This program supports the enhancement or expansion of approaches that engage Federal, State, local, and tribal law enforcement in reducing juvenile crime, victimization, and delinquency by providing them with comprehensive training, technical assistance, and research findings. The initiative will examine how police can address priority issues more effectively using evidence-based strategies that enhance their effectiveness in policing situations involving youth. Key issues may include disproportionate minority contact, responses to adolescent girls,

school safety, and unsafe and inappropriate use of electronic communication. This initiative will engage law enforcement leaders and front-line officers through classroom and Web-based instruction, online resources, peer-to-peer networking and interaction, and geospatial information system technology.

*State Advisory Group Training and Technical Assistance Project*

Under this project, OJJDP provides training and technical assistance to State advisory groups (SAGs) appointed under the Juvenile Justice and Delinquency Prevention Act (JJDP Act) 1974, as amended. The training and technical assistance that SAG members receive serve two broad purposes. It enables them to: (1) Better understand the juvenile justice system in their respective States or territories and (2) become more familiar with all programs and facilities serving youth. Trained SAG members will more effectively carry out their roles and responsibilities to ensure and enhance a responsive juvenile justice system within their jurisdictions.

**General**

*Support for Conferences on Juvenile Justice*

OJJDP will support conferences that address juvenile justice and the prevention of delinquency. This support would provide community prevention leaders, treatment professionals, juvenile justice officials, researchers, and practitioners with information on best practices and research-based models to support State, local government, and community efforts to prevent juvenile delinquency.

Dated: May 17, 2010.

**Jeff Slowikowski,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on April 15, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Phase Matrix, Springfield, VA, has withdrawn as a party to this venture. In addition, Pacific Mindworks, Inc. has changed its address to San Diego, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on December 1, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2009 (74 FR 67902).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 2010–12030 Filed 5–19–10; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on April 1, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tyco Electronics, Middletown, PA; OpenATE, Inc., Taipei City, TAIWAN; and Logic Instrument USA, Inc., Owings Mills, MD, have been added as parties to this venture. Also, Eberspacher Electronics GmbH & Co. KG, Goppingen, GERMANY; VX Instruments GmbH, Landshut-Altdorf, GERMANY; Keithly Instruments, Solon, OH; Elektrobit Austria GmbH, Vienna, AUSTRIA; DiagnoSYS Systems Ltd., Hampshire, UNITED KINGDOM; and Elma Electronic Inc., Fremont, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(c) of the Act. The Department of Justice published a Notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 12, 2010. A Notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 2010 (75 FR 13781).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 2010–12033 Filed 5–19–10; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Applied Nanotechnology Consortium

Notice is hereby given that, on March 26, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Applied Nanotechnology Consortium ("TANC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Connecticut Center for Advanced Technology, Inc., East Hartford, CT; Ensign-Bickford

Aerospace and Defense, Simsbury, CT; GKN Aerospace Services Structures Corporation, Cromwell, CT; Imperial Machine Tool Co., Columbia, NJ; Kaman Precision Products-Fuzing, Middletown, CT; University of Bridgeport, Bridgeport, CT; University of Connecticut, Storrs, CT; and the University of Hartford, West Hartford, CT. The general areas of TANC's planned activities are to perform coordinated planning and research and development prototype efforts designed to encompass the following as it relates to nanotechnology: (a) Nanoparticle Production Methods/Processing of Nano Composites; (b) Laser Processing of Nano-Composite Materials; (c) Nanotech Education; (d) Nano Energetics and Safe & Arming Solutions; and (e) Advanced Structural Materials and Systems.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 2010–12031 Filed 5–19–10; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–72,695]**

### Parkdale Mills (Formerly Hanesbrands, Inc.) Galax, VA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated February 2, 2010, petitioners requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on January 11, 2010, and the Department's Notice of determination will be published soon in the **Federal Register.**

The initial investigation resulted in a negative determination based on the findings that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioners provided additional information regarding the number of workers separated from the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of May, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12108 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,697]**

### Federal-Mogul, Including On-Site Leased Workers From Kelly Services, Summerton, SC; 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 27, 2009, applicable to workers of Federal-Mogul, Summerton, South Carolina. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65795).

At the request of the State, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to production of molded rubber products (seals and gaskets).

The company reported that workers leased from Kelly Services were employed on-site at the Summerton, South Carolina location of Federal-Mogul. 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 Kelly Services working on-site at the Summerton, South Carolina location of Federal-Mogul.

The amended notice applicable to TA–W–71,697 is hereby issued as follows:

All workers Federal-Mogul, including on-site leased workers from Kelly Services, Summerton, South Carolina, who became totally or partially separated from employment on or after July 15, 2008, through October 27, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 28th day of April 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12104 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–72,144]**

### Cummins Filtration, Including On-Site Leased Workers From Manpower and Spherion Staffing, Including On-Site Workers From Hagemeyer North America, Lake Mills, IA; 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 15, 2009, applicable to workers of Cummins Filtration, including on-site leased workers from Manpower, Lake Mills, Iowa. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65798).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of oil and fuel filters, Stratpore media and other metal components for engines.

New information shows that workers from Hagemeyer North America were employed on-site at the Lake Mills, Iowa location of Cummins Filtration to provide procurement and inventory management services for the subject firm. Information also shows that workers leased from Spherion Staffing were employed on-site at the Lake Mills, Iowa location of Cummins Filtration. The Department has determined that workers from Spherion Staffing 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 from

Hagemeyer North America and leased workers from Spherion Staffing working on-site at the Lake Mills, Iowa location of Cummins Filtration.

The amended notice applicable to TA–W–72,144 is hereby issued as follows:

All workers of Cummins Filtration, including on-site leased workers from Manpower and Spherion Staffing and including on-site workers from Hagemeyer North America, Lake Mills, Iowa, who became totally or partially separated from employment on or after August 26, 2008 through October 15, 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 4th day of May, 2010.

**Elliott S. Kushner**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12106 Filed 5–19–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,919]**

### Denso Manufacturing of Michigan Including On-Site Leased Workers From Adecco Employment Services, Adecco Technical, Aerotec, Inc., Anchor Staffing, Capitol Software Systems, Donohue Computer Services, Historic Northside Family Practice, Scripture and Associates, Summit Software Services DD, Tacworldwide Companies, Talent Trax, Tek Systems, Kelly Services and Employment Group, Battle Creek, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 2009, applicable to workers of Denso Manufacturing of Michigan, including leased workers from Adecco Employment Services, Adecco Technical, Aerotec, Inc., Anchor Staffing, Capitol Software Systems, Donohue Computer Services, Historic Northside Family Practice, Scripture and Associates, Summit Software Services DD, Tacworldwide Companies, Talent Trax, Tek Systems and Kelly Services, Battle Creek, Michigan. 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 are engaged in the production of heat exchangers.

New information shows that workers leased from Employment Group were employed on-site at the Battle Creek, Michigan location of Denso Manufacturing of Michigan. 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 Employment Group working on-site at the Battle Creek, Michigan location of Denso Manufacturing of Michigan.

The amended notice applicable to TA–W–71,919 is hereby issued as follows:

All workers of Denso Manufacturing of Michigan, including leased workers from Adecco Employment Services, Adecco Technical, Aerotec, Inc., Anchor Staffing, Capitol Software Systems, Donohue Computer Services, Historic Northside Family Practice, Scripture and Associates, Summit Software Services DD, Tacworldwide Companies, Talent Trax, Tek Systems, Kelly Services and Employment Group, Battle Creek, Michigan, who became totally or partially separated from employment on or after August 3, 2008, through September 10, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 5th day of May 2010.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12105 Filed 5–19–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–72,773]**

### Clark Engineering Co., Inc., Including On-Site Leased Workers From Kelly Services and Qualified Staffing, Owosso, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on January 7, 2010, applicable to workers of Clark Engineering Co., Inc., including on-site leased workers of Kelly Services, Owosso, Michigan. The notice was published in the **Federal Register** February 16, 2010 (75 FR 7036).

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 metal parts.

The company reports that workers leased from Qualified Staffing were employed on-site at the Owosso, Michigan location of Clark Engineering Co., Inc. 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 Qualified Staffing working on-site at the Owosso, Michigan location of Clark Engineering Co., Inc.

The amended notice applicable to TA–W–72,773 is hereby issued as follows:

All workers of Clark Engineering Co., Inc., including on-site leased workers of Kelly Services and Qualified Staffing, Owosso, Michigan, who became totally or partially separated from employment on or after October 14, 2008, through January 7, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 3rd day of May, 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12109 Filed 5–19–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,055]**

### Ovonic Energy Products Including On-Site Leased Workers From PDSI Springboro, 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 August 28, 2009, applicable to workers of Ovonic Energy Products, Springboro, Ohio. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57340).

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 batteries and related energy storage systems.

New information shows that workers leased from PDSI were employed on-site at the Springboro, Ohio location of Ovonic Energy Products. 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 PDSI working on-site at the Springboro, Ohio location of Ovonic Energy Products.

The amended notice applicable to TA–W–70,055 is hereby issued as follows:

All workers of Ovonic Energy Products, including on-site leased workers from PDSI, Springboro, Ohio, who became totally or partially separated from employment on or after May 18, 2008, through August 28, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 4th day of May 2010.

**Elliott S. Kushner**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12111 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,774]**

### Sychip, Inc., a Wholly Owned Subsidiary of Murata Electronics North America, Inc. (MENA), Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Either Adminstaff or MENA, Plano, 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 September 23, 2009, applicable to workers of Sychip, Inc., Plano, Texas. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59254). The notice was amended on October 21, 2009 to include on-site leased workers from Adminstaff. The notice was published in the **Federal Register** on November 10, 2009 (74 FR 58052).

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 wireless modules.

New information shows that Sychip, Inc. is a wholly owned subsidiary of Murata Electronics North America, Inc. (MENA). Since January 1, 2010, workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Murata Electronics North America, Inc. (MENA). Prior to January 1, 2010, workers of the subject firm had their waged reported under a separate unemployment insurance (UI) tax account for Administaff.

Accordingly, the Department is amending this certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected as downstream producers to Honeywell International, a TAA Certified firm.

The amended notice applicable to TA–W–70,774 is hereby issued as follows:

All workers of Sychip, Inc., a wholly owned subsidiary of Murata Electronics North America, Inc. (MENA), including workers whose unemployment insurance (UI) wages are paid through Adminstaff, and including workers reported under a tax account for MENA, Plano, Texas, who became totally or partially separated from employment on or after May 27, 2008 through September 23, 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 5th day of May, 2010.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12113 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,118]**

### Rexnord Industries, LLC Industrial Chain and Conveyor Division Including On-Site Leased Workers From Stivers West Milwaukee, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 2010, applicable to workers of Rexnord Industries, LLC, Industrial Chain and Conveyor Division, including on-site leased workers from Stivers, West Milwaukee, Wisconsin. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21354).

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 mechanical power transmission equipment.

The review shows that on September 7, 2006, a certification of eligibility to apply for adjustment assistance was issued for all workers of Rexnord Industries, LLC, Industrial Chain and Conveyor Division, Milwaukee, Wisconsin, separated from employment on or after July 20, 2005, through September 7, 2008. The Department's Notice was published in the **Federal Register** on September 21, 2006 (71 FR 55218).

In order to avoid an overlap in worker group coverage, the Department is amending the June 9, 2008 impact date established for TA–W–71,118, to read September 8, 2008.

The amended notice applicable to TA–W–71,118 is hereby issued as follows:

All workers of Rexnord Industries, LLC, Industrial Chain and Conveyor Division, including on-site leased workers from Stivers, West Milwaukee, Wisconsin, who became totally or partially separated from employment on or after September 8, 2008, through March 11, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 4th day of May, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12114 Filed 5–19–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,405; TA–W–70,405FF]**

### 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., Sapphire Technologies, Highlands Ranch, CO; Including Employees in Support of Avaya Inc., Worldwide Services Group, Global Support Services (GSS) Organization, Highlands Ranch, CO Operating Out of the State of Nebraska; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 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 various locations in the state of Nebraska. 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 the state of Nebraska.

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) and Nebraska (TA–W–70,405FF), 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 6th day of May, 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12112 Filed 5–19–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 12, 2010 through April 23, 2010.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such

workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*TA–W–72,497: Utah Stamping Company, Leased Workers from SOS and ESSI–LUMEA, Clearfield, UT: October 5, 2008.*

*TA–W–72,506: GHT-Craft Steel LLC, Grand Rapids, MI: October 5, 2008.*

*TA–W–72,590: Taminco Higher Amines, Inc., Including Leased Workers From Orbital Technical Solutions, URS, etc., Riverview, MI: October 13, 2008.*

*TA–W–72,618: Baker Furniture, Highpoint, NC: October 16, 2008.*

*TA–W–72,759: Donsco, Inc., Belleville, PA: November 3, 2008.*

*TA–W–72,856: Deco Products Company, LLP, Decorah, IA: November 13, 2008.*

*TA–W–72,865: Valenite, LLC, Leased Workers From Snelling Staffing Services & The Creative Group, Madison Heights, MI: November 16, 2008.*

*TA–W–72,935: T-Shirt International, Inc., Leased Workers from Express Professional Services, Culloden, WV: November 18, 2008.*

*TA–W–73,069: Allen Edmonds Shoe Corporation, Lewiston, ME: December 8, 2008.*

*TA–W–73,164: General Motors Corporation, Renaissance Center, Leased Workers From Accretive Solutions, etc., Detroit MI: December 18, 2008.*

*TA–W–73,306: Lynn Ladder and Scaffolding Co., Inc., Orwigsburg, PA: January 6, 2009.*

*TA–W–73,338: American General, Life Brokerage, American International Group, Leased Workers from Adecco, Milwaukee, WI: January 20, 2009.*

*TA–W–73,357: Hutchinson Technology, Inc., Disk Drive Components, Eau Claire, WI: January 14, 2009.*

*TA–W–73,446: Genesis Networks Solutions, Inc., Abilene, TX: February 3, 2009.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

*TA–W–71,043: Philip Morris USA, Altria Group, Cabarrus Manufacturing Plant, Concord, NC: May 29, 2008.*

*TA–W–71,845: Lattice Semiconductor Corporation, Leased Workers from Robert Half International, Express Personnel, Hillsboro, OR: July 28, 2008.*

*TA–W–72,170: Learjet, Inc., Wichita Division, Leased Workers from*

*Aerotek, Atsi, Cantec etc., Wichita, KS: August 26, 2008.*

*TA–W–72,329: Sabritec, Leased Workers from Mattson Resources, Volt Temporary Services, Irvine, CA: September 15, 2008.*

*TA–W–72,354: Fair Isaac Corporation, Helpdesk and PC Support, San Rafael, CA: September 14, 2008.*

*TA–W–72,556: Sonus Networks, Inc., Quality Assurance Group, The System Verification Testing Group, Westford, MA: October 5, 2008.*

*TA–W–72,704A: Starwood Hotels & Resorts Worldwide, Corporate IT Division, Leased Workers from Computer Merchant, LTD, Austin, TX: September 30, 2008.*

*TA–W–72,704B: Starwood Hotels & Resorts Worldwide, Corporate IT Division, Leased Workers from Computer Merchant, LTD, White Plains, NY: September 30, 2008.*

*TA–W–72,704C: Starwood Hotels & Resorts Worldwide, Corporate IT Division, Leased Workers from Computer Merchant, LTD, Phoenix, AZ: September 30, 2008.*

*TA–W–72,704: Starwood Hotels & Resorts Worldwide, Corporate IT Division, Leased Workers from Computer Merchant, LTD, Braintree, MA: September 30, 2008.*

*TA–W–72,757: Intermet U.S. Holding, dba Intermet, New River Foundry, Radford, VA: October 28, 2008.*

*TA–W–73,022: Autodesk, Inc., Platform Solutions and Emerging Business Division, San Rafael, CA: November 24, 2008.*

*TA–W–73,036A: Tracksure Insurance Agency, Inc., Assurant, Inc., Hazard Insurance Processing, Tustin, CA: December 4, 2008.*

*TA–W–73,036: Tracksure Insurance Agency, Inc., Assurant, Inc., Hazard Insurance Processing, Santa Ana, CA: December 4, 2008.*

*TA–W–73,107: Infrasoft International, LLC, State College, PA: December 15, 2008.*

*TA–W–73,125: Baker Hughes Oilfield Operation, Inc., Enterprise Finance Organization, Leased Workers of Kelly Services, Houston, TX: December 16, 2008.*

*TA–W–73,133: CVG–Mayflower Vehicle Systems LLC, Norwalk, OH: December 17, 2008.*

*TA–W–73,146: IBM, Global Business Services Division, Application Management Services Business, Charleston, WV: December 21, 2008.*

*TA–W–73,149: Ashland, Inc., Ashland Hercules Water Technology, Kearny, NJ: December 18, 2008.*

*TA–W–73,150: Hyatt Corporation as an Agent for Manchester Resorts, LP, Account Department, San Diego, CA: December 17, 2008.*

*TA–W–73,174: EMD Chemicals Inc., Leased Workers from Ajilen, Ranstad, Assigend Counsel and Emerson Personnel, Gibbstown, NJ: December 21, 2008.*

*TA–W–73,189: Lear Corporation, Loma Verde El Paso Distribution Center, Leased Workers from Manpower and Kelly, El Paso, TX: December 18, 2008.*

*TA–W–73,197: Rexam Consumer Plastics, Leased Workers From CBS Personnel Services, S&S Staffing, etc., Holden, MA: December 29, 2008.*

*TA–W–73,270: Atmel Corporation, Finance Group, Leased Workers from Volt Accountabilities, Colorado Springs, CO: January 8, 2009.*

*TA–W–73,278A: Maersk Agency USA, Inc., North America Information Systems, Leased Workers IBM, Consonus, and Sarcom, Charlotte, NC: January 12, 2009.*

*TA–W–73,278B: Maersk Agency USA, Inc., North America Information Systems, A.P. Moller-Maersk A/S, Carney, MD: January 12, 2009.*

*TA–W–73,278: Maersk Agency USA, Inc., North America Information Systems, Leased Workers GMM Enterprises, LLC, ICS, Madison, NJ: January 12, 2009.*

*TA–W–73,316: Yale Sportswear Corporation, Federalsburg, MD: January 10, 2009.*

*TA–W–73,320: Rio Tinto Services, Inc., Salt Lake City Rio Tinto Regional Center, Leased Workers from Prince Perelson, South Jordan, UT: December 28, 2008.*

*TA–W–73,322: Hartford Financial Services Group, Inc., Claims Department/Auto Commercial Liability, Phoenix, AZ: January 15, 2009.*

*TA–W–73,341: WestPoint Home, Inc., Biddeford, ME: January 22, 2009.*

*TA–W–73,343: Convergys, International Management Group, Lake Mary, FL: January 19, 2009.*

*TA–W–73,397: Remy, Inc., Meridian, MS: February 1, 2009.*

*TA–W–73,420A: Alticor, Inc., Including Access Business Group International LLC, Amway, Ada, MI: February 1, 2009.*

*TA–W–73,420: Alticor, Inc., Including Access Business Group International LLC, Amway, Buena Park, CA: February 1, 2009.*

*TA–W–73,489: Sonoco Products Company, Orrville, OH: February 2, 2009.*

*TA–W–73,543: Bumble Bee Foods, LLC, Including Leased Workers of Labor Ready, Prospect Harbor, ME: February 22, 2009.*

*TA–W–73,663: Appleton Papers, Inc., Finance and Information Technology Divisions, Appleton, WI: March 8, 2009.*

*TA–W–73,667: Saint-Gobain Performance Plastics, Polymer Products Div., Leased Workers from Dimension Staffing, Monroe Staffing, Bristol, RI: April 24, 2010.*

*TA–W–73,808: Maersk Agency USA, Inc., Maersk, Inc., A.P. Moller-Maersk A/S, Madison, NJ: January 12, 2009.*

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*TA–W–71,374: GMPT Warren Transmission, GM Powertrain Division, General Motors Company, Warren, MI: June 16, 2008.*

*TA–W–71,470: Unifi, Inc., Plant #3, Nylon Division, Madison, NC: June 29, 2008.*

*TA–W–71,923: Decker Logging, Inc., Libby, MT: July 19, 2008.*

*TA–W–72,125: Manitowoc Cranes, Inc., Port Washington Division, Port Washington, WI: August 25, 2008.*

*TA–W–72,470: McKenzie Foam And Supply, Inc., McKenzie, TN: September 30, 2008.*

*TA–W–72,548: AGC Flat Glass North America, Inc., dba AGC Glass Co. North America, Leased Workers from Express Employment, Elizabethtown, KY: October 7, 2008.*

*TA–W–72,639: Faurecia, Faurecia Seating, Seating Div. Leased Workers from Harvard Resources Group, Shelby Township, MI: October 20, 2008.*

*TA–W–72,646: Michigan Mechanical Services, Inc., Taylor, MI: October 21, 2008.*

*TA–W–72,707: Air-Way Manufacturing Co., Leased Workers from Pro Resources, Hamilton, IN: October 23, 2008.*

*TA–W–72,844: Paramount Precision Products, Inc., Leased Workers from Aerotek Commercial Staffing, Oak Park, MI: November 6, 2008.*

*TA–W–73,028: TRW Automotive, Body Control Systems North America Division, Galesville, WI: October 11, 2008.*

*TA–W–73,041: Pilkington North America, Inc., Lathrop, CA: December 2, 2008.*

*TA–W–73,057: Lamjen, Inc., A Subsidiary of Custom Engineering, Erie, PA: December 7, 2008.*

*TA–W–73,253: Injex Industries, Inc., Leased Workers from the Solutions*

*Group, Hayward, CA: January 12, 2009.*

*TA–W–73,262: Vuteq California Corporation, Leased Workers from Staffchex and Randstad, Hayward, CA: January 12, 2009.*

*TA–W–73,333: Aegis Communications Group, Inc., ACZ and ACY Group, Elkins, WV: January 21, 2009.*

*TA–W–73,497: Aisin Manufacturing California, LLC, Including Leased Workers of Premier Staffing, Stockton, CA: February 8, 2009.*

*TA–W–73,660: Rebuilt, LLC, Previously Known as ILevel by Weyerhaeuser, Commercial Sales Division, Boise, ID: March 8, 2009.*

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

*TA–W–71,047: UAW–Chrysler National Training Center, Detroit, MI.*

*TA–W–71,235: Vairex Corporation, A Subsidiary of Vairex International LTD., Boulder, CO.*

*TA–W–71,367: Siegwerk USA Company, On-Site Workers at Graphics Packaging, Lawrenceburg, TN.*

*TA–W–73,232: R.L. Torresdal Company, Inc., Ossian, IA.*

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

*TA–W–73,000: Ayrshire Electronics of Mississippi, LLC, CDR Manufacturing, Inc., Corinth, MS.*

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

*TA–W–71,017: Diversified Textile Machinery Corporation, Kings Mountain, NC.*

*TA–W–71,083: Montana Renewable Resources, LLP, Eureka, MT.*

*TA–W–71,307: Clear Lake Lumber, Inc., Spartanburg, PA.*

*TA–W–71,335: Suburban Precision Mold Company, Inc., Meadville, PA.*

*TA–W–71,379: General Motors Company, formerly known as General Motors Corporation, Wentzville Assembly Center, Wentzville, MO.*

*TA–W–71,394: Cascade Structural Laminators, Willamina, OR.*

*TA–W–71,434: Eramet Marietta, Inc., Special Products Division, Marietta, OH.*

*TA–W–71,456: Knight Celotex, Sunbury, PA.*

*TA–W–71,494: Johns Manville, Engineered Products Division, Spartanburg, SC.*

*TA–W–71,607: Wisconsin Mechanical, LLC, Waukesha, WI.*

*TA–W–71,750: E.I. DuPont, Electronic Technologies Division, Circleville, OH.*

*TA–W–71,817: Clark Equipment Company, Bobcat Company Division, Gwinner, ND.*

*TA–W–71,868: Hamilton Sundstrand, Sundyne Electromagnetics, United Technologies, Leased Workers from Aerotek, Pleasant Prairie, WI.*

*TA–W–71,936: Seaboard Folding Box Company, LLC, CJ Fox Division, Providence, RI.*

*TA–W–71,953: Vanguard National Trailer Corporation, Monon, IN.*

*TA–W–71,976: Powerboss, Inc., Minuteman International, Aberdeen, NC.*

*TA–W–72,152: Marvel Industries, Northland Corporation, Richmond, IN.*

*TA–W–72,220: Ecolab, Leased Workers from Spherion, Hebron, OH.*

*TA–W–72,247: National Briquetting Corporation, Harsco, also s Performix East Chicago, East Chicago, IN.*

*TA–W–72,554: General Motors Company, Pontiac Assembly, Pontiac, MI.*

*TA–W–72,903: Ford Motor Company, Walton Hills Stamping Plant, Division Stamping Business Unit of Ford Motor, Walton Hills, OH.*

*TA–W–72,957: Hoffco-Comet Industries, Richmond, IN.*

*TA–W–72,999: Shain Solutions, Diversified Woodcrafts, Inc., Philipsburg, PA.*

*TA–W–70,941: Performance Powder Coating, LLC, Kokomo, IN.*

*TA–W–71,372: Starcom MediaVest Group, Detroit, MI.*

*TA–W–71,483A: Continental Airlines, Inc., Reservations Division—Tampa, Tampa, FL.*

*TA–W–71,483B: Continental Airlines, Inc., Reservations Division—Salt Lake City, Salt Lake City, UT.*

*TA–W–71,483: Continental Airlines, Inc., Reservations Division, Houston, TX.*

*TA–W–71,653: Minnesota Industries, Chisholm, MN.*

*TA–W–71,667: Fort Smith Express, Inc., Fort Smith, AR.*

*TA–W–71,789: Lyon Workspace Products, LLC, L&D Group, Inc., Leased Workers from Paige Personnel, Montgomery, IL.*

*TA–W–71,995: Honeywell Technology Solutions, Inc., Honeywell International, Inc., Piketon, OH.*

*TA–W–72,145: HSBC Finance Corporation, A Subsidiary of HSBC North America Holdings, Inc., Dubois, PA.*

*TA–W–72,203: Georgino Industrial Supply, Penfield, PA.*

*TA–W–72,680: Goodwill Printing Company, Ferndale, MI.*

*TA–W–72,950: Pittsburgh Coatings, Inc., Ambridge, PA.*

*TA–W–73,088A: Emerson Process Management, Rosemount Division, Database and Purchasing Groups, Chanhassen, MN.*

*TA–W–73,088: Emerson Process Management, Rosemount Division, Database and Purchasing Groups, Eden Prairie, MN.*

*TA–W–73,114: Maddox Drilling, San Angelo, TX.*

*TA–W–73,367: Caliber Auto Transfer of Ohio, Inc., Fostoria, OH.*

The investigation revealed that criteria of Section 222(c)(2) have not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

*TA–W–70,949A: Chrysler LLC, Mopar Parts Distribution Center, Naperville, IL.*

*TA–W–70,949B: Chrysler LLC, Mopar Parts Distribution Center, New Boston, MI.*

*TA–W–70,949C: Chrysler LLC, Mopar Parts Distribution Center, Beaverton, OR.*

*TA–W–70,949D: Chrysler LLC, Mopar Parts Distribution Center, Carrollton, TX.*

*TA–W–70,949E: Chrysler LLC, Mopar Parts Distribution Center, Fontana, CA.*

*TA–W–70,949F: Chrysler LLC, Mopar Parts Distribution Center, Lathrop, CA.*

*TA–W–70,949G: Chrysler LLC, Mopar Parts Distribution Center, Denver, CO.*

*TA–W–70,949H: Chrysler LLC, Mopar Parts Distribution Center, Ontario, CA.*

*TA–W–70,949I: Chrysler LLC, Mopar Parts Distribution Center, Hazelwood, MO.*

*TA–W–70,949J: Chrysler LLC, Mopar Parts Distribution Center, Morrow, GA.*

*TA–W–70,949K: Chrysler LLC, Mopar Parts Distribution Center, Memphis, TN.*

*TA–W–70,949L: Chrysler LLC, Mopar Parts Distribution Center, Tappan, NY.*

*TA–W–70,949M: Chrysler LLC, Mopar Parts Distribution Center, Mansfield, MA.*
*TA–W–70,949N: Chrysler LLC, Mopar Parts Distribution Center, Plymouth, MN.*
*TA–W–70,949O: Chrysler LLC, Mopar Parts Distribution Center, Streetsboro, OH.*
*TA–W–70,949P: Chrysler LLC, Mopar Parts Distribution Center, Orlando, FL.*
*TA–W–70,949Q: Chrysler LLC, Mopar Parts Distribution Center, Milwaukee, WI.*
*TA–W–70,949R: Chrysler LLC, Mopar Parts Distribution Center, Warren, MI.*
*TA–W–70,949S: Chrysler LLC, Mopar Parts Distribution Center, Marysville, MI.*
*TA–W–70,949: Chrysler LLC, Mopar Parts Distribution Center, Center Line, MI.*

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

*TA–W–71,562: Magneti Marelli Powertrain USA, LLC, Sanford, NC.*
*TA–W–71,734A: Morris Yachts, Inc., Trenton, ME.*
*TA–W–71,734: Morris Yachts, Inc., Bass Harbor, ME.*
*TA–W–73,287: HP Enterprise Services, Formerly Known As EDS/HP, Fort Worth, TX.*
*TA–W–73,304: Suntron Corporation, Newberg, OR.*
*TA–W–73,337: Vector CANtech, Novi, MI.*
*TA–W–73,340: Carestream Health, Inc., Sensitizing Department, Windsor, CO.*
*TA–W–73,387: CC Forbes, Big Lake, TX.*
*TA–W–73,442: International Business Machines Corporation, IT Support 7—IBM, Boulder, CO.*
*TA–W–73,452: Safmarine, Inc., Madison, NJ.*
*TA–W–73,474: Managed Business Solutions, Santa Rosa, CA.*
*TA–W–73,571: Halliburton, Duncan, OK.*
*TA–W–73,744: Sony Ericsson, USA, Research Triangle Park, NC.*
*TA–W–73,834: William B. Altman, Inc., Fenelton, PA.*
*TA–W–73,839: Duthler Ford Truck, Inc., Wyoming, MI.*

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

*TA–W–72,895: Clark Construction, El Dorado, TX.*
*TA–W–73,300: Wood-Mode, Kreamer, PA.*

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

*TA–W–71,317: Product Action, Toledo, OH.*
*TA–W–73,749: Assembly and Test Worldwide, Inc., Shelton, CT.*

I hereby certify that the aforementioned determinations were issued during the period of *April 12, 2010 through April 23, 2010.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: May 13, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12110 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–72,606]**

### American Food and Vending Spring Hill, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 6, 2010, the International Union, United Automobile, Aerospace and Agricultural Implements Workers of America, Local 1853 (Union) requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The determination was signed on March 19, 2010. The Department's Notice of determination was published in the **Federal Register** on April 23, 2010 (75 FR 21358).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination applicable to workers and former workers at American Food and Vending, Spring Hill, Tennessee, was based on the findings that the subject firm did not, during the investigation period, shift to a foreign country services like or directly competitive with the cafeteria services or vending machine services supplied by the workers or acquire from a foreign country services like or directly competitive with the cafeteria services or vending machine services supplied by the workers; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive services or a shift in service/acquisition abroad; and that the workers did not supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the afore-mentioned article or service.

In the request for reconsideration, the Union stated that the workers of the subject firm should be eligible for TAA because they are service workers who provided services to General Motors, Spring Hill, Tennessee, and were laid off at the same time as workers of Premier Manufacturing Support Services (a services provider to General Motors, Spring Hill, Tennessee, who were certified eligible to apply for TAA on March 12, 2010, under TA–W–72,379).

The difference in the determinations is based on the difference in the companies' relationships to the

production process at General Motors, Spring Hill, Tennessee. The workers of Premier Manufacturing Support Services provided services (janitorial, maintenance, and hazardous waste disposal) that were directly involved in the production process at General Motors, Spring Hill, Tennessee. In contrast, the worker of the subject firm provided services (cafeteria services and vending machine services) that are not directly involved in the production process at General Motors, Spring Hill, Tennessee.

In the request for reconsideration, the Union also asserts that the workers "are under the operational control of the General Motors Corporation in Spring Hill, Tennessee and were considered joint employees."

A careful review of previously-submitted information from American Food and Vending revealed no evidence that supports either of the afore-mentioned assertions. For example, the workers' wages have not been reported under any Federal Employer Identification Number (FEIN) other than the subject firm's FEIN.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 3rd day of May 2010.

**Del Min Amy Chen,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12107 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,401]**

### Setco Automotive, Inc., Paris, TN; Notice of Revised Determination on Reconsideration

By application dated April 5, 2010, the Tennessee AFL–CIO Technical Assistance Office (Union) requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm.

The initial investigation resulted in a negative determination, issued on March 9, 2010, that was based on the finding that there was no increase in imports by the workers' firm or customers of the subject firm, nor was there a shift or acquisition by the workers' firm, and neither the workers' firm nor its customers reported imports of articles like or directly competitive with articles into which the automotive clutch products produced by the workers' firm was directly incorporated into. The Department's Notice of determination was published in the **Federal Register** on April 23, 2010 (FR 75 21358).

The reconsideration investigation revealed that, during 2008 and 2009, the subject firm sold component parts (automotive clutch products) to be incorporated into an article to a firm that employed a worker group currently eligible to apply for TAA, and that the article was the basis for the certification. The subject firm's sales to that customer in each of those two years amounted to approximately twenty percent of the subject firm's total sales.

### Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Setco Automotive, Inc., Paris, Tennessee meet the worker group certification criteria under Section 222(c) of the Act, 19 U.S.C. 2272(c). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Setco Automotive, Inc., Paris, Tennessee, who became totally or partially separated from employment on or after June 25, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 4th day of May, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–12115 Filed 5–19–10; 8:45 am]

BILLING CODE 4510–FN–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission, [NRC–2010–0002].

**DATE:** Week of May 24, 2010.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**ADDITIONAL ITEMS TO BE CONSIDERED:**

**Week of May 24, 2010**

*Thursday, May 27, 2010*

9:25 a.m. Affirmation Session (Public Meeting) (Tentative).

a. South Texas Project Nuclear Operating Co. (South Texas Project Units 3 and 4), Intervenors' Notice of Appeal, Brief in Support of Intervenors' Appeal of Atomic Safety and Licensing Board's Order of January 29, 2010 (Feb. 9, 2010) (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

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or send an e-mail to *darlene.wright@nrc.gov.*

Dated: May 17, 2010.

**Rochelle C. Bavol,**

*Office of the Secretary.*

[FR Doc. 2010–12224 Filed 5–18–10; 11:15 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request extension of OMB approval of revised collection of information.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is modifying the collection of information under Part 4007 of its regulation on Payment of Premiums (OMB control number 1212–0007; expires April 30, 2011) and intends to request that the Office of Management and Budget (OMB) extend approval of the collection of information under the Paperwork Reduction Act for three years. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments must be submitted by July 19, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.*

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The premium payment regulation and the premium instructions (including illustrative forms) for 2010 and prior years can be accessed on PBGC's Web site at *http://www.pbgc.gov.*

**FOR FURTHER INFORMATION CONTACT:** James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under Title IV pension insurance programs to pay premiums to PBGC. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC. Premium information must be filed electronically using "My Plan Administration Account" ("My PAA") through PBGC's Web site except to the extent PBGC grants an exemption for good cause in appropriate circumstances, in which case the information must be filed using an approved PBGC form. The plan administrator of each pension plan covered by Title IV of ERISA is required to submit one or more premium filings for each premium payment year. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

PBGC needs information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

All plans covered by Title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Large-plan filers (*i.e.,* plans that were required to pay premiums for 500 or more participants for the prior plan year) are required to pay PBGC's flat-rate premium early in the premium payment year. Because the participant count often is not available until late in the premium payment year, PBGC permits filers to make an "Estimated flat-rate premium filing."

All plans are required to make a "Comprehensive premium filing." Comprehensive filings are used to report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). For large plans, the Comprehensive filing also serves to reconcile an estimated flat-rate premium paid earlier in the year.

PBGC intends to revise the 2011 filing instructions to:

- Remove references to a transition rule in section 430 of the Internal Revenue Code that no longer applies.
- Remove instructions about the credit card payment option for premium payments, which is being eliminated because of low usage.
- Clarify that if a plan has been frozen more than once, a filer should report the most recent date that the plan became closed to new entrants. These instructions parallel the benefit-accrual-freeze instructions.
- Make other minor changes.

PBGC intends to revise the 2012 filing instructions to require plans using the alternative premium funding target to report the "effective interest rate" (defined in section 430(h) of the Internal Revenue Code). PBGC will use this information to update its annual contingency list and financial statements more timely and accurately. PBGC is not making this change until 2012 to provide time to modify its premium accounting system to handle the new data element.

The collection of information under the regulation has been approved through April 30, 2011, by OMB under control number 1212–0007. PBGC intends to request that OMB extend approval of the collection of information (with modifications) for another three years. 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.

PBGC estimates that it will receive 34,300 premium filings per year from 28,500 plan administrators under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 9,000 hours and $59,960,000.

PBGC is soliciting public comments to—

- 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 methodologies 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.

Issued in Washington, DC, this 14th day of May 2010.

**John H. Hanley,**

*Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.*

[FR Doc. 2010–12121 Filed 5–19–10; 8:45 am]

**BILLING CODE 7709–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

**[OMB Control No. 3206–0136; SF 2823]**

### Proposed Collection; Request for Comments on a Revised Information Collection

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comments on a revised information collection. This information collection, "Designation of Beneficiary: Federal Employees' Group Life Insurance," (OMB Control No. 3206–0136; SF 2823), is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

*Comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 47,000 SF 2823 forms are completed annually by annuitants and 1,000 forms are completed by assignees. Each form takes approximately 5 minutes to complete. The annual estimated burden is 12,000 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Christopher N. Meuchner, Program Analysis Officer, FSA, Life & Long Term Care, Retirement and Benefits, Insurance Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415–3661.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, (202) 606–4808.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2010–12129 Filed 5–19–10; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

**[OMB Control No. 3206–0233; Form RI 25–51]**

### Proposed Collection; Request for Comments on a Revised Information Collection:

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comments on a revised information collection. This information collection, "Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits" (OMB Control No. 3206–0233; Form RI 25–51), will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

*Comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 34,800 RI 25–51 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 17,400 hours. For copies of this proposal, contact Cyrus S. Benson (202) 606–4808, FAX (202) 606–0910 or E-mail to *Cyrus.Benson@opm.gov.* Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

*For information regarding administrative coordination contact:* Cyrus S. Benson, Team Leader, Publications Team, RB/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2010–12127 Filed 5–19–10; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

**FOR FURTHER INFORMATION CONTACT:** Roland Edwards, Senior Executive Resource Services, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedules A, B, and C between April 1, 2010 and April 30, 2010. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/*. A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are *not* codified in the Code of Federal Regulations. These are agency-specific exceptions.

**Schedule A**

No Schedule A authorities to report during April 2010.

**Schedule B**

No Schedule B authorities to report during April 2010.

**Schedule C**

The following Schedule C appointments were approved during April 2010.

*Office of Management and Budget*

BOGS10016 Special Projects Coordinator to the Associate Director, Strategic Planning and Communications. Effective April 5, 2010.

BOGS10015 Special Assistant to the Director, Office of Management and Budget. Effective April 15, 2010.

*Office of the United States Trade Representative*

TNGS08010 Deputy Assistant United States Trade Representative for Public and Media Affairs. Effective April 13, 2010.

*Department of State*

DSGS70033 Staff Assistant to the Director, Policy Planning Staff. Effective April 1, 2010.

DSGS70107 Assistant Chief of Protocol to the Chief of Protocol. Effective April 29, 2010.

*Department of Defense*

DDGS17277 Special Assistant for Acquisition Technology and Logistics of Defense Legislative Affairs. Effective April 15, 2010.

*Department of the Army*

DWGS10098 Special Assistant to the Assistant Secretary of the Army (Manpower and Reserve Affairs). Effective April 2, 2010.

DWGS10099 Special Assistant to the Assistant Secretary of the Army (Acquisition, Logistics and Technology). Effective April 5, 2010.

DWGS90096 Special Assistant to the Chief Management Officer to the Under Secretary of the Army. Effective April 14, 2010.

*Department of the Air Force*

DFGS60024 Special Assistant to the Assistant Secretary of the Air Force (Manpower and Reserve Affairs). Effective April 2, 2010.

*Department of Justice*

DJGS00441 Counsel to the Assistant Attorney General Tax Division. Effective April 9, 2010.

DJGS00601 Counsel to the Assistant Attorney General. Effective April 19, 2010.

DJGS00605 Chief of Staff, Office of Justice Programs. Effective April 27, 2010.

*Department of Homeland Security*

DMGS00013 Special Assistant to the Deputy Chief of Staff (Policy). Effective April 9, 2010.

DMGS00804 Advisor to the Assistant Secretary for Intergovernmental Affairs. Effective April 9, 2010.

*Department of Agriculture*

DAGS00101 Deputy White House Liaison to the White House Liaison. Effective April 1, 2010.

DAGS60600 Chief of Staff to the Under Secretary for Rural Development. Effective April 1, 2010.

DAGS60599 Minister Counselor of Agriculture for Farm and Foreign Agricultural Services. Effective April 14, 2010.

DAGS50602 Director, Correspondence Management for Administration. Effective April 19, 2010.

DAGS50609 Deputy Director of Scheduling to the Director of Communications. Effective April 23, 2010.

*Department of Commerce*

DCGS00598 Senior Director for Management and Performance to the Chief Financial Officer and Assistant Secretary for Administration. Effective April 15, 2010.

DCGS00431 Director of Scheduling to the Director of Scheduling and Advance. Effective April 16, 2010.

DCGS00289 Legislative Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 19, 2010.

DCGS00317 Deputy Director of Scheduling to the Director of Scheduling and Advance. Effective April 23, 2010.

DCGS00433 Director, National Export Initiative to the Under Secretary for International Trade. Effective April 26, 2010.

DCGS60312 Senior Advisor to the Chief of Staff to the Under Secretary, International Trade Administration. Effective April 28, 2010.

*Department of Labor*

DLGS60203 Special Assistant to the Senior Advisor for Communications and Public Affairs. Effective April 16, 2010.

DLGS60114 Special Assistant to the Senior Advisor for Communications and Public Affairs. Effective April 22, 2010.

DLGS60133 Chief of Staff to the Director of the Women's Bureau. Effective April 28, 2010.

DLGS60221 Speechwriter to the Senior Advisor for Communications and Public Affairs. Effective April 28, 2010.

*Department of Health and Human Services*

DHGS60120 Special Assistant to the Assistant Secretary for Preparedness and Response. Effective April 9, 2010.

DHGS60237 Regional Director, New York, Region II to the Director of Intergovernmental Affairs. Effective April 9, 2010.

DHGS60238 Regional Director, Boston, Massachusetts, Region I to the Director of Intergovernmental Affairs. Effective April 9, 2010.

DHGS60247 Regional Director Philadelphia Region III to the Director of Intergovernmental Affairs. Effective April 9, 2010.

DHGS60252 Regional Director, Denver, Colorado, Region VIII to the Director of Intergovernmental Affairs. Effective April 9, 2010.

DHGS60412 Regional Director, San Francisco, California, Region IX to the Director of Intergovernmental Affairs. Effective April 9, 2010.

DHGS60627 Confidential Assistant to the Administrator, Substance Abuse and Mental Health Services Administration. Effective April 9, 2010.

DHGS60470 Director of Policy Coverage (Office of Health Reform) to

the Principal Deputy Assistant Secretary for Planning and Evaluation. Effective April 22, 2010.

DHGS60258 Deputy Director, Office of External Affairs to the Director. Effective April 29, 2010.

*Department of Education*

DBGS00320 Confidential Assistant to the Executive Director of the White House Initiative on Asian Americans and Pacific Islanders. Effective April 1, 2010.

DBGS00225 Confidential Assistant to the Press Secretary for Strategic Communications. Effective April 8, 2010.

DBGS00687 Senior Counsel to the Assistant Secretary for Civil Rights. Effective April 9, 2010.

DBGS00254 Deputy Director of the White House Initiative on Asian Americans and Pacific Islanders. Effective April 23, 2010.

DBGS00291 Special Assistant to the Director, Educational Technology. Effective April 30, 2010.

*Securities and Exchange Commission*

SEOT01090 Chief Operating Officer to the Chairman. Effective April 26, 2010.

SEOT60001 Confidential Assistant to the Chairman. Effective April 26, 2010.

*Department of Energy*

DEGS00805 Special Assistant to the Director, Office of Scheduling and Advance. Effective April 9, 2010.

DEGS00806 Special Assistant to the Director, Office of Scheduling and Advance. Effective April 13, 2010.

DEGS00807 Special Assistant to the Under Secretary for Nuclear Security/Administrator. Effective April 19, 2010.

DEGS00808 Senior Advisor and Director of New Media to the Director, Office of Public Affairs. Effective April 19, 2010.

DEGS00809 Congressional Affairs Specialist to the Director, Office of Congressional Affairs. Effective April 29, 2010.

*Small Business Administration*

SBGS00705 Policy Associate to the Deputy Assistant Administrator for Policy and Strategic Planning. Effective April 22, 2010.

SBGS00640 Regional Administrator (Region II) to the Associate Administrator for Field Operations. Effective April 30, 2010.

*Export-Import Bank*

EBGS10002 Counselor and Executive Secretary to the President and Chairman. Effective April 1, 2010.

EBGS10003 Speechwriter to the Senior Vice President, Communications. Effective April 20, 2010.

*Department of Transportation*

DTGS60277 Associate Administrator for Communications and Legislative Affairs. Effective April 1, 2010.

DTGS60358 Special Assistant to the Director of Scheduling and Advance. Effective April 5, 2010.

DTGS60129 Counselor to the General Counsel. Effective April 8, 2010.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2010–12135 Filed 5–19–10; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### National Council on Federal Labor-Management Relations Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Council on Federal Labor-Management Relations is cancelling its June 2, 2010 meeting and rescheduling that meeting for June 7, 2010. The meeting will start at 10 a.m. and will be held in Room 1416, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC. The dates for all Council meetings for the remainder of 2010 were announced in the April 30, 2010, **Federal Register** (75 FR 22871). Interested parties should consult the Council Web site at *http://www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting dates.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, "Creating Labor-Management Forums to Improve Delivery of Government Services," which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the Government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

**FOR FURTHER INFORMATION CONTACT:** Thomas Wachter, Acting Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street, NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930; Fax (202) 606–2613; or e-mail at *PLR@opm.gov*.

For the National Council.

**John Berry,**

*Director.*

[FR Doc. 2010–12171 Filed 5–19–10; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974: Update and Amend System of Records

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Update and amend system of records.

**SUMMARY:** OPM proposes to update and amend OPM/Central-9, Personnel Investigations Records contained in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)).

**DATES:** These changes will become effective without further notice June 29, 2010, unless we receive comments that result in a contrary determination.

**ADDRESSES:** Send written comments to the Chief for the Freedom of Information and Privacy Act office, Federal Investigative Services, U.S. Office of Personnel Management, 1137 Branchton

Road, PO Box 618, Boyers, Pennsylvania 16018.

**FOR FURTHER INFORMATION CONTACT:** Chief, Freedom of Information and Privacy Act office, *FISSORNComments@opm.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management's (OPM) system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register**.

The specific changes to the record system being amended are set forth below. The proposed amendment is within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

**SYSTEM NAME:**

Personnel Investigations Records.

**SYSTEM LOCATION:**

Delete current paragraph a and replace with:

"a. Federal Investigative Services (FIS), U.S. Office of Personnel Management, PO Box 618, 1137 Branchton Road, Boyers, PA 16018–0618."

Add a new paragraph:

"b. Records may be maintained in various FIS field offices, including the Personnel Investigations Center, 601 10th Street, Fort Meade, MD, for limited periods of time. These records would include investigative and administrative records, including files and duplicate records or records which extract information from the main files. This is necessary to assist field offices in their day to day operations. Investigative activities conducted by field offices are reported to FIS headquarters at one or more stages of the background investigation process. Upon completion of activities to include fieldwork, quality review, and/or adjudicative action, documents are returned to FIS headquarters or destroyed in accordance with the published retention schedule."

Delete the current paragraph b and replace with:

"c. Decentralized segments: Copies of these records may exist temporarily in agencies on current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for making suitability, fitness, security clearance, access, HSPD 12 credentialing decisions, or hiring determinations on an individual. ("Agency" as used throughout this system is deemed to include Legislative and Judicial branch establishments as well as those in the Executive Branch)."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current paragraphs a and c have been merged. Replace current paragraph a with:

"a. Civilian and military applicants and employees or government contractors, experts, instructors, and consultants to Federal programs who undergo a personnel background investigation for the purpose of determining suitability for government employment, contractor employee fitness, eligibility for access to classified information, credentialing for HSPD 12, and/or access to a federal facility or information technology system."

Due to the deletion of the current paragraph c, current paragraphs d, e, and f have been re-lettered respectively to c, d, and e.

Add a new paragraph:

"f. State, Local, Tribal and Private Sector partners identified by Federal sponsors for eligibility to access classified information in support of Homeland Defense initiatives."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with

"a. Applicable records containing the following information about the individual investigated may be maintained: Name, former names, and aliases; date and place of birth; social security number; height; weight; hair and eye color; gender; mother's maiden name; current and former home addresses, phone numbers, and e-mail addresses; employment history; military record information; selective service registration record; residential history; education and degrees earned; names of associates and references with their contact information; citizenship; passport information; criminal history; civil court actions; prior security clearance and investigative information; mental health history; records related to drug and/or alcohol use; financial record information; information from the Internal Revenue Service pertaining to income tax returns; credit reports; the name, date and place of birth, social security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s); the citizenship, name, date and place of birth, and address for relatives; information on foreign contacts and activities; association records; information on loyalty to the United States; and other agency reports furnished to OPM in connection with the background investigation process, and other information developed from above.

b. Summaries of personal and third party interviews conducted during the course of the background investigation.

c. Correspondence relating to adjudication matters and results of suitability decisions in cases adjudicated by the OPM, FIS in accordance with 5 CFR 731.

d. Records of personnel background investigations conducted by other Federal agencies.

e. Records of adjudicative and HSPD 12 decisions by other Federal agencies, including clearance determinations and/or polygraph results.

**Note:** This system does not include agency records of a personnel investigative nature that do not come to OPM.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with:

"Depending on the purpose of the investigation, Executive Orders 9397, as amended by 13478, 10450, 10577, 10865, 12968, and 13470; Section 2, Civil Service Act of 1883; Public Laws 82–298 and 92–261; Title 5, U.S.C., sections 1303, 1304, 3301, 7301, and 9101; Title 22, U.S.C., section 2519; Title 42 U.S.C. sections 1874 (b)(3), 2165, 2201, and 2455; Title 50 U.S.C. section 435b(e); Title 5 CFR sections 731, 732 and 736; Homeland Security Presidential Directive 12 (HSPD 12) and OMB Circular No. A–130. In addition to the authorities cited, there are various acts of Congress that contain implied authority for OPM to investigate, such as laws prohibiting the purchase and sale of office, holding of two offices, conspiracy and other prohibited practices."

**PURPOSE(S):**

Current paragraphs a and b have been merged. Replace current paragraphs a and b with: "The records in this system may be used to provide investigatory information for determinations concerning whether an individual is suitable or fit for Government employment; eligible for logical and physical access to federally controlled facilities and information systems; eligible to hold sensitive positions (including but not limited to eligibility for access to classified information); fit to perform work for or on behalf of the Government as a contractor employee; qualified for Government service; qualified to perform contractual services for the Government; and loyal to the United States. The system is also used to document such determinations."

Delete current paragraph c.

Remove paragraph lettering for current paragraphs d and e. All current language remains unchanged.

Add a paragraph: "The records may be used to help streamline and make more efficient the investigations and adjudications processes generally."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add: "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3)." to the beginning of this section.

Add: "k. For agencies that use adjudicative support services of another agency, at the request of the original agency, the results will be furnished to the agency providing the adjudicative support.

l. To provide criminal history record information to the FBI, to help ensure the accuracy and completeness of FBI and OPM records." to the end of this section.

**POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with: "Records are maintained in paper format in file folders, on microfilm, as digital images, on computer tapes, and in electronic databases such as the Personnel Investigations Processing System, the Clearance Verification System, and the e-QIP system."

**RETRIEVABILITY:**

Delete entry and replace with: "Records are retrieved by the name, Social Security Number, unique case serial number and/or other unique identifier of the individual on whom they are maintained."

**SAFEGUARDS:**

Delete entry and replace with: "Paper files are stored in a locked filing cabinet or a secure facility with an intrusion alarm system. Microfilm is secured in a facility with an intrusion system. Electronic records are maintained in computer databases in a limited access room with a keyless cipher lock. All employees are required to have an appropriate background investigation before they are allowed access to the records. The U.S. Postal Service and other postal providers are used to transmit hard copy records sent to and from field offices. Information that is transmitted electronically from field offices is encrypted."

**RETENTION AND DISPOSAL:**

Replace "* * * 15 years, plus the current year from the date of the most recent investigative activity, except for investigations involving potentially actionable issue(s) which will be maintained for 25 years plus the current year from the date of the most recent investigative activity." with "* * * 16 years from the date of closing or the date of the most recent investigative activity, whichever is later, except for investigations involving potentially actionable issue(s) which will be maintained for 25 years from the date of closing or the date of the most recent investigative activity."

Add a paragraph: "Digital capture of fingerprint card set is forwarded to the Federal Bureau of Investigation and the card is destroyed when it is verified that the digital copy was accurately captured and transferred."

Remove paragraph lettering for current paragraphs a and b. All current language remains unchanged.

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with: "Associate Director, Federal Investigative Services, U.S. Office of Personnel Management, PO Box 618, 1137 Branchton Road, Boyers, PA 16018."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with: "Individuals wishing to learn whether this system contains information about them should contact the FOI/PA, Office of Personnel Management, Federal Investigative Services, PO Box 618, 1137 Branchton Road, Boyers, PA 16018–0618, in writing. Written requests must contain the following information:

a. Full name, former name, and any other names used.

b. Date and place of birth.

c. Social Security Number.

d. Any available information regarding the type of record involved.

e. The address to which the record information should be sent.

f. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297)."

**RECORD ACCESS PROCEDURE:**

Delete entry and replace with: "Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding accounting of disclosures, and access to and amendment of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act indicates the kinds of material exempted and the reasons for exempting them from access.

Individuals wishing to request access to their records should contact the OPM Federal Investigative Services in writing. Requests should be directed only to the Federal Investigative Services whether the record sought is in the primary system or in an agency's decentralized segment. Individuals must furnish the following information for their records to be located and identified:

a. Full name, former name, and any other names used.

b. Date and place of birth.

c. Social Security Number.

d. Any available information regarding the type of record involved.

e. The address to which the record information should be sent.

f. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297)."

**AMENDMENT PROCEDURES:**

Delete entry and replace with: "Individuals wishing to request amendment to their non-exempt records should contact the Federal Investigations Processing Center in writing. Requests should be directed only to the OPM Federal Investigative Services, whether the record sought is in the primary system or in agency's decentralized segment. Individuals must furnish the following information for their records to be located and identified:

a. Full name, former name, and any other names used.

b. Date and place of birth.

c. Social Security Number.

d. Any available information regarding the type of record involved.

e. The address to which the record information should be sent.

f. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Individuals requesting amendment must also comply with OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

**Note:** Where an agency retains the decentralized copy of the investigative report provided by OPM, requests for access to or amendment of such reports will be forwarded to the OPM Federal Investigative Services for processing."

**RECORD SOURCE CATEGORIES:**

Replace paragraph a with:

"a. Electronic and paper applications, personnel and security forms or other information completed or supplied by the individual, and the results of personal contacts with the individual."

Paragraphs b and c were merged. Replace current paragraphs b and c with:

"b. Investigative and other record material furnished by Federal agencies, including notices of personnel actions."

Add a paragraph:

"c. By personal investigation, written inquiry, or computer linkage from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications."

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Delete paragraphs a, b, c, d, e, f, and g and replace with:

"1. Properly classified information subject to the provisions of section 552(b)(1), which states as follows: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

2. Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

3. Information maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U.S. Code.

4. Material that is required by statute to be maintained and used solely as a statistical record.

5. Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment and Federal contact or access to classified information. Materials may be exempted to the extent that release of the material to the individual whom the information is about would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

6. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

7. Evaluation materials, compiled during the course of a personnel investigation, that are used solely to determine potential for promotion in the armed services can be exempted to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence."

Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2010–12132 Filed 5–19–10; 8:45 am]

**BILLING CODE 6325–38–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12172]**

### Florida Disaster # FL–00056 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Florida, dated 05/13/2010.

*Incident:* Deepwater BP Oil Spill.

*Incident Period:* 04/20/2010 and continuing.

**DATES:** *Effective Date:* 05/13/2010.

*EIDL Loan Application Deadline Date:* 02/14/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Bay, Citrus, Dixie, Escambia, Franklin, Gulf, Hernando, Hillsborough, Jefferson, Levy, Manatee, Okaloosa, Pasco, Pinellas, Santa Rosa, Sarasota, Taylor, Walton.

*Contiguous Counties:*

Florida: Alachua, Calhoun, Charlotte, Desoto, Gilchrist, Hardee, Holmes, Jackson, Lafayette, Leon, Liberty, Madison, Marion, Polk, Sumter, Wakulla, Washington.

Alabama: Baldwin, Covington, Escambia, Geneva.

Georgia: Brooks, Thomas.

The Interest Rates are:

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere: ..... | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere: ..... | 3.000 |

The number assigned to this disaster for economic injury is 121720.

The States which received an EIDL Declaration # are Florida, Alabama, Georgia.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 13, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–12072 Filed 5–19–10; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12181 and # 12182]**

### South Dakota Disaster # SD–00031

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA—1915—DR), dated 05/13/2010.

*Incident:* Flooding.

*Incident Period:* 03/10/2010 And Continuing.

**DATES:** *Effective Date:* 05/13/2010.

*Physical Loan Application Deadline Date:* 07/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/14/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/13/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Aurora, Beadle, Brown, Brule, Buffalo, Charles Mix, Clark, Clay, Codington, Day, Edmunds, Faulk, Grant, Hamlin, Hanson, Hutchinson, Hyde, Jerauld, Kingsbury, Lyman, Marshall, Mccook, Mcpherson, Miner, Roberts, Sanborn, Spink, Sully, Turner, Union.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere .. | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 121816 and for economic injury is 121826.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–12077 Filed 5–19–10; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12168 and # 12169]**

### Kentucky Disaster # KY–00032

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA—1912—DR), dated 05/11/2010.

*Incident:* Severe Storms, Flooding, Mudslides, and Tornadoes.

*Incident Period:* 05/01/2010 and continuing.

**DATES:** *Effective Date:* 05/11/2010.

*Physical Loan Application Deadline Date:* 07/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/11/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/11/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Casey, Lewis, Lincoln, Logan, Metcalfe, Rockcastle, Rowan, Woodford.

*Contiguous Counties (Economic Injury Loans Only):*

Kentucky: Adair, Anderson, Barren, Bath, Boyle, Butler, Carter, Cumberland, Elliott, Fayette, Fleming, Franklin, Garrard, Green, Greenup, Hart, Jackson, Jessamine, Laurel, Madison, Marion, Mason, Menifee, Mercer, Monroe, Morgan, Muhlenberg, Pulaski, Russell, Scott, Simpson, Taylor, Todd, Warren.

Ohio: Adams, Scioto.

Tennessee: Robertson.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere: ..... | 5.500 |
| Homeowners without Credit Available Elsewhere: ..... | 2.750 |
| Businesses with Credit Available Elsewhere: ..... | 6.000 |
| Businesses without Credit Available Elsewhere: ..... | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere: | 3.625 |
| Non-Profit Organizations without Credit Available Elsewhere: ..... | 3.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere: | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere: ..... | 3.000 |

The number assigned to this disaster for physical damage is 121686 and for economic injury is 121690.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–12082 Filed 5–19–10; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12170 and #12171]**

### Kentucky Disaster #KY–00033

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–1912–DR), dated 05/11/2010.

*Incident:* Severe Storms, Flooding, Mudslides, and Tornadoes.

*Incident Period:* 05/01/2010 and continuing..

*Effective Date:* 05/11/2010.

*Physical Loan Application Deadline Date:* 07/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/11/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/11/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Allen, Hart, Lewis, Logan, Metcalfe, Monroe, Rockcastle.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 121706 and for economic injury is 121716.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–12083 Filed 5–19–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12179 and # 12180]**

### South Dakota Disaster # SD–00030

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1914–DR), dated 05/13/2010.

*Incident:* Severe Winter Storm.

*Incident Period:* 04/02/2010.

**DATES:** *Effective Date:* 05/13/2010.

*Physical Loan Application Deadline Date:* 07/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/14/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/13/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Corson, Perkins, Ziebach.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 12179B and for economic injury is 12180B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–12080 Filed 5–19–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12177 and # 12178]**

### New Hampshire Disaster # NH–00017

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–1913–DR), dated 05/12/2010.

*Incident:* Severe Storms And Flooding.

*Incident Period:* 03/14/2010 through 03/31/2010.

**DATES:** *Effective Date:* 05/12/2010.

*Physical Loan Application Deadline Date:* 07/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/14/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/12/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary County:* Rockingham.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere .. | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |

| | Percent |
|---|---|
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 12177B and for economic injury is 12178B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–12076 Filed 5–19–10; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12173]**

### Mississippi Disaster #MS–00038 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Mississippi, dated 05/13/2010.

*Incident:* Deepwater BP Oil Spill.

*Incident Period:* 04/20/2010 and continuing.

**DATES:** *Effective Date:* 05/13/2010.

*EIDL Loan Application Deadline Date:* 02/14/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* George, Hancock, Harrison, Jackson, Pearl River, Stone.

*Contiguous Counties and Parishes:*

Mississippi: Forrest, Greene, Lamar, Marion, Perry.

Alabama: Mobile.

Louisiana: Saint Tammany, Washington.

The Interest Rates are:

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for economic injury is 121730

The States which received an EIDL Declaration # are Mississippi, Alabama, Louisiana.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 13, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–12073 Filed 5–19–10; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12174]**

### Alabama Disaster #AL–00032 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Alabama, dated 05/13/2010.

*Incident:* Deepwater BP Oil Spill.

*Incident Period:* 04/20/2010 and continuing.

**DATES:** *Effective Date:* 05/13/2010.

*EIDL Loan Application Deadline Date:* 02/14/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Baldwin, Mobile.

*Contiguous Counties:*

Alabama: Clarke, Escambia, Monroe, Washington.

Florida: Escambia.

Mississippi: George, Greene, Jackson.

*The Interest Rates are:*

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for economic injury is 121740.

The States which received an EIDL Declaration # are Alabama, Florida, Mississippi.

(Catalog of Federal Domestic Assistance Number 59002)

May 13, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–12074 Filed 5–19–10; 8:45 am]

BILLING CODE 8025–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (*see* also Pub. L. 111–117, Section 621) will hold an Open Meeting on Monday, May 24, 2010, in the Auditorium, L–002.

The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes: (i) Opening remarks; (ii) the introduction of Committee members, (iii) discussion of Committee agenda and organization; (iv) discussion of the Joint CFTC–SEC report on the market events of May 6, 2010; and (v) discussion of next steps and closing comments.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 17, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–12228 Filed 5–18–10; 4:15 pm]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62101; File No. SR–ISE–2010–40]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 502(k)

May 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise ISE Rule 502(k) to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 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

ISE Rule 502(k) designates the listing and trading of options on equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities"), collectively known as "Index-Linked Securities" that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index ("VIX") Futures. Specifically, the Exchange proposes to add the VIX Futures to the definition of a Futures Reference Asset in ISE Rule 502(k)(1)(v).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in ISE Rule 502(a)–(b) or the criteria set forth in ISE Rule 502(k)(3)(ii).

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in ISE Rule 502(b); or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset.[5] In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Options on Index-Linked Securities will continue to be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on ISE will continue to apply.

The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the "CBOE").

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index ("SPX") option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the "CFE").

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m.–3:15 p.m. Central Time (Chicago Time).

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the

[5] For the purposes of Rule 502(k), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as "Reference Assets." *See* Rule 502(k)(2).

Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (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 after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission [8] and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing to enable the Exchange to list and trade options on index-linked securities without delay.[9]

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 the 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–ISE–2010–40 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–40. 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–ISE–2010–40 and should be submitted on or before June 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–12068 Filed 5–19–10; 8:45 am]

**BILLING CODE 8010–01–P**

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[8] *See* Securities Exchange Act Release Nos. 60822 (October 14, 2009), 74 FR 54114 (October 21, 2009) (SR–NYSEArca–2009–77); 60823 (October 14, 2009), 74 FR 54112 (October 21, 2009) (SR–NYSEAmex–2009–59); and 60857 (October 21, 2009), 74 FR 55611 (October 28, 2009) (SR–CBOE–2009–74).

[9] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 55 (Sub-No. 701X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Vigo County, IN

On April 30, 2010, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 3.71-mile rail line on its Southern Region, Nashville Division, CE&D Subdivision, between milepost QST 1.42 (Park Street) and milepost QST 5.13 (Spring Hill), in Terre Haute (City), Vigo County (County), Ind.[1] The line contains the International Paper Lead and portions of the Graham Grain Lead and the 1st Street Lead. The line traverses United States Postal Service Zip Code 47802 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

[1] CSXT states that once abandonment authority has been approved, it intends to reclassify 1.35 miles of trackage between milepost QST 1.42 and milepost QST 2.77 (Helen Avenue) to excepted track. Also, CSXT states that it has received expressions of interest from the City and County about converting the remaining 2.36 miles of trackage between mileposts 2.77 and 5.13 into a trail. CSXT adds that, if a request for interim trail use/rail banking is filed, it plans to agree to negotiate.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad and The Union Pacific Railroad Company—Abandonment Portion Goshen Branch Between Firth and Ammon, In Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued on or before August 18, 2010.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 9, 2010. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 701X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204, and Steven Armbrust, 500 Water St., Jacksonville, FL 32202. Replies to the petition are due on or before June 9, 2010.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its presentation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: May 14, 2010.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. 2010–12067 Filed 5–19–10; 8:45 am]

**BILLING CODE 4915–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Buy America Waiver Request by Oregon Department of Transportation for Steel Roof Tiles To Be Used in Union Station Roof Rehabilitation

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

**ACTION:** Notice of Buy America waiver request and request for comment.

**SUMMARY:** The FRA is issuing this notice to advise the public that the Oregon Department of Transportation ("ODOT") has requested a waiver from the Buy America requirements of the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") (49 U.S.C. 24405(a)) for the purchase of metal roof tiles made of 40/45 KSI #2, 24 Gauge (0.0276") Galvanized "Non-Fluting" Steel Stock with Kynar PPG 5LR82411 or L/G Rodda Red II Paint finish color. ODOT is seeking a waiver in order to complete the rehabilitation of the historic Union Station roof in Portland, Oregon as one component of a project funded by FRA under the American Recovery and Reinvestment Act of 2009 ("Recovery Act"). The purpose of this notice is to seek public comment on whether the FRA should grant a waiver to its Buy America requirements in 49 U.S.C. 24405(a).

**DATES:** *Written Comments:* Written comments must be received by June 3, 2010.

**ADDRESSES:** You may submit comments identified by the docket number FRA–2010–0085 by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket name and docket number or Regulatory Identification Number ("RIN") for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Further Information Contact: For questions about this notice, please contact Mr. Chris Van Nostrand, Attorney-Advisor, FRA Office of Chief Counsel, (202) 493–6058 or via e-mail at *christopher.vannostrand@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

The Recovery Act requires the FRA to apply the Buy America provisions contained in PRIIA, at 49 U.S.C. 24405(a), to grants obligated with Recovery Act funds. PRIIA section 24405(a)(1) authorizes the Secretary of Transportation ("Secretary") to obligate grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. However, PRIIA section 24405(a)(2) also permits the Secretary to waive the Buy America requirements if he finds that; (A) applying paragraph (1) would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

If the Secretary determines that it is necessary to waive the Buy American provisions, PRIIA section 24405(a)(4) requires that the Secretary provide public notice of such a finding and

provide an opportunity for comment. In addition, PRIIA requires a detailed written justification for the decision be published in the **Federal Register**. This notice informs the public that ODOT has requested a Buy America waiver for the roofing tiles and requests public comment on the potential waiver. ODOT has requested the waiver pursuant to 49 U.S.C. 24405(a)(2)(B) because it believes that for the reasons set forth in this notice below the manufactured goods, the metal roofing tiles, are not reasonably available in the United States and that therefore a waiver is warranted.

In its Buy America waiver request to the FRA, ODOT distinguishes between "field" tiles which are used for the majority of the roof rehabilitation and "specialty" tiles which are used for the ridge, hip and valley area of the roof. ODOT states that after researching potential manufacturers of the roof tiles it found only two companies in North America capable of manufacturing the tiles necessary to complete this project. Furthermore, the one American firm ODOT identified, W.F. Norman, stated it might be a good source for the specialty tiles but turned down the request to manufacture the field tiles. The other firm capable and willing to produce the field tiles is Heather & Little Limited located in Ontario, Canada. ODOT has also explored the possibility of custom fabricating the tiles. However, ODOT found that custom fabrication would cost upwards of $1.5 million whereas the cost of purchasing the manufactured tiles would be approximately $1 million.

While this $500,000 price disparity does not trigger the PRIIA section 24405(a)(2)(D) waiver for instances where procuring domestic material would increase the cost of the overall project by more than 25 percent, it does represent a substantial increase in project cost. In addition, custom fabrication does not equate to "reasonably available" manufactured goods as ODOT would have to specially fabricate field tiles that are otherwise available through mass production albeit from a foreign source. Thus, since ODOT could not find a reasonable domestic source and the only other option is procuring the field tiles from a foreign manufacturer, it requests that the Secretary grant a Buy America waiver based on non-availability.

In addition to FRA's grant, the Federal Highway Administration ("FHWA") is also providing funding for the Union Station rehabilitation with a portion of its Recovery Act funds. Pursuant to FHWA's Buy America policy contained in 23 CFR. 635.410 and Division K, section 130 of the Consolidated Appropriations Act of 2008 (Pub. L. 110–161), FHWA published a notice of intent to issue a waiver on its Web site for the roof tiles (available at *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=39*). FHWA posted its request for comments on its Web site on October 22, 2009 and sought public comment for a period of fifteen days while it considered the waiver request. After determining the Buy America waiver was appropriate, FHWA published a Notice of Finding in the **Federal Register** on December 4, 2009 and invited comment for an additional fifteen days (74 FR 63316, Dec. 4, 2009). According to its Notice, FHWA did not receive any substantive comments that led it to believe that the roof tiles made of 40/45 KSI #2, 24 Gauge (0.0276") Galvanized "Non-Fluting" Steel Stock with Kynar PPG 5LR82411 or L/G Rodda Red II Paint Finish Color are available from a domestic source. Furthermore, FHWA conducted its own nationwide review to locate potential domestic manufacturers for the roof tiles but did not uncover any additional domestic sources of the field tiles. After considering ODOT's waiver request and its own internal review of potential tile manufacturers, FHWA concluded that "[b]ased on all of the information available to the agency, the FHWA concludes that there are no domestic manufacturers of the roof tiles" and that the Buy America waiver was appropriate based on non-availability.

With this information in mind and in order to completely understand the facts surrounding ODOT's request, FRA seeks comment from all interested parties regarding the availability of domestically manufactured field tiles of the materials described above and the potential Buy America waiver.

Issued in Washington, DC on May 17, 2010.

**Paul Nissenbaum,**

*Director, Office of Passenger and Freight Programs.*

[FR Doc. 2010–12157 Filed 5–19–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highways in Michigan

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Decision by FHWA and Notice of Limitation of Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

**SUMMARY:** This notice announces the availability of a Record of Decision by FHWA pursuant to the requirements of the National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. 4321, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508). In addition, this Notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). These actions relate to proposed improvements to US–31, M–104, and construction of a new M–231 route in Ottawa County, Michigan. These actions grant approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 771 and 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal Agency actions on the highway project will be barred unless the claim is filed on or before *November 16, 2010* (180 days from May 20, 2010). If the Federal law that authorizes that judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Williams, Environmental Program Manager, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933; *phone:* (517) 702–1820, *Fax:* (517) 377–1804; and *e-mail: David.Williams@dot.gov.* Ms. Ruth Hepfer, Area Engineer, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933; *phone:* (517) 702–1847, *Fax:* (517) 377–1844; *E-mail: Ruth.Hepfer@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of Michigan: US–31 (Holland to Grand Haven). The Selected alternative will: construct a new north-south M–231 route (between M–45 and I–96), improve M–104 in the vicinity of the M–104/M–231/I–96 junction (including improvements to the 112th Avenue Interchange), improve US–31 in the City of Grand Haven, from south of Franklin Street to north of Jackson Street, and improve US–31 in the City of Holland from Lakewood Boulevard north to Quincy Street. The selected alternative is located in the cities of Holland and Grand Haven, in Ottawa County, Michigan.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement for the project approved on February 5, 2010; in the FHWA Record of Decision (ROD) issued on April 23, 2010; and in other project records. The FEIS, ROD and other documents in the FHWA project file are available by contacting the FHWA. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at: *http://www.michigan.gov/mdot/0,1607,7–151–9621_11058—,00.html* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife and Plants:* Endangered Species Act [16 U.S.C. 1531–1544].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*] Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].
6. *Social and Economics:* Civil Rights Act of 1964 [42 U.S.C 2000(d)-2000(d)(1)]; American Indians Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended [42 U.S.C. 61].
7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [14 U.S.C. 1451–1465]; Land and Water Conservation fund [16 U.S.C. 4601–4604]; Safe Drinking Water act [42 U.S.C. 300(f)-300(j)(6)]; Rivers and Harbors Act of 1899 [42 U.S.C. 401–406]; TEA–21 Wetland Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9501–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource, Conservation and Recovery Act [42U.S.C. 6901–6992(k)].
9. *Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplains Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13112, Invasive Species; E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(1)(1).

Issued on: May 13, 2010.

**Russell L. Jorgenson,**

*Division Administrator, Federal Highway Administration, Lansing, Michigan.*

[FR Doc. 2010–11960 Filed 5–19–10; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighty-Second Meeting: RTCA Special Committee 159: Global Positioning System (GPS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

**DATES:** The meeting will be held June 8–11, 2010, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159: Global Positioning System (GPS) meeting. The agenda will include:

**Specific Working Group Sessions**

*Tuesday, June 8th*

- All Day, Working Group 2C, GPS/Inertial, Colson Board Room.

*Wednesday, June 9th*

- All Day, Working Group 2, GPS/WAAS, Hilton-ATA Room.
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room.

*Thursday, June 10th*

- Morning (9 a.m.–12 p.m.), Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.

*Friday, June 11th*

**Plenary Session—See Agenda Below**

*Agenda—Plenary Session—Agenda*

June 11th, 2010—starting at 9 a.m.

MacIntosh-NBAA & Hilton-ATA Rooms

- Chairman's Introductory Remarks.
- Approval of Summary of the Eighty-First Meeting held February 5, 2010, RTCA Paper No. 068–10/SC159–984.
- Review Working Group (WG) Progress and Identify Issues for Resolution.
  - GPS/3rd Civil Frequency (WG–1).
  - GPS/WAAS (WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/Inertial (WG–2C).
  - GPS/Precision Landing Guidance (WG–4).
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - GPS/Antennas (WG–7).
- Review of EUROCAE Activities.
- GEAS Update Briefing.
- Assignment/Review of Future Work.
- Other Business.
- Date and Place of Next Meeting

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the "**FOR FURTHER INFORMATION CONTACT**" section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 12, 2010.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. 2010–12088 Filed 5–19–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Thirteenth Meeting: EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

**DATES:** The meeting will be held June 8–11, 2010 starting at 9 a.m. on the first day and ending by 13:00 on the last day.

**ADDRESSES:** The meeting will be held at Malakoff (France), 102 rue Etienne Dolet–92240 Malakoff (4th Floor), hosted by EUROCAE. Point of Contact: Samira Bezza *samira.bezza@eurocae.net,* Tel: +33 1 40 92 79 30, Fax: +33 1 46 55 62 65.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting) meeting.

The meeting is expected to start at 9:00 on the first day and to finish by 17:00 each day. It will finish latest by 13:00 on the last day.

The main purpose of the meeting is to determine potential joint Subgroup work based on the new SC–216 TOR, develop agreement between both groups on the roadmap to potentially jointly publish documents, continue the specification work and strengthening of links to the Civil Aviation Authorities.

Please inform *jean-paul.moreaux@airbus.com* and *samira.bezza@eurocae.net* of your intention to attend the meeting.

The agenda will include:

**Day 1**

- *09h00 to 09h20:* Introduction/review of the previous MoM/Report about publications/Approval of the meeting agenda.
- *09h20 to 09h40:* WG72 and Group (ED20x) activities status discussion of implications on joint work.
- *09h40 to 10h00:* SC–216 and Subgroup activities status and discussion of implications on joint work.
- *10h00 to 10h45:* Mapping of SC216 SG's to WG72 ED 20x Documents:
- Discuss joint SG work plan & schedule based on document(s) chart.
- *10h45 to 11h00:* Break.
- *11h00 to 11h45:* Develop agreement on:
- Either continuing as per previous mode of cooperation.
- Or create a firm joint work plan for mutual document development.
- Publication Plan: Roadmap and Document layout, discuss implications.
- *11h45 to 12h00:* Discussion options to strengthen ties with CAA's (EASA and others):
- Discuss Response to White Paper: Vision to Lawmakers.
- *12h00 to 13h15:* Lunch Break.
- *13h15 to 14h30:* Status of ED201, ED202/ED203, ED204 or equivalent documents.
- *14h15 to 17h00:* Split-up sessions:
- *ED201:* Include transversal topics extracted from other parts; coordinate details with other parts.
- *ED202/203–SG2:* Discussion of differences with SC216/SG2; identify specific terms and glossary concerns; establish common basis for collaboration or joint work.
- *ED204–SG4:* Review the SOW of both groups, determine if full or partly joint work with one resulting document is possible, identify parts, that can't be joint.

**Days 2 & 3**

- *09h00 to 17h00:* Split-up sessions:
- Continuation of work for all documents.

**Day 4**

- *09h00 to 13h00:* Plenary Session:
- *09:00 to 09:20:* Review Status of ED201 session work—What has been added/modified? Which elements will be dealt with in 2010, which in a later issue? What is the status of the EFB analysis?
- *09:20 to 10:00:* Review Status of ED202/ED203–SG2 session work—What is the status of the documents? Is it reasonable to expect termination of ED202/DO–TBD work in 2010?
- *10:00 to 10:30:* Review Status of ED204–SG4 session work—Is the target audience clear and limited, for which the document is to be established? Are the expectations of the audience well understood? How will the work progress, fully joint, partly joint, coordinated w/two separate documents?
- *10:30 to 11:00:* Discussion of Glossary: Content and Publication (separate in ED210 or integrated).
- *11:00 to 11:15:* Break.
- *11:15 to 11:30:* Discuss collaboration and associated topics with other organisations (Arinc, DSWG, ICAO, *etc.*)
- *11:30 to 12:00:* Summarize the official Eurocae and RTCA release/review processes in relation to the planned releases for this year/early next—verify publication schedule.
- *12:00 to 12:30:* Future meeting dates & locations; Expertise to be included; Action Item review.
- *12:30 to 12:45:* Wrap-up of Meeting, Agreement on Conclusions and Main Events, Main messages to be disseminated.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on May 12, 2010.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. 2010–12084 Filed 5–19–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2010–0056; Notice 1]**

### Yokohama Tire Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

Yokohama Tire Corporation, (YTC) [1], has determined that approximately 8,238 of its P215/60R15 93H AVID H4S passenger car replacement tires, manufactured between December 2, 2007, and September 19, 2009, do not fully comply with paragraph S5.5.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* YTC has filed an appropriate report dated January 19, 2010 pursuant to 49 CFR

[1] Yokohama Tire Corporation (YTC) a replacement equipment manufacturer is incorporated in the state of California with its principal address at 601 South Acacia Avenue, Fullerton, CA 92831.

Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), YTC has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of YTC's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 8,238 size P215/60R15 93H Yokohama AVID H4S brand passenger car replacement tires manufactured between December 2, 2007, and September 19, 2009, at YTC's plant located in Salem, Virginia. Approximately 7,836 of these tires have been delivered to YTC's customers. The remaining tires (approximately 402) are being held in YTC's possession until they are correctly relabeled.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the approximately 7,836 [2] tires that have already passed from the manufacturer to an owner, purchaser, or dealer.

Paragraph S5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches. * * *

S5.5.1 *Tire Identification Number*

(a) * * *

(b) Tires manufactured on or after September 1, 2009. Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

YTC explains that the noncompliance is that, due to a mold labeling error, the markings on the non-compliant tires omits the partial tire identification number on one of the sidewalls as required by paragraph S5.5.1(b). YTC explains that the non-compliant tires include the full Tire Identification Number (TIN) on one sidewall but omits the partial serial number on the other sidewall. YTC reported that this noncompliance was brought to their attention when "one of several molds were being certified and readied as part of a production quantity of replacement tires for the USA."

YTC argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not affect the strength of the tires and all other labeling requirements have been met.

YTC supports this conclusion with the following arguments:

- Warranty and claim data for the subject tire model, for which production has been continual since November 2002, reveals a very small number of tire warranty returns and no reports of claims associated with accidents or tire failure incidents.
- The TIN becomes important in the event of a safety campaign and enables the owners to properly identify tires included in a captive action campaign. While the subject tires are noncompliant with the current FMVSS No. 139 sidewall marking regulation that requires a full TIN on the sidewall and at minimum a partial TIN on the other sidewall, these subject tires have a full TIN on one sidewall that can be used in case of a special campaign. These tires are marked in the same manner that was the requirement for many years prior to FMVSS No. 139 that now requires the application of the additional TIN identifier in a full or partial form. The absence of one TIN identifier on the one tire sidewall does not prohibit the ability to identify the tire as part of a safety campaign or tire recall when required.

YTC concludes in part that "the actual tire performance is not inconsequential as it relates to motor vehicle safety because the actual tire performance is not affected by this noncompliance, and in the unlikely event that the tires become subject to a safety or recall campaign, the tires can be identified by the single TIN on one sidewall of the tire."

Furthermore, YTC points out three other factors that support its petition:

- All of the subject tires have been tested and certified compliant with all of the other durability requirements of FMVSS No. 139 for high speed, endurance, and low inflation pressure performance, and physical dimensions, resistance to bead unseating and strength.
- There have been a very small number of tire warranty returns (the incorrect markings were found when molds were being certified and readied).
- YTC has designed and implemented verification countermeasures to prevent any re-occurrence of any incorrect tire markings.

Supported by all of the above stated reasons, YTC believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket

[2] YTC's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt YTC as replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 7,836 of the affected tires. However, the agency cannot relieve FTS distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after FTS recognized that the subject noncompliance existed. Those tires must be brought into conformance, exported, or destroyed.

Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: By logging onto the Federal Docket Management System (FDMS) website at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 21, 2010.

**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: May 12, 2010.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2010–12057 Filed 5–19–10; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 13, 2010

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 21, 2010 to be assured of consideration.

**Bureau of Public Debt (BPD)**

*OMB Number:* 1535–0023.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Request To Reissue United States Savings Bonds.

*Form:* PD F 4000.

*Abstract:* Form is used by owners to identify the securities involved and to establish authority to reissue them.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 270,000 hours.

*OMB Number:* 1535–0062.

*Type of Review:* Revision of a currently approved collection.

*Title:* Special Bond of Indemnity By Purchaser of United States Savings Bonds/Notes Involved in a Chain Letter Scheme.

*Form:* PD F 2966.

*Abstract:* Used by the purchaser of savings bonds in a chain letter scheme to request refund purchase price of the bonds.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 320 hours.

*OMB Number:* 1535–0092.

*Type of Review:* Revision of a currently approved collection.

*Title:* Subscription For Purchase and Issue of U.S. Treasury Securities— State and Local Government Series.

*Form:* PD–F–4144, 4144–1, 4144–2, 4144–5, 4144–6, 4144–7.

*Abstract:* The information is necessary to establish the accounts for owners of securities of State and Local Government Series.

*Respondents:* State, Local, and Tribal Governments.

*Estimated Total Burden Hours:* 2,713 hours.

*OMB Number:* 1535–0127.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

*Form:* CFR Part 343.

*Abstract:* Regulations governing the issue, reissue, and redemption of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

*Respondents:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 20 hours.

*Clearance Officer:* Bruce Sharpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106; (304) 480–8150.

*OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

**Celina Elphage,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2010–12094 Filed 5–19–10; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 13, 2010.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

**DATES:** Written comments should be received on or before June 21, 2010 to be assured of consideration.

**Financial Management Service (FMS)**

*OMB Number:* 1510–0007.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Direct Deposit Sign-Up Form and Go Direct Sign Up Form.

*Form:* SF–1199A, FMS 1200.

*Abstract:* The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have executed the form.

*Respondents:* Individuals and Households.

*Estimated Total Burden Hours:* 69,142 hours.

*OMB Number:* 1510–0066.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* 31 CFR Part 208—Management; Final Rule.

*Abstract:* This regulation requires that most Federal payments be made by Electronic Funds Transfer (EFT); sets forth waiver requirements; and provides for a low-cost Treasury-designated account to individuals at a financial institution that offers such accounts.

*Respondents:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 325 hours.

*Bureau Clearance Officer:* Wesley Powe, Financial Management Service, 3700 East West Highway, Room 135, Hyattsville, MD 20782; (202) 874–7662.

*OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

**Celina Elphage,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2010–12095 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5578

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

*OMB Number:* 1545–0213.

*Form Number:* Form 5578.

*Abstract:* Every organization that claims exemption from Federal income tax under Internal Revenue Code section 501(c)(3) and that operates, supervises, or controls a private school must file a certification of racial nondiscrimination. Such organizations, if they are not required to file Form 990, must provide the certification on Form 5578. The Internal Revenue Service uses the information to help ensure that the school is maintaining nondiscriminatory policy in keeping with its exempt status.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 3 hours, 44 minutes.

*Estimated Total Annual Burden Hours:* 3,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12035 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[EE–12–78]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–12–78 (TD 7611) Nonbank Trustees (§ 1.408–2(e)).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue

Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Nonbank Trustees.

*OMB Number:* 1545–0806.

*Regulation Project Number:* EE–12–78.

*Abstract:* Internal Revenue Code section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account. This regulation imposes certain reporting and recordkeeping requirements to enable the IRS to determine whether an institution qualifies to be a nonbank trustee and to insure that accounts are administered according to sound fiduciary principles.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 23.

*Estimated Time per Respondent:* 34 minutes.

*Estimated Total Annual Burden Hours:* 13.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–12054 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–104691–97]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–104691–97 (TD 8910), Electronic Tip Reports (§§ 31.6053–1 and 31.6053–4).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Tip Reports.

*OMB Number:* 1545–1603.

*Regulation Project Number:* REG–104691–97.

*Abstract:* The regulations provide rules authorizing employers to establish electronic systems for use by their tipped employees in reporting tips to their employer. The information will be used by employers to determine the amount of income tax and FICA tax to withhold from the tipped employee's wages.

*Current Actions:* There are no changes being made to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and not-for-profit institutions.

*Estimated Number of Respondents:* 300,000.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 600,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–12053 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[FI–221–83 and FI–100–83]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking (FI–221–83) and temporary regulation (FI–100–83), Indian Tribal Governments Treated as States for Certain Purposes (§§ 305.7701–1 and 305.7871–1).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Joel Goldberger, at (202) 972–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Indian Tribal Governments Treated as States for Certain Purposes.

*OMB Number:* 1545–0823.

*Regulation Project Number:* FI–221–83 (notice of proposed rulemaking) and FI–100–83 (temporary regulation).

*Abstract:* These regulations relate to the treatment of Indian tribal governments as States for certain Federal tax purposes. The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indial tribal government or subdivision thereof for purpose of sections 7701(a)(40) and 7871 of the Internal Revenue Code, it may apply for a ruling to that effect from the Internal Revenue Service.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments.

*Estimated Number of Respondents:* 25.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12051 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[TD 8172]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 8172, Qualification of Trustee or Like Fiduciary in Bankruptcy (§ 301.6036–1).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualification of Trustee or Like Fiduciary in Bankruptcy.

*OMB Number:* 1545–0773.

*Regulation Project Number:* TD 8172.

*Abstract:* Internal Revenue Code section 6036 requires that receivers, trustees in bankruptcy, assignees for the benefit of creditors, or other like fiduciaries, and all executors shall notify the district director within 10 days of appointment. This regulation provides that the notice shall include the name and location of the Court and when possible, the date, time, and place of any hearing, meeting or other scheduled action. The regulation also eliminates the notice requirement under section 6036 for bankruptcy trustees, debtors in possession and other fiduciaries in a bankruptcy proceeding.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12050 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8316

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8316, Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form should be directed to Joel P. Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368 or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

*OMB Number:* 1545–1862.

*Form Number:* 8316.

*Abstract:* Certain foreign students and other nonresident visitors are exempt from FICA tax for services performed as specified in the Immigration and Naturalization Act. Applicants for refund of this FICA tax withheld by their employer must complete Form 8316 to verify that they are entitled to a refund of the FICA, that the employer has not paid back any part of the tax withheld and that the taxpayer has attempted to secure a refund from his/her employer.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 22,000.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 5,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12049 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8879–PE

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879–PE, IRS e-file Signature Authorization for Form 1065.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 622–9368, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* IRS e-file Signature Authorization for Form 1065.

*OMB Number:* 1545–2042.

*Form Number:* Form 8879–PE.

*Abstract:* New Modernized e-file Form for partnerships under Internal Revenue Code sections 6109 and 6103.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time per Respondent:* 4 hours 3 minutes.

*Estimated Total Annual Burden Hours:* 2,025.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12048 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1040EZ–T

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040EZ–T, Claim for Refund of Federal Telephone Excise Tax.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Claim for Refund of Federal Telephone Excise Tax.

*OMB Number:* 1545–2039.

*Form Number:* 1040EZ–T.

*Abstract:* Form 1040EZ–T was developed as a result of Notice 2006–50. The purpose of the form is to allow individuals that are not required to file an individual income tax return to claim a refund of the federal telephone excise taxes paid. The taxes must have been paid after February 28, 2003 and before August 1, 2006. This form can only be filed once.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,000,000.

*Estimated Time per Respondent:* 2 hours, 26 minutes.

*Estimated Total Annual Burden Hours:* 2,430,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2010.

**Gerald Shields,**

*IRS Reports Clearance Office.*

[FR Doc. 2010–12046 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2004–15

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–15, Waivers of Minimum Funding Standards.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Waivers of Minimum Funding Standards.

*OMB Number:* 1545–1873.

*Revenue Procedure Number:* Revenue Procedure 2004–15.

*Abstract:* Revenue Procedure 2004–15 describes the process for obtaining a waiver from the minimum funding standards set forth in section 412 of the Code.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations not-for-profit institutions, farms and state, local or tribal governments.

*Estimated Number of Respondents:* 55.

*Estimated Annual Average Time per Respondent:* 172 hours.

*Estimated Total Annual Hours:* 9,460 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2010.

**Gerald Shields,**

*IRS Supervisory Tax Analyst.*

[FR Doc. 2010–12045 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2001–24

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–24, Advanced Insurance Commissions.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Advanced Insurance Commissions.

*OMB Number:* 1545–1736.

*Revenue Procedure Number:* Revenue Procedure 2001–24.

*Abstract:* A taxpayer that wants to obtain automatic consent to change its method of accounting for cash advances on commissions paid to its agents must agree to the specified terms and conditions under the revenue procedure. This agreement is ratified by attaching the required statement to the federal income tax return for the year of change.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,270.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,318.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12044 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–150562–03]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG–150562–03 (NPRM), Section 1045 Application to Partnerships.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 1045 Application to Partnerships.

*OMB Number:* 1545–1893.

*Regulation Project Number:* REG–150562–03.

*Abstract:* This document contains proposed regulations relating to the application of section 1045 of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide rules regarding the deferral of gain on a partnership's sale of qualified small business stock and deferral of gain on a partner's sale of qualified small business stock distributed by a partnership. The proposed regulations affect partnerships that invest in qualified small business stock and their partners. This document also provides notice of a public hearing on the proposed regulations.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of the currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–12043 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209020–86]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–209020–86 (TD 8210), Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations (§§ 1.905–3T, 1.905–4T, 1.905–5T and 301.6689–IT).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

*OMB Number:* 1545–1056.

*Regulation Project Number:* REG–209020–86 (formerly INTL–61–86).

*Abstract:* This regulation relates to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to file notification of a foreign tax redetermination, to make adjustments to a taxpayer's pools of foreign taxes and earnings and profits, and the imposition of the civil penalty for failure to file such notice or report such adjustments.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Individuals and business or other for-profit organizations.

*Estimated Number of Respondents:* 10,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–12042 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–260–82]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–260–82 (TD 8449), Election, Revocation, Termination, and Tax Effect of Subchapter S Status (§§ 1.1362–1 through 1.1362–7).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Election, Revocation, Termination, and Tax Effect of Subchapter S Status.

*OMB Number:* 1545–1308.

*Regulation Project Number:* PS–260–82.

*Abstract:* Section 1362 of the Internal Revenue Code provides for the election, termination, and tax effect of subchapter S status. Sections 1.1362–1 through 1.1362–7 of this regulation provides the specific procedures and requirements necessary to implement Code section 1362, including the filing of various elections and statements with the Internal Revenue Service.

*Current Actions:* There are no changes being made to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, and farms.

*Estimated Number of Respondents:* 133.

*Estimated Time per Respondent:* 2 hours, 25 minutes.

*Estimated Total Annual Burden Hours:* 322.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–12041 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 2006–109

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–109, Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of notice should be directed to Joel Goldberger at (202) 927–9368 or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.

*OMB Number:* 1545–2050.

*Notice Number:* Notice 2006–109.

*Abstract:* This notice provides interim guidance regarding application of new or revised requirements under sections 1231 and 1241–1244 of the Pension Protection Act of 2006. It also provides interim relief from application of new excise taxes on private foundation grants to supporting organizations and on sponsoring organizations of donor advised funds.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 65,000.

*Estimated Time per Respondent:* 9 hours, 25 minutes.

*Estimated Total Annual Burden Hours:* 612,294.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12036 Filed 5–19–10; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[Announcement 2006–95 (IRB 2006–50)]**

### Proposed Collection; Comment Request for Announcement

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 151178–06, Settlement Initiative for Employees of Foreign Embassies, Foreign Consular Offices and International Organizations in the United States.

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the announcement should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Settlement Initiative for Employees of Foreign Embassies, Foreign Consular Offices and International Organizations in the United States.

*OMB Number:* 1545–2045.

*Announcement Number:* 2006–95, (IRB 2006–50).

*Abstract:* The IRS has determined a substantial number of U.S. citizens and lawful permanent residents working in the international community have failed to fulfill their U.S. tax obligations. The IRS needs the information in order to apply the terms of the settlement and determine the amount of taxes, applicable statutory interest and penalties. The respondents are individuals employed by foreign embassies, foreign consular offices or international organizations in the United States.

*Current Actions:* There are no changes being made to this notice.

*Type of Review:* New collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 5,500.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 11,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2010.

**Gerald Shields,**

*IRS Reports Clearance Officer.*

[FR Doc. 2010–12037 Filed 5–19–10; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[INTL–955–86]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–955–86 (TD 8350), Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries (§ 1.936–10(c)).

**DATES:** Written comments should be received on or before July 19, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Carribean Basin Countries.

*OMB Number:* 1545–1138.

*Regulation Project Number:* INTL–955–86.

*Abstract:* This regulation relates to the requirements that must be met for an investment to qualify under Internal Revenue code section 936(d)(4) as an investment in qualified Caribbean Basin countries. Income that is qualified possession source investment income is entitled to a quasi-tax exemption by reason of the U.S. possessions tax credit under Code section 936(a) and substantial tax exemptions in Puerto Rico. Code section 936(d)(4)(C) places certification requirements on the recipient of the investment and the qualified financial institution; and recordkeeping requirements on the financial institution and the recipient of the investment funds to enable the IRS to verify that the investment funds are being used properly and in accordance with the Caribbean Basin Economic Recovery Act.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Recordkeepers:* 50.

*Estimated Time per Recordkeeper:* 30 hours.

*Estimated Total Annual Recordkeeping Hours:* 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–12034 Filed 5–19–10; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Bureau of Engraving and Printing

### Meaningful Access to United States Currency for Blind and Visually Impaired Persons

**AGENCY:** Bureau of Engraving and Printing, Department of the Treasury.

**ACTION:** Notice of proposed agency action and request for public comments.

**SUMMARY:** The Department of the Treasury (Treasury) and the Bureau of Engraving and Printing (BEP) are issuing this Notice pursuant to the ruling in *American Council of the Blind* v. *Paulson* that ordered Treasury to provide meaningful access to U.S. currency to people who are blind and visually impaired pursuant to section 504 of the Rehabilitation Act of 1973, as amended. BEP seeks to develop a solution that fully complies with the Court's order and provides people who are blind and visually impaired meaningful access to U.S. currency, while also giving appropriate consideration to the interests of domestic and international users of currency, U.S. businesses, and cash handling and cash-intensive industries. The purposes of this **Federal Register** Notice are to inform the public of the features that BEP intends to propose to the Secretary of the Treasury to accommodate people who are blind and visually impaired in denominating U.S. currency, and to solicit public comment on the proposed accommodations.

**DATES:** Submit comments on or before August 18, 2010.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section for meeting addresses and information about submitting public comments.

**FOR FURTHER INFORMATION CONTACT:** Ellen Gano, 202–874–1200.

**SUPPLEMENTARY INFORMATION:**

By statute, the Secretary of the Treasury has sole authority for approving designs of U.S. Federal Reserve notes (U.S. currency). To develop the designs, Treasury works in collaboration with the Board of Governors of the Federal Reserve System (Board) and the Department of Homeland Security's United States Secret Service (USSS), through the Advanced Counterfeit Deterrence (ACD)

Steering Committee.[1] As a general guideline, the ACD has recommended that Treasury redesign Federal Reserve notes every seven to ten years to deter counterfeiting by anticipating advances in technologies. The most recent redesign of the currency commenced in 2003, and the final note in that series of currency design is in production. As Treasury begins its design plans for a new family of currency, Treasury and BEP will incorporate additional features to accommodate people who are blind and visually impaired. Although it is somewhat difficult to provide a specific date or time frame as to when the redesign of this new family of currency will be completed, BEP is required by the Court's order to "take such steps as may be required to provide meaningful access to United States currency for blind and other visually impaired persons * * * not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury."

In anticipation of this endeavor, in January of 2008, BEP commissioned a comprehensive study to (1) review and analyze the needs of the blind and visually impaired relating to the identification of U.S. currency through focus groups, surveys, and usability tests; (2) examine various methods that might improve access to the currency by the blind and visually impaired through discussions with subject matter experts, foreign currency experts, and advocacy groups; (3) perform a cost impact analysis of possible accommodations on various government and industry sectors; and (4) provide a decision model, by which BEP could evaluate various potential accommodations. *See Final Report: Study to Address Options for Enabling the Blind and Visually Impaired Community to Denominate U.S. Currency,* July 2009 (Study), which can be found on the BEP Web site at *http://www.bep.gov/uscurrency/meaningfulaccess.html.*

Although there are a wide variety of definitions and methodologies to define blindness and visual impairment, the Study used the following definitions: it defined *blind* individuals as those who have no useful vision for reading any amount of print, and *visually impaired* individuals as those who have difficulty seeing but are able to read some print (with or without corrective lenses).

**Summary of Proposed Design Modifications**

Based upon the Study's findings and BEP's own expertise in manufacturing U.S. currency, BEP proposes to recommend to the Secretary of the Treasury the following:

I. *Tactile Feature.* As part of the next currency redesign, BEP will develop and deploy a raised tactile feature that builds upon current tactile feature technologies. The tactile feature will be unique to each Federal Reserve note denomination that it may lawfully change, and will provide users with a means of identifying each denomination by way of touch.[2]

II. *Large, High-Contrast Numerals.* Consistent with current practice, BEP will continue its practice of adding large, high-contrast numerals and different and distinct color schemes to each denomination that it is permitted by law to alter to further assist visually impaired citizens.

III. *Supplemental Currency Reader Program.* BEP also proposes to recommend to the Secretary of the Treasury a supplemental measure that will be taken in order to provide access to U.S. currency. This measure would involve a process to loan and distribute currency readers to the blind and visually impaired at no cost to them. BEP believes this process will ameliorate difficulties stemming from the transition that will occur during the co-circulation of notes with and without a tactile feature and large, high contrast numerals, a transition which will persist for many years after the introduction of the tactile-enhanced note.

In addition, BEP will continue to explore emerging technological solutions to provide access to U.S. currency, such as the development of software to enable blind and visually impaired individuals to fully access U.S. currency. Some of the options include the development and deployment of assistive software to enable banknote denomination using cellular phones, computers, and imaging and reading devices.

**Recommendation Details**

I. *Tactile Feature:* BEP will develop and incorporate a raised tactile feature that will accommodate people who are blind and visually impaired. This feature will enable blind and visually impaired individuals to identify currency by touching the tactile feature. The Study demonstrated that raised tactile features allow most blind and visually impaired individuals to denominate currency. Indeed, this kind of feature is used in some foreign currency, and the Study's data indicated that this feature was more effective than virtually every other kind of accommodation tested, including different-sized notes. Additionally, a raised tactile feature would not cause a major disruption to the general population because the notes will not appear substantially different from their current form.

BEP recognizes that implementing a raised tactile feature will pose some challenges. First, the Study showed that current tactile technology wears out eventually, so the effectiveness of the feature diminishes over time. In addition, the Study showed that a raised tactile feature would impose costs on both government and industry. For example, some major cash handlers expressed concern over stacking, mechanical counting, examination, and finishing processes of notes with raised tactile features. The banking industry echoed the major cash handlers' concern of equipment malfunctions caused by jams and added concerns that increased jams would require higher inventory levels with associated increased carrying costs to ensure sufficient cash would be available at all times. In addition, BEP will need to put forth a comprehensive public education program for all users of U.S. currency to acquaint them with the new tactile feature.

The selection of the raised tactile feature will require additional targeted research, testing, and consideration of the public comments. Nonetheless, the significant benefits of notes with a tactile feature, including the excellent accuracy results the blind and visually impaired achieved with them, the ease of use evidenced both by the usability tests and applicable scientific research, and the relatively minimal impact on the general U.S. population, supports the inclusion of a raised tactile feature as a recommended accommodation despite its challenges. Based on experience, independent research, and the Study, BEP believes it can develop a raised tactile feature that is durable and can be incorporated into its existing

[1] The ACD Steering Committee was established by charter in 1982 to recommend designs to the Secretary of the Treasury for Federal Reserve notes. The ACD Steering Committee is chaired by the Treasury's Under Secretary for Domestic Finance. Its members include the senior representatives from the Department of the Treasury, Treasury's Bureau of Engraving and Printing, the Federal Reserve System, and the USSS.

[2] The Department of the Treasury is not permitted to redesign the $1 note. The Omnibus Appropriations Act of 2009, Public Law 111–8, Section 111, states that "None of the funds appropriated in this Act or otherwise available to the Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the $1 Federal Reserve note." In addition, the Court's October 3, 2008 order explicitly excluded the $1 note and the soon to be released $100 note.

manufacturing systems at a reasonable cost, coincident with the introduction of the next design series of U.S. currency.

BEP invites comment on its proposal to incorporate raised tactile features in the next redesign of its currency.

II. *Large, High-Contrast Numerals:* BEP began incorporating large, high-contrast numerals into Federal Reserve notes beginning with the Series 1996 design $50 note in October 1997. In March 2008, BEP increased the size of the large high contrast numeral with the introduction of the Series 2006 $5 note. The feedback received from visually impaired individuals has been positive. This feature will be continued in the new-design $100 note, which is the last in the Series 2004 family of designs. Because BEP has experience printing this feature and the visually impaired community has provided positive feedback on it, BEP proposes to continue using this feature in the next design for U.S. currency. BEP is aware, however, that there may be a number of options concerning the size, color, placement, background contrast and other features for these large numerals that may improve accessibility of currency for persons with low-vision. BEP invites comment from the public, including persons with low-vision, about the best choices for the proposed large, high-contrast numerals.

III. *Supplemental Currency Reader Program:* BEP will establish a supplemental currency reader distribution program. The purpose of the program is to provide blind and visually impaired people a means that can be used independently to correctly identify the denomination of U.S. currency. In compliance with legal requirements, BEP will loan a currency reader device to all blind and visually impaired U.S. citizens and legal residents, who wish to avail themselves of this program. The individual may borrow the reader for as long as the individual desires the assistance of the reader. Before a reader is distributed, BEP first will verify that the requestor is eligible.

Under the reader program, individuals who are United States citizens *or* persons legally residing in the United States who are blind or visually impaired and who need a reader to accurately identify the denomination of U.S. currency will be able to obtain a reader at no cost to the individual. BEP will define blind or visually impaired under the same definition as the Study, with the following change to the Study's definition of visual impairment: The reader program will not extend to visually impaired individuals whose impairment is corrected with ordinary eyeglasses or contact lenses.

BEP is considering the scope of an appropriate verification framework to determine eligibility to receive a reader. Specifically, it is considering a framework inspired by the eligibility requirements that the Library of Congress uses when loaning library materials to blind and other disabled persons as set forth in 36 CFR 701.6. Under that framework, applicants may submit verification of their eligibility from a "competent authority." BEP would define a "competent authority as one of the following: doctors of medicine, doctors of osteopathy, doctors of optometry, registered nurses, and licensed practical nurses.

Alternatively, if a person who is blind or visually impaired has verification of visual impairment from another Federal agency, including the Social Security Administration, the Library of Congress, or a State or local agency, that person need only submit a copy of that verification. BEP is inviting comments on whether this verification system is appropriate, or whether other frameworks would be more appropriate.

Parents or legal guardians of a blind or visually impaired child under 18, and caregivers, legal guardians, or those with power of attorney for a U.S. citizen or someone legally residing in the U.S. may act as a proxy on behalf of the blind or visually impaired child or represented individual and request a currency reader. BEP will require verification for the child or represented individual.

BEP will solicit and award a single, long-term contract to implement the currency reader program. The contractor will be designated as the Currency Reader Program Coordinator (CRPC). Once the program is operational, a potentially eligible person may request a currency reader by contacting the CRPC and completing and submitting a request form. Depending on the verification framework adopted, upon verification of eligibility, the person will be provided a reader. If an individual believes that the CRPC erroneously denied him or her a reader, the individual may appeal the decision to the appropriate authority at BEP, who will be designated after BEP awards the CRPC contract.

Except for the postage to mail application forms to the CRPC, the user should not have to expend any funds for the reader. Any fees for shipping and the initial battery will be borne by the provider. Readers will be delivered by mail. There will be a "one reader per verified eligible person" limit. Though there is a "one reader" limit, an eligible individual may receive a replacement reader from the CRPC upon request if the circumstances, such as a lost, damaged, or obsolete reader, are reasonable and warrant replacement.

The CRPC will also establish a selection of approved reader suppliers. BEP anticipates that more than one reader supplier may be authorized by the CRPC to provide readers and will seek to keep costs low by requiring suppliers to meet the lowest price in order to be a program participant. The CRPC shall:

1. Be responsible for overall implementation and operation of the program pursuant to a government contract;
2. Have the program operational within six months after contract award;
3. Communicate with eligible persons via mail, Braille, e-mail, phone, fax, TTY, and Web site;
4. Maintain a help desk for a minimum of ten hours a day, five days a week;
5. Be able quickly to scale up or down staffing resources to react to demand on the program;
6. Accept requests for readers;
7. Verify eligibility, using the appropriate criteria;
8. Within three weeks of receiving a request, either provide a reader to a requester deemed eligible or inform said person that he or she does not meet the eligibility criteria;
9. Establish a formal CRPC Authorized Supplier Program, with documented contractual controls and agreements between the CRPC and each supplier;
10. Monitor each supplier's operation;
11. Certify each supplier's reader products;
12. Publicize a list of approved suppliers and products;
13. Establish payment mechanisms for authorized suppliers;
14. Evaluate and possibly add new reader suppliers as they enter the market;
15. Suspend reader suppliers if they fail to perform;
16. Establish internal controls to assist BEP in preventing fraud, waste, and abuse; and obtain an annual independently verified SAS–70 Report (Type II) of those controls;
17. Maintain a database of each person who requested a reader, was issued a reader, or was denied a reader, and for readers issued, which reader (including its serial number) was issued to which person;
18. Implement privacy controls; and
19. Ensure that all CRPC Authorized Suppliers are able and contractually obligated to:

a. Provide a reader that quickly and accurately denominates U.S. currency;

b. Interact with verified eligible persons via mail, Braille, e-mail, phone, fax, TTY, and Web site;

c. Provide readers directly to verified eligible persons if necessary;

d. Provide accessible instructional materials on how to use the reader;

e. Provide readers that use a non-proprietary battery;

f. Provide readers with unique serial numbers for accountability;

g. Provide at least a one-year parts and labor warranty on each reader;

h. Provide free return postage for malfunctioning readers and for warranty service; and

i. Recognize that the selection of a reader is based on the free market and personal choice and that there is no minimum quantity of readers that the government guarantees from any supplier.

BEP will assess the structure of this program on a continuing basis and implement changes as needed to enhance its effectiveness or efficiency.

**Funding**

The Board pays BEP for its currency-related expenses, which are primarily the costs of producing new currency. BEP's costs associated with incorporating the proposed tactile and large, high-contrast numeral features would be funded by the Board, as are the costs of other design elements for U.S. currency. BEP plans also to charge the Board for the costs associated with the proposed currency readers. Because the U.S. District Court for the District of Columbia determined that BEP is required by the Rehabilitation Act to provide meaningful access to U.S. currency, BEP believes these costs represent a necessary expense that may be appropriately charged to the Board.

**Questions for Comment**

Treasury welcomes all comments and suggestions regarding the proposed solutions. Treasury is particularly interested, however, in comments on the specific questions set forth below:

1. What would be the ideal placement of the raised tactile feature? In what kind of pattern or patterns should the raised tactile feature be arranged?

2. How should the large, high contrast numerals be incorporated? In other words, what colors should BEP use, what is the optimal size of the numerals, and where should the numerals be placed on the note?

3. What background colors would provide the highest color contrast for people who are visually impaired?

4. What technological solutions should BEP explore to help people who are blind and visually impaired denominate currency?

5. What is the nature of the burden, if any, on the general public of including a raised tactile feature on U.S. currency?

6. If there are any burdens imposed on the public by a raised tactile feature on currency, how can such burdens be minimized?

7. What is the nature of the burden, if any, on industry and business of including a raised tactile feature on U.S. currency?

8. If there are such burdens, how can they be minimized?

9. Does the supplemental currency reader program impose a burden on the blind and visually impaired?

10. If so, what are those burdens, and how can they be minimized?

11. Does a verification process of the currency reader program inspired by the Library of Congress process impose too a great a burden on the blind and visually impaired?

12. If so, what are those burdens, and how can they be minimized?

13. Alternatively, if a person who is blind or visually impaired has verification of visual impairment from another Federal agency (such as the Social Security Administration or Library of Congress), or a State or local agency, should BEP allow that person to submit a copy of that verification in order to satisfy a proof of visual impairment requirement in order to obtain a currency reader? If so, what burdens might this impose, and how can those burdens be minimized?

14. Should BEP consider working with local governments and/or State agencies to deliver the currency readers?

15. Should BEP consider additional or different criteria when determining eligibility for the currency reader program?

16. What administrative and/or operational challenges does the currency reader program create?

**Electronic Submission of Comments, Electronic Access and Mailing Address**

Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules. Follow the on-line instructions for submitting comments. You may also e-mail electronic comments to *meaningful.access@bep.gov*. You may fax comments to 202–874–1212. Please mail any written comments to Meaningful Access, Bureau of Engraving and Printing, Office of External Relations, 14th and C Streets, SW., Room 530–1M, Washington, DC 20228.

In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy comments at: Treasury Department Library, Freedom of Information Act (FOIA) collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

**Public Forum**

BEP will host two open public forums simultaneously on June 22, 2010. One will be held at the Eastern Currency Facility (14th and C Streets, SW., Washington, DC 20228) and the other at the Western Currency Facility (9000 Blue Mound Road, Ft. Worth, TX 76131). BEP representatives will be available to discuss the proposed accommodations for meaningful access and to hear public comment. Registration to attend the public forum (at either the Washington, DC or Fort Worth, TX facility) must be made by calling (877) 874–4114. Because the BEP is a secure Federal installation, all attendees must pre-register for the public forum by providing their name and are subject to magnetometer inspection and their bags are subject to x-ray prior to entering and upon exiting the facility. To ensure your access, please notify BEP of your intent to attend by 5 p.m., EDT on June 18, 2010.

**Larry R. Felix,**

*Director.*

[FR Doc. 2010–12091 Filed 5–19–10; 8:45 am]

**BILLING CODE 4840–01–P**

Federal Register

Thursday,
May 20, 2010

# Part II

# Consumer Product Safety Commission

## 16 CFR Part 1107

## Testing and Labeling Pertaining to Product Certification; Proposed Rule

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1107**

**[CPSC Docket No. CPSC–2010–0038]**

**RIN 3041–AC71**

## Testing and Labeling Pertaining to Product Certification

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Consumer Product Safety Commission ("CPSC" or "Commission") is issuing a proposed rule that would establish requirements for a reasonable testing program and for compliance and continuing testing for children's products.[1] The proposal would also address labeling of consumer products to show that the product complies with certification requirements under a reasonable testing program for nonchildren's products or under compliance and continuing testing for children's products. The proposed rule would implement section 14(a) and (d) of the Consumer Product Safety Act ("CPSA"), as amended by section 102(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").

**DATES:** Written comments and submissions in response to this notice must be received by August 3, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2010–0038, 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.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

### Written Submissions

Submit written submissions in the following way:

*Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to:* Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

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

**FOR FURTHER INFORMATION CONTACT:** Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; 301–504–7562; e-mail: *RButturini@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Statutory Authority

Section 14(a)(1) of the CPSA, (15 U.S.C. 2063(a)(1)), as amended by section 102 of the CPSIA, establishes requirements for the testing and certification of products subject to a consumer product safety rule under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission and which are imported for consumption or warehousing or distributed in commerce. Under section 14(a)(1)(A) of the CPSA, manufacturers and private labelers must issue a certificate which "shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission." CPSC regulations, at 16 CFR part 1110, limit the certificate requirement to importers and domestic manufacturers. Section 14(a)(1)(B) of the CPSA further requires that the certificate provided by the importer or domestic manufacturer "specify each such rule, ban, standard, or regulation applicable to the product." The certificate described in section 14(a)(1) of the CPSA is known as a General Conformity Certification (GCC).

Section 14(a)(2) of the CPSA (15 U.S.C. 2063(a)(2)) establishes testing requirements for children's products that are subject to a children's product safety rule. (Section 3(a)(2) of the CPSA (15 U.S.C. 2052(a)(2)) defines a children's product, in part, as a consumer product designed or intended primarily for children 12 and younger.) Section 14(a)(2)(A) of the CPSA also states that, before a children's product subject to a children's product safety rule is imported for consumption or warehousing or distributed in commerce, the manufacturer or private labeler of such children's product must submit sufficient samples of the children's product "or samples that are identical in all material respects to the product" to an accredited "third party conformity assessment body" to be tested for compliance with the children's product safety rule. Based on such testing, the manufacturer or private labeler, under section 14(a)(2)(B) of the CPSA, must issue a certificate that certifies that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to perform such tests.

Section 14(d)(2)(A) of the CPSA requires the Commission to initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements. This provision applies to all consumer products that are subject to a product safety rule administered by the Commission.

Section 14(d)(2)(B) of the CPSA requires the Commission to establish protocols and standards for:

- Ensuring that a children's product tested for compliance with a children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts;
- Testing of random samples;
- Verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and
- Safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

Section 14(d)(2)(B)(iii) of the CPSA provides for verification that a children's product tested by a conformity assessment body complies with applicable children's product safety rules. At this time, the Commission is not imposing any verification obligations on manufacturers because the Commission intends to conduct the verification itself under its inherent authorities while it gains more experience with the testing and certification requirements. When the Commission finds that a children's

[1] The Commission voted 5–0 to approve publication of this proposed rule. Chairman Inez Tenenbaum and Commissioners Nancy Nord and Anne Northup filed statements concerning this action. These statements may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/statements.html* or obtained from the Commission's Office of the Secretary.

product accompanied by a certificate of conformity does not pass the tests upon which the certification was based, it may initiate an investigation of the manufacturer, third party conformity assessment body, and any other relevant party in the supply chain, to determine the cause of the discrepancy.

The proposed rule would implement sections 14(a) and (d) of the CPSA, as amended by section 102(b) of the CPSIA, by:

- Defining the elements of a "reasonable testing program" for purposes of section 14(a)(1)(A) of the CPSA;
- Establishing the protocols and standards for continuing testing of children's products under section 14(d)(2)(B)(i), (ii), and (iv) of the CPSA; and
- Describing the label that manufacturers may place on a consumer product to show that the product complies with the certification requirements for purposes of section 14(d)(2)(A) of the CPSA.

The proposed rule also builds upon previous documents and activities by the Commission. For example, on November 3, 2009, Commission staff made available a draft guidance document titled, "Guidance Document: Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008." The draft guidance document, which is available at *http://www.cpsc.gov/library/foia/foia10/brief/102testing.pdf*, was intended to provide the Commission's interpretation of the requirements of section 102 of the CPSIA. Specifically, it sought to describe the Commission's position on a reasonable testing program and how to certify that a product complies with all rules, bans, standards, or other regulations applicable to the product under the laws enforced by the Commission. The guidance document also sought to explain when and how component testing to certain specific requirements would be allowed. Although the Commission never voted on whether to approve or to not approve the issuance of the draft guidance document, the draft did represent the Commission staff's thinking on the subject. Shortly thereafter, in the **Federal Register** of November 13, 2009 (74 FR 58611), the Commission announced that it would hold a two-day public workshop to discuss issues relating to the testing, certification, and labeling of consumer products pursuant to section 14 of the CPSA. The workshop was held on December 10 through 11, 2009, in Bethesda, Maryland, and the Commission invited interested parties to attend and participate in the meeting. Commission staff made presentations on specific topics and held breakout sessions on:

- Sampling and statistical considerations;
- Verification of third party test results;
- Reasonable test programs and third party testing;
- Challenges for small manufacturer/low-volume production;
- Component testing and material changes; and
- Protection against undue influence.

The notice also stated that the Commission wanted to use the workshop to discuss possible options for implementing section 14 of the CPSA. Several hundred individuals attended the workshop.

The Commission understands the economic ramifications that small businesses (and even large businesses) face regarding the testing costs required by section 102 of the CPSIA. Moreover, retailers and importers may be imposing significant additional testing cost on manufacturers by requiring that products that have already been tested by a third party conformity assessment body be tested again by a specific third party conformity assessment body selected by the retailer or importer. The Commission wants to emphasize to retailers and sellers of children's products that they can rely on certificates provided by product suppliers if those certificates are based on testing conducted by a third party conformity assessment body. Section 19(b) of the CPSA provides that a retailer or seller of a children's product shall not be subject to civil or criminal penalties for selling products that do not comply with applicable safety standards if it holds a certificate issued in accordance with section 14(a) of the CPSA to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform. The Commission notes that section 19(b) of the CPSA does not relieve any person of the obligation to conduct a corrective action should any product violate an applicable safety standard and need to be recalled.

In order to provide some relief from testing costs, elsewhere in this issue of the **Federal Register**, the Commission has issued a separate proposed rule which would allow for testing of component parts as a basis for certification of finished products in certain circumstances. The Commission intends to make clear in the two proposed rules that, in some cases, the required certificate for children's products can be based on component part testing as described in proposed 16 CFR part 1109, rather than testing of the finished product, if components are tested by a third party testing conformity assessment body. Furthermore, these proposed rules would allow importers to base their product certification for a children's product on a certificate provided by a foreign manufacturer as long as that manufacturer has based its certificate on third party testing conducted by a third party conformity assessment body.

**B. Responses to Comments on the Notice of Availability and the Public Workshop**

In connection with the public workshop, the Commission invited public comment on its implementation of various aspects of section 14 of the CPSA.

The **Federal Register** notice announcing the meeting identified specific issues for public comment; for example, in the section titled, "What are the issues regarding additional third party testing of children's products?" the Commission asked:

- Should the potential hazard (either the severity or the probability of occurrence) be considered in determining how frequently the periodic testing is conducted? For example, should a product subject to a consumer product safety rule, where the potential hazard is death, be tested more frequently than a product where the potential hazard is some lesser degree of harm? If so, how might a rule incorporate potential hazard into testing frequency?
- What changes should constitute a "material change" in a product's design or manufacturing process? Are there criteria by which one might determine whether a change is a "material" change? For example, a material change in a product's design or manufacturing process could be described as a change that affects the product's ability to comply with a consumer product safety rule. However, as a practical matter, it may be difficult to determine what consumer product safety rules apply to the product and the extent to which compliance with those rules is affected by a change.

*See* 74 FR at 58614.

The Commission received 38 comments, and we discuss those comments, and our responses, in parts B.1 through B.12 of this document. To make it easier to identify comments and our responses, the word "Comment" or "*Comments*" will appear before the

comment's description, and the word "*Response*" will appear before our response.

*1. The Reasonable Testing Program*

In the **Federal Register** notice announcing the public workshop, the Commission had described a "reasonable testing program" as consisting of:

- Product specifications that describe the consumer product and list the safety rules, standards, etc., with which the product must comply. The product specification should include a complete description of the product and any other information, including, but not limited to, a bill of materials, parts listing, raw material selection and sourcing, and/or model names or numbers of items necessary to describe the product and differentiate it from other products;
- Certification tests which are performed on samples of the manufacturer's consumer product to demonstrate that the product is capable of passing the tests prescribed by the standard;
- A production testing plan which describes the tests that must be performed and the testing intervals to provide reasonable assurance that the products as produced meet all applicable safety rules;
- A remedial action plan which must be employed whenever samples of the consumer product or results from any other tests used to assess compliance yield unacceptable or failing test results; and
- Documentation of the reasonable testing program and how it was implemented.

*See* 74 FR at 58613.

*Comments:* Most comments addressed the five elements of the reasonable testing program, either by suggesting that the Commission allow for some flexibility as to what constitutes a reasonable testing program or by suggesting specific exceptions or tests as part of a reasonable testing program.

Several comments expressed concern that many manufacturers may not be able to specify their products down to the component or raw material level because proprietary information from offshore manufacturers may prevent importers from knowing every component of the products they purchase. One comment noted that importers typically do not control the production process of the products they import, so the Commission should define a reasonable testing program differently to address an importer's special circumstances.

Another comment suggested that "reasonable" for some products would involve less than the five elements outlined by CPSC in the notice for a reasonable testing program. For example, because some regulations require placement of a label, the comment said that "testing" in that circumstance would consist of observing that the label was placed properly.

One comment stated that any testing program that results in an acceptable confidence level that a product complies with the applicable standards should be considered an acceptable reasonable testing program. The comment also suggested that other items, such as factory certification (to recognized standards), audits, risk assessment plans, certification of a manufacturer's quality system, etc., should be allowed as elements of a reasonable testing plan.

One comment suggested allowing process capability testing, where, for a continuous-flow process, first-run samples are tested, as a form of certification testing. The comment urged the Commission to allow a manufacturer to search "backwards" and "forwards" in continuous-flow process for good product in the event that a test during manufacturing shows noncompliance.

Several comments noted that, for seasonal or short-run products, only prototype samples may exist before production begins. Some comments stated that neither the same materials nor the same manufacturing processes were used to manufacture the prototype samples as would be used to manufacture the consumer product.

Multiple comments stated that the relative hazard should be a factor in determining the test frequency. Some stated that higher risks should necessitate a higher test frequency, and where the perceived risk is low, third party testing should not be mandatory for some products.

One comment suggested that a manufacturer's record of manufacturing products with low-lead levels should result in relaxed testing requirements.

One comment remarked on the differences between conformity assessment and certification. The comment suggested that CPSC regulations should clarify that a "reasonable testing program" means a conformity assessment process such as that in Annex A of ISO/IEC 17000 and describe the five elements in generic terms that avoid the implication that "testing" will always be the evaluation activity. This comment noted that the phrase "production testing plan" is misleading in that only testing is anticipated, and would expand the interpretation to include activities certification bodies use to assess continuing compliance.

One comment said that the Commission must issue regulations clarifying what will constitute "unacceptable or failing" test results for product testing. Additionally, the comment stated that the Commission's regulations should explicitly allow for retesting prior to remanufacturing or redesigning. One comment specifically stated that the reasonable testing program should be implemented for children's products.

*Response:* The Commission believes that the five elements of a reasonable testing program are adaptable to manufacturers' and importers' circumstances, are present in most testing programs (even if some of the elements might seem trivial), and can be accomplished with seemingly little effort. However, the five elements are essential and should be included to ensure a high degree of assurance of compliance to the applicable rules, bans, standards, or regulations.

For the product specification component of a reasonable testing program, a manufacturer is not required to specify every component or raw material of a product. The manufacturer is free to describe its product by model number, general description, photograph, etc., as long as the product is identifiable and differentiable from other products.

The Commission agrees that other elements such as risk assessment plans, quality system certification, and factory certifications could be added to provide a manufacturer with a high degree of assurance that the product produced complies with all applicable requirements. However, many methods suggested in the comments would require CPSC to assess and recognize or certify the certification services providers and require the manufacturer and importer to purchase these certification services. The approach in the proposed rule seeks to identify a method whereby a manufacturer or importer can independently establish a reasonable testing program and establish a set of minimum requirements for these reasonable testing programs that reflect commonly used elements of a quality assurance/quality control system. If process capability testing can ensure with a high degree of assurance that the product is capable of meeting the applicable rules, bans, standards, or regulations, that form of testing can be used for certification testing. Similarly, techniques used during production to ensure, with a high degree of assurance, that the continuing production is

compliant can be considered as acceptable production testing plans.

For children's products, section 14(a)(2) of the CPSA requires manufacturers to submit "sufficient samples of the children's product, or samples that are identical in all material respects to the product," to a third party conformity assessment bodies for testing. A prototype manufactured with different materials or manufacturing processes than the finished product cannot be considered the same in all material respects as the finished product with respect to compliance. Therefore, section 14(a)(2) of the CPSA does not allow for testing of prototype samples unless they are identical in all material respects to the finished product. The proposed rule would extend the requirement to test only prototype samples that are identical in all material respects to the finished product that will be imported for consumption, warehoused, or distributed in commerce to manufacturers of nonchildren's products under section 14(a)(1) of the CPSA.

While the Commission agrees that a higher risk level should necessitate a greater testing frequency, it should be noted that risk and potential severity are not indicators of the level of compliance to the legal standards, regulations, rules, and bans. Section 14 of the CPSA does not allow for the exclusion of any children's product from third party testing based on a perceived low level of risk. Thus, regardless of other existing means of determining compliance, products must be tested for compliance to the applicable rules, bans, standards, or regulations.

As for the conformity assessment process in ISO/IEC 17000, the Commission does not consider it to be equivalent to a reasonable testing program. In sections 14(a) and 14(d)(2)(B) of the CPSA, testing is specifically mentioned as the evaluation activity. Thus, regardless of other means of determining compliance, products must be tested for compliance to the applicable rules. The conformity assessment process mentioned in Annex A of ISO/IEC 17000 includes attestations in its principles of conformity assessment. However, the CPSA requires the manufacturer to perform the attestation that its products comply with the applicable rules. If the manufacturer uses a third party conformity assessment body to conduct the testing of its products, then the determination and attestation functions would be performed by two separate parties. Thus, the conformity assessment process in ISO/IEC 17000 is not equivalent to the reasonable testing program mentioned in section 14(a) of the CPSA. However, the certification testing and the production testing plan in the reasonable testing program do allow a wide latitude of actions in determining initial and continuing compliance to the applicable rules for a product.

Test results that indicate noncompliance to the applicable rules are unacceptable or failing test results. Retesting, as a general matter, should not be allowed because doing so may tempt unscrupulous parties to attempt to "test the product into compliance," (*i.e.,* to repeat testing a product until a sample passes the test and then reject the earlier unacceptable or failing test results). The intent of section 14 of the CPSA is to conduct tests to provide assurance that all the products being imported, warehoused, or distributed in interstate commerce comply with all applicable rules.

*2. Flexibility in Testing*

*Comments:* Many comments stressed the need for flexibility in test protocols. Some comments stated that the types of products are so varied that no one prescribed system could be devised to effectively and efficiently apply to all of them. Other comments noted that determining the number of samples to be tested should be left to the manufacturer, who has intimate knowledge of the product's manufacturing process, to decide.

*Response:* The Commission agrees that it is difficult to develop rigid protocols for testing across all categories of products, manufacturers, and importers. A manufacturer may tailor the tests to the needs of the individual product, and the tests do not need to be the same tests that are specified in the applicable rules, provided that they are at least as effective in assessing compliance. The proposed rule would leave decisions on procedures, such as the number of samples to test, up to the manufacturer provided that the testing plan provides a high degree of assurance that noncompliant products are not introduced into the stream of commerce.

*3. Existing Testing Programs*

*Comments:* One comment asked if the Toy Safety Certification Program initiated by the Toy Institute of America (TIA) could be accepted as a reasonable testing program under section 14(a)(1) of the CPSA. Two other comments recommended that CPSC recognize the value of industry-specific certification programs prescribing testing methods for a product category and verifying conformance. Another two comments suggested that CPSC should consider the testing requirements in existing product safety standards to be acceptable in meeting the requirements of section 14 the CPSA, including existing regulations with their own reasonable testing program requirements. One comment noted that, unless the Commission can show that current industry testing programs are insufficient, no prescribed reasonable testing program should be implemented. One comment stated that CPSC should establish a safe harbor enforcement policy regarding recognized programs. The comment noted that an enforcement policy that accepts participation in such programs as demonstrable good faith, without imposition of civil or criminal liability under CPSIA's expanded penalty limits, could act to promote participation in effective certification programs.

*Response:* Manufacturers will need to ensure that any reasonable testing programs, whether they are industry-specific programs or not, also conform to the requirements of the CPSA and any implementing regulations promulgated by the Commission. If, in a manufacturer's determination, a prescribed testing program ensures with a high degree of assurance that the products distributed in commerce will comply with the applicable rules, then the manufacturer is free to choose that program for its product. CPSC cannot generally consider all preexisting testing regulations to be acceptable for purposes of complying with section 14 of the CPSA. For example, preexisting CPSC regulations may not mandate third party conformity assessment body testing for children's products because those preexisting CPSC regulations were promulgated before the CPSIA's enactment. Further, nothing in section 14(a)(1) or 14(b) of the CPSA, nor section 3 of the CPSIA, which gives the Commission the authority to issue regulations to implement the CPSIA, requires the Commission to find industry testing programs to be insufficient before implementing a reasonable testing program.

The proposed rule would not include any provision for a "safe harbor" enforcement policy based on a manufacturer's participation in a voluntary or industry-sponsored program, nor has the Commission recognized any such program as indicating compliance within the requirements of the proposed rule. Section 14 of the CPSA does not contain a "safe harbor" exception nor does it establish any criteria by which the Commission could "recognize" testing programs for purposes of a "safe harbor."

*4. Random Samples*

In the **Federal Register** notice announcing the public workshop, the Commission explained that section 14(d)(2)(B)(ii) of the CPSA refers to the "testing of random samples to ensure continued compliance" and asked (among other things), "What constitutes a 'random' sample?" See 74 FR at 58614. At the workshop itself, CPSC staff presented a statistically-based rationale for selecting random samples.

*Comments:* Many comments suggested that the word "random" should not be interpreted by its strict statistical definition, but should be adapted to the product type, how it is manufactured, and its intended use. One comment stated that random should be interpreted to mean free from overt selection bias and that it is more important that a sample be reasonably representative of the population from which it is selected. One comment suggested that, with the assistance of industry, the CPSC should develop guidelines regarding the circumstances and elements to consider when determining what constitutes a reasonable random sample. One comment mentioned the problems associated with random sampling of single-unit production and with very small production volumes (less than 10, for example). One comment noted that some manufacturing processes are of a continuous-flow type, and randomly selecting a sample would be disruptive to the production system. Another comment stated that products that are subjected to continuous testing with a specified frequency should be exempt from any additional random testing.

*Response:* The *Random House Dictionary of the English Language* defines "random sampling" as "a method of selecting a sample from a statistical population in such a way that every possible sample that could be selected has the same probability of being selected." The Commission believes that this is the most appropriate technical definition. It also seems more appropriate to use a definition where both terms (random and sampling) are defined together rather than two separate definitions, one of random and the second of sampling. More generally, terms such as a "representative" sample, a "non-fraudulent" sample, or a "non-golden" sample, do not have the underlying statistical attributes necessary to generalize about compliance of the untested portion of the product population from the tested samples.

With regard to low-volume production, the proposed rule would not require random sampling unless a manufacturer produces 10,000 units of a product at which time the product would be subject to the proposed periodic testing requirements. Regardless of how random sampling is defined, section 14(d)(2)(B) of the CPSA requires samples to be tested. The samples must be selected from products in production or supply and must be tested by a third party conformity assessment body.

Products manufactured in a continuous-flow process ultimately create individual products. If those products are subject to periodic testing, the requirement for random samples may constrain where in the manufacturing process periodic testing samples are selected. In general, product tests at a specific frequency are susceptible to transient events that could affect compliance and would be undetected. Random sampling has the capability of detecting such transient events and is thus required to ensure continued compliance of the product.

*5. Challenges for Small Manufacturers/ Low-Volume Production*

In the **Federal Register** notice announcing the public workshop, the Commission asked, "What provisions (if any) should be made for small manufacturers and manufacturers with low production volumes and why?" See 74 FR at 58614. The Commission explained that specifying the frequency of periodic testing or the number of random samples to be tested may be inappropriate where the volume of children's products being manufactured is low or where the children's product is one-of-a-kind.

*Comments:* Several comments were received specific to small manufacturers who may not have the technical, legal, or financial resources of large-volume manufacturers. One comment stressed the need for step-by-step guidance from the CPSC on how to follow the rules. Another comment noted that, for very small production volumes (often one or two custom items), testing of a representative sample should be allowed to suffice for all items. Two comments concurred with the draft Guidance Policy document text that did not require periodic testing for production volumes less than 10,000 units or once a year, whichever is less. One comment suggested that, due to the economic ramifications associated with the development of a reasonable testing program, the CPSC should convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel for this rulemaking.

*Response:* While the Commission will provide general guidance on how to comply with the requirements of the CPSIA, manufacturers are responsible for fully understanding their manufacturing process and knowing how the regulations would apply to their products. Because there may be a disproportionate effect on small-volume manufacturers relative to large volume manufacturers, the proposed rule would not require periodic testing for production volumes of less than 10,000 units because certification and periodic testing costs are largely independent of manufacturing volume. Certification testing and testing after a material change are still required and may be performed on portions of the finished product or representative samples that are the same with respect to compliance as the finished product.

As for the comment regarding a SBREFA panel, the requirements for a SBREFA panel only apply to the Environmental Protection Agency and the Occupational Safety and Health Administration (OSHA).

*6. Verification of Third Party Conformity Assessment Bodies*

*Comments:* Several comments suggested that the CPSC, rather than manufacturers, should perform any verification of third party conformity assessment bodies. Another comment proposed that, upon demand by the CPSC, the conformity assessment body be required to produce a copy of the mandatory or voluntary standard against which the children's product is being tested, a copy of the test protocol used for the test procedure, and a copy of the test results that can be traced back to the specific sample tested. Another comment noted that variations in sample preparation by conformity assessment bodies can and do lead to differing test results. One comment, noting lab-to-lab variations in test results for the same product, suggested that CPSC should require third party conformity assessment bodies to conduct blind correlation studies and lab audits. Another comment asserted that proficiency testing is the only true outside independent verification option for laboratories and should be limited to chemical tests only.

*Response:* The Commission's limited resources preclude CPSC from directly conducting verification of the numerous conformity assessment bodies. As stated earlier in part A of this document, at this time, the Commission is not proposing any verification obligations on manufacturers because the Commission intends to conduct the verification itself under its inherent

authorities while it gains more experience with the testing and certification requirements. Additionally, the activities and requirements for accrediting conformity assessment bodies are outside the scope of this rulemaking.

The Commission acknowledges that variations in sample preparation can lead to some differences in test results. However, these variations should not be significant enough to alter the general determination of whether a product complies with the applicable children's product safety rule.

As for proficiency testing (by which the Commission means testing conducted by an independent evaluator of the competence of a "body" (organization, person, etc.) to perform specific tasks), the Commission considers proficiency testing to be one option for domestic manufacturers and importers to use for verification purposes. However, the requirements for verifying that a children's product complies with the applicable children's product safety rules are not limited to only chemical tests.

*7. Protection of Conformity Assessment Bodies Against Undue Influence*

*Comments:* One comment suggested that provisions of ISO/IEC Guide 65 be used to prevent undue influence from being exerted over third party testing body by a manufacturer or private labeler. Other comments suggested that laboratory certification beyond ISO/IEC 17025 is neither productive nor necessary. Another comment suggested that the Commission should look to OSHA's Nationally Recognized Testing Laboratory (NRTL) program to ensure impartiality and prevent conflict of interest. One comment stated that CPSC should extend existing CPSC fines and penalties that the CPSC can currently impose on manufacturers and retailers to apply to exerting or attempting to exert undue influence on third party conformity bodies.

*Response:* ISO/IEC Guide 65 and OSHA's NRTL program both deal with certifying bodies that perform many functions in addition to the testing functions performed by third party conformity assessment bodies. The ISO/IEC 17025 certification system appears to be working as intended. There is no need to implement duplicative or additional requirements by requiring them in this proposed rule.

With regard to extending fines, section 19 the CPSA already addresses fines and penalties. Section 19(a)(4) of the CPSA prohibits any attempt to exercise undue influence on a third party conformity assessment body. Sections 20 and 21 of the CPSA establish monetary and criminal penalties for violations of section 19 of the CPSA.

*8. Certificates*

*Comments:* One comment urged the Commission to recognize the registered certification marks of recognized product certification bodies, like those accredited under the OSHA NRTL program for applicable product scopes, in lieu of paper certificates of conformity. Another comment asserted that the CPSC has no jurisdiction to issue certification regulations except as part of a reasonable labeling rule adopted under section 14 of the CPSA. The comment argued that section 14(a) of the CPSA gives the manufacturer the option to select its own form and medium to convey certification of compliance with a CPSC standard. Finally, the comment contended that section 14 of the CPSA does not authorize the Commission to adopt any rule prescribing the content of the certificate or method of its distribution. Another comment stated that the CPSC has no jurisdiction to require that a certificate be on a separate piece of paper that accompanies the product. The comment also suggested that at least 180 days would be needed to comply with any new requirements.

*Response:* The Commission does not believe that registered certification marks, by themselves, would provide the information required for certificates under section 14 of the CPSA. With respect to children's products, third party conformity assessment bodies only test children's products for compliance with the applicable children's product safety rules. Third party conformity assessment bodies are not responsible for issuing certificates under section 14(a)(2) of the CPSA; to the contrary, under existing CPSC regulations, only domestic manufacturers and importers are required to issue certificates (*see* 16 CFR part 1110; see also 73 FR 68328 (November 18, 2008)).

Regarding the Commission's jurisdiction to issue certification regulations, the Commission has the authority to issue implementing regulations under section 3 of the CPSIA, which provides that "[t]he Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act." The Commission has not required certificates to be only in the form of a separate piece of paper. Certificates can be in electronic form.

As for the effective date of any final rule, the Commission intends that any final rule resulting from this rulemaking become effective 180 days after its date of publication in the **Federal Register**. Interested parties who believe that the effective date should be longer or shorter should submit a comment to the proposed rule. The comment should include the specific facts on which they base their conclusion.

*9. Reliance on Test Results of Others for Certification Purposes*

*Comments:* Two comments noted that a foreign manufacturer may supply the same product to several importers, who would then be required to test the same product. The comments considered such testing of the same product by multiple importers to be wasteful and inefficient. Another comment stated that importers of many products will be overburdened with testing costs, whereas manufacturers making one product can efficiently test their products. The comment added that the importer would still be responsible for the product's certificate, but would use test data furnished by the manufacturer. Finally, the comment noted that importers have little control over the design, manufacturing process, or sourcing of component parts, but manufacturers control all those aspects of production. Two other comments asserted that importers should be allowed to base their certificates on test reports and results of other entities. Another comment proposed that CPSC should recognize the vendor's assumption of liability in making such certification and deem that retailers, importers and distributors of product subject to such certification may rely upon it without facing civil or criminal liability.

One comment asked for clarification for importers who rely on foreign manufacturers' certificates of conformity regarding what level of diligence can reasonably and effectively be exercised by the importers.

One comment recommended that ink manufacturers be allowed to group, test and certify product families for component testing because product families represent the same core formula. The comment asserted that product family certification provides a reasonable, economically viable, testing model for these ink manufacturers.

*Response:* While an importer is not required to commission testing itself and may, in certain cases, use component part test reports from the manufacturer, the importer is responsible for issuing the certificate for a children's product (see 16 CFR 1110.7(a)). The importer also must ensure that the proper testing was

conducted (*i.e.,* a third party conformity assessment body accredited for the correct test conducted the testing). The importer is ultimately responsible for ensuring that its product meets CPSC requirements. In those cases in which the importer has little or no control over the manufacturing process and is relying on the manufacturer's test data, the importer should take measures to understand the manufacturing and testing process. An importer needs to ensure that all necessary tests are conducted in an appropriate manner to ensure, with a high degree of assurance, that no noncompliant product is placed into commerce. In the Commission's proposed rule on "Conditions and Requirements for Testing of Component Parts of Consumer Products" (which appears elsewhere in this issue of the **Federal Register**), the Commission is considering additional issues related to the reliance of a manufacturer on the test results of others for certification purposes.

As for the comment regarding ink, an ink that has a similar base formula and varies only in color could contain some pigments that contain lead while the same base with different pigments did not. Thus, families of inks cannot be grouped for compliance testing. However, the Commission has previously made a determination that CYMK inks do not need to be tested since they do not contain lead. See 16 CFR 1500.91.

*10. Additional Third Party Testing Requirements for Children's Products*

*Comments:* One comment remarked that the Commission should offer guidance on the adequacy of specific programs to firms who request it. The comment also sought clarification on whether a test could be any reasonable, objective method for evaluating compliance with a standard. The comment suggested that any attempt to specify protocols and standards for testing children's products, such as sample size and frequency, should be tied to specific standards. The comment also expressed interest in having the Commission provide a clearer definition of reasonable certainty, especially in the context of specific standards. Finally, the comment advised against attempting to establish any numerical standard, such as a specified confidence level with a specific number of samples to test.

Another comment requested that the Commission should provide reasonably specific guidelines with regard to both periodic testing frequency and sample size to be used in such testing. The comment suggested a period of at least twice per year or once every 50,000 units in any event, whichever occurs first. With regard to the sample size for periodic testing, the comment suggested (at least for toys) using the 12-unit sample size which has been the requirement of the CPSC Engineering Test Manual for many years as a starting point. A sample size of 18 pieces could be required for higher-risk products such as infant and toddler toys, and a lesser sample could be allowed for large, bulky, or expensive products to minimize cost.

Many comments asserted that risk should be factored into any testing program. A product that poses a higher level of risk should undergo closer scrutiny.

One comment provided a list of activities that would more precisely define a material change. The list included changes in tooling, product materials, assembly method, or the manufacturing facility.

Another comment contended that once the children's product has passed its certification testing, periodic testing is not required, and that only a material change would require retesting.

One comment noted that first-party production testing is used extensively to control manufacturing and is effective in detecting problems that could lead to nonconforming products. The comment noted that the information can be used to reduce the number of samples required for periodic testing to one.

One comment suggested that, in establishing procedures and standards for periodic testing of children's products, CPSC should consider the potential for lead exposure in order to distinguish between products that pose a reasonable risk of noncompliance with the lead content limits and products that pose only a theoretical risk of noncompliance.

*Response:* Several existing CPSC regulations are product-specific, allowing the Commission to develop guidance for those particular manufactured goods. However, section 14(a) of the CPSA covers all products subject to a consumer product safety standard enforced by the Commission. In light of that fact, the CPSC cannot provide guidance for every product and every manufacturing process. For children's products, only a third party conformity assessment body accredited to perform the required tests is allowed to test for compliance to the applicable children's product safety rules.

The proposed rule would consider non-conformity assessment body tests, such as production tests, process control measurements, or other means of assessing compliance, to be acceptable if they are as effective in discriminating compliance and noncompliance as the tests specified in the standards as part of a reasonable testing program. Neither the reasonable testing program for nonchildren's products nor the certification and periodic tests for children's products specify values for sample size or test frequency.

The Commission recognizes that no one-size-fits-all testing program will be sufficient for all manufacturers. The proposed rule would state that a reasonable testing program is a program that, when structured with appropriate specifications, measurements, controls, and test intervals, will provide a high degree of assurance that the consumer products manufactured under the reasonable testing program will comply with all the requirements of the applicable rules. If a high degree of assurance is interpreted to be a statistical likelihood of not producing noncompliant products, the sample size for periodic testing will depend upon the number of samples that need to be tested to provide that statistical assurance. The number of samples could be fewer than 12 or more than 18. The Commission agrees that products with a higher potential for injury or death should undergo greater scrutiny.

Because of the many types of children's products and manufacturing processes that will be covered by the rule, the description of the activities that would trigger additional third party testing due to material changes needs to be described in general terms. A more general description gives manufacturers, who are experts in their product areas and are better suited to understand when a change in their product could affect the product's ability to comply with applicable rules, the flexibility to develop testing programs to suit their products and manufacturing operations. For children's products, section 14(d)(2)(B)(i) of the CPSA says explicitly that the rule is intended to establish protocols and standards to ensure that children's products are tested "periodically," as well as when there has been a material change to the product. Thus, even if no changes are made to a children's product, it must be tested periodically.

For children's products with a reasonable testing program, it may be possible to show that one periodic test sample verifies and validates the program. However, for children's products without a reasonable testing program, in order for third party testing to provide a high degree of assurance that the products produced comply with the rule, the Commission believes that testing only a single sample would not

be acceptable. Other than the exceptions for lead that are specified in section 101 of the CPSIA and the lead determinations regarding certain materials or products in 16 CFR 1500.91, all children's products are required to be tested for lead content.

*11. Labeling Program*

As stated earlier in part A of this document, section 14(d)(2)(A) of the CPSA requires the Commission to initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements. This provision applies to all consumer products that are subject to a product safety rule administered by the Commission.

*Comments:* One comment recommended that the Commission not initiate a labeling program because it will contribute to confusion within the small business community about the tracking label. Another comment suggested that the Commission should provide examples of allowable text for such labels, but should not have specific requirements for things such as size, color, font or location as these will depend on the product. The comment further noted that it would be a huge burden to impose specifications such as "label" text or size.

One comment noted that some children's products currently must contain a label and that label should be considered sufficient. Two comments stated that, if a consumer compares a children's product with a label stating compliance to all applicable rules to a comparable product with no applicable rules (and thus no label), the absence of the label will be misperceived as noncompliance by the consumer and will thus disadvantage the second product. One comment suggested that the label requirement be harmonized as best as possible with existing Federal regulations such as U.S. Customs and Border Production country of origin labeling (19 U.S.C. 1304 and 19 CFR 134.33) and the Federal Trade Commission's Textile and Wool Products Identification Act's fiber content labeling requirements (15 U.S.C. 70 and 16 CFR part 303). Another comment said that the use of the label should be restricted to identifying the manufacturer/importer and the batch to help facilitate and narrow the scope of recalls. One comment suggested that there needs to be accommodations or exclusions for products that are impossible to mark that are similar to exclusions provided in the J list of the U.S. Customs and Border Protection regulations for country of origin markings or products that would be destroyed by marking. One comment urged CPSC to include the certification requirements of section 14(a) of the CPSA on a label on the product.

*Response:* Section 14(d)(2)(A) of the CPSA requires the Commission to initiate a program by which a manufacturer or private labeler may label their products as complying with the certification requirements. The Commission staff's suggested text and format for the label will make it easier for consumers, small businesses, and any other interested party to notice it, understand its meaning, and distinguish it from tracking labels. Varying the text and the font size and style on the label could lead to greater confusion in understanding than a consistent label. Because the use of the label is optional for manufacturers, similar-looking products, or even units of the same product, may or may not contain the label. The label is intended to show compliance with CPSC certification requirements. It is not intended to be a tracking label or demonstrate compliance with laws or regulations administered by other federal agencies. The comment suggesting the Commission should include the certification requirements of section 14(a) of the CPSA on a label on the product is outside the scope of the labeling program in the proposed rule which is being promulgated pursuant to section 14(d)(2)(A) of the CPSA. Additionally, on November 18, 2008, the Commission issued a rule (*see* 16 CFR part 1110; see also 73 FR 68328) addressing the requirements for certificates under section 14(a) of the CPSA.

*12. Comments Outside the Scope of the Rule*

*Comments:* Several comments addressed issues pertaining to specific tests or other provisions in the CPSIA, such as tracking labels and the interpretation of statutory definitions.

Several comments suggested that x-ray fluorescence (XRF) technology should be an acceptable method to test for the presence of lead.

Two comments suggested that CPSC require a hazard analysis of children's products if manufacturers are permitted to perform the analysis themselves without a third party check of the results.

One comment would interpret the CPSIA's definition of "children's product" as a product with which a child plays.

One comment suggested that the CPSC tracking label require the name of the manufacturer or importer, the production date, the compliance identifier, and the model number.

One comment said that the electronic availability of certificates should satisfy the "accompany" and "furnish" requirements as opposed to requiring a paper certificate. One comment stated that the CPSC cannot require the certificate to contain the specific week of manufacture or the particular unit of equipment used to manufacture the product.

One comment argued that the Commission has no jurisdiction over architectural glass (*e.g.,* glass used in windows and doors).

*Response:* Because these comments address issues that are unrelated to reasonable testing programs, continued testing of children's products, and labels to show that a product complies with the certification requirements in section 14(a) of the CPSA, they are outside the scope of this rule. Consequently, we decline to address them here.

**C. Description of the Proposed Rule**

The proposal would create a new part in Title 16 of the Code of Federal Regulations: Part 1107, titled "Testing and Labeling Pertaining to Product Certification." The new part 1107 would consist of four subparts: Subpart A would be "General Provisions"; Subpart B would be the requirements for a "Reasonable Testing Program for Nonchildren's Products"; Subpart C would be the requirements for "Certification of Children's Products"; and Subpart D would be the requirements for a "Consumer Product Labeling Program."

*1. Proposed Subpart A General Provisions*

a. Proposed § 1107.1—Purpose

Proposed § 1107.1 would state that part 1107 establishes the requirements for: a reasonable testing program for nonchildren's products; third party conformity assessment body testing to support certification and continuing testing of children's products; and labeling of consumer products to indicate that the certification requirements have been met pursuant to sections 14(a)(1), and (a)(2), (d)(2)(B) of the CPSA (15 U.S.C. 2063(a)(1), (a)(2), (d)(2)(B)).

b. Proposed § 1107.2—Definitions

Proposed § 1107.2 would state that, unless otherwise stated, the definitions of the Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008 apply to this part. Proposed § 1107.2 also would define certain terms or abbreviations for

purposes of part 1107. For example, with respect to abbreviations, proposed § 1107.2 would define "CPSA" to mean the Consumer Product Safety Act. Proposed § 1107.2 would define "CPSC" to mean the Consumer Product Safety Commission.

Proposed § 1107.2 would define "detailed bill of materials" to mean a list of the raw materials, sub-assemblies, intermediate assemblies, sub-component parts, component parts, and the quantities of each needed to manufacture a finished product.

Proposed § 1107.2 would define "due care" to mean the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

Proposed § 1107.2 would define "high degree of assurance" to mean an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture. The term "high degree of assurance" appears in several proposed provisions, and so the concept of what constitutes a "high degree of assurance" would be important for purposes of interpreting and complying with certain proposed sections. We considered several alternative definitions for a high degree of assurance. One alternative definition would be, for quantitative tests, where a high degree of assurance would be at least a 95 percent probability that all the product produced meets the requirements of the applicable rules; for non-quantitative (pass/fail) tests, a high degree of assurance could mean a 95 percent confidence that at least 95 percent of the product produced meets the requirements of the applicable rules. The 95 percent level is widely used in the natural and social sciences as the minimum acceptable probability for determining statistical significance and has been found to be effective. However, we recognize that defining a "high degree of assurance" as a 95 percent or greater probability could result in greater testing demands on small manufacturers. For example, for a non-quantitative test, a method such as the "rule of three" could be used to determine the number of samples needed for testing. For a 95 percent confidence that no more than five percent of the production fails to comply, 3/0.05 = 60 units will be needed for testing. For small production volumes where 60 samples would be considered excessive, alternative methods would be needed. Thus, we decided against defining "high degree of assurance" with respect to a 95 percent probability or confidence level because there may be difficulty in applying the statistical methods to all manufacturing processes. We invite comment on possible amendments or revisions to the proposed definition of "high degree of assurance."

Proposed § 1107.2 would define "identical in all material respects" to mean there is no difference with respect to compliance to the applicable rules between the samples and the finished product.

Proposed § 1107.2 would define "manufacturer" to mean the parties responsible for certification of a consumer product pursuant to 16 CFR part 1110. Currently, 16 CFR part 1110 limits the certification requirement to domestic manufacturers and importers.

Proposed § 1107.2 would define "manufacturing process" to mean the techniques, fixtures, tools, materials, and personnel used to create the component parts and assemble a finished product.

Proposed § 1107.2 would define "production testing plan" to mean a document that shows what tests must be performed and the frequency at which those tests must be performed to provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable safety rules.

Proposed § 1107.2 would define "third party conformity assessment body" to mean a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products.

*2. Proposed Subpart B—Reasonable Testing Program for Nonchildren's Products*

Proposed subpart B would consist of one provision and would describe the "reasonable testing program" for nonchildren's products.

a. Proposed § 1107.10—Reasonable Testing Program for Nonchildren's Products

Proposed § 1107.10(a) would state that, except as otherwise provided in a specific regulation under this title or a specific standard prescribed by law, a manufacturer certifying a product pursuant to a reasonable testing program must ensure that the reasonable testing program provides a high degree of assurance that the consumer products covered by the program will comply with all applicable rules, bans, standards or regulations. The proposed exception for specific regulations or standards prescribed by law is meant to recognize that certain preexisting CPSC regulations or standards that were previously voluntary standards which, by statute, are now considered to be mandatory consumer product safety standards or are to be adopted as mandatory standards may have specific testing requirements or protocols. The reasonable testing programs requirements under proposed § 1107.10 are not intended to supersede those preexisting testing requirements listed in Table 1. Table 1 only lists testing requirements as they pertain to nonchildren's products because proposed § 1107.10 would not apply to children's products.

TABLE 1—EXISTING TESTING PROGRAMS THAT WOULD NOT BE SUPERSEDED BY PROPOSED § 1107.10 REGARDING A REASONABLE TESTING PROGRAM

| 16 CFR part | Subject |
|---|---|
| 1201 | Safety Standard for Architectural Glazing Materials. |
| 1202 | Safety Standard for Matchbooks. |
| 1203 | Safety Standard for Bicycle Helmets. |
| 1204 | Safety Standard for Omnidirectional Citizen Band Base Station Antennas. |
| 1205 | Safety Standard for Walk-Behind Power Lawn Mowers. |
| 1207 | Safety Standard for Swimming Pool Slides. |
| 1209 | Interim Safety Standard for Cellulose Insulation. |
| 1210 | Safety Standard for Cigarette Lighters. |
| 1211 | Safety Standard for Automatic Residential Garage Door Operators. |
| 1212 | Safety Standard for Multi-Purpose Lighters. |
| 1610 | Standard for the Flammability of Clothing Textiles. |
| 1611 | Standard for the Flammability of Vinyl Plastic Film. |

TABLE 1—EXISTING TESTING PROGRAMS THAT WOULD NOT BE SUPERSEDED BY PROPOSED § 1107.10 REGARDING A REASONABLE TESTING PROGRAM—Continued

| 16 CFR part | Subject |
|---|---|
| 1630, 1631 | Standards for the Surface Flammability of Carpets and Rugs. |

A reasonable testing program serves as the basis for issuance of the general conformity certification for nonchildren's products unless the manufacturer conducts a test of each product. A reasonable testing program is a program that, when structured with appropriate specifications, measurements, controls, and test intervals, will provide a high degree of assurance that the consumer products manufactured under the reasonable testing program will comply with all the requirements of the applicable rules.

The manufacturer is responsible for establishing a reasonable testing program because it is necessary to support the issuance of a general conformity certificate where a test of each product is not undertaken. All the elements of the reasonable testing program should be in place, and certification tests completed with passing results before a general conformity certificate can be issued for a product.

Several existing nonchildren's product standards issued by the Commission already contain product-specific testing programs that were developed by the Commission at the time the standard was issued and for which certification was required before the CPSIA's enactment. For existing rules that contain testing requirements, and do not contain specific testing programs, the reasonable testing program establishes the minimum set of requirements to be met for certification. For the remaining applicable rules, the implementation of reasonable testing programs will vary depending on the product under consideration and the compliance characteristics being tested. Persons issuing general conformity certificates should exercise due care in developing and implementing a reasonable testing program that demonstrates that their products comply with the applicable rules.

Commission staff examined existing CPSC regulations, such as the regulations pertaining to omnidirectional citizens band base station antennas, walk-behind lawn mowers, and automatic residential garage door openers, and selected common features of existing reasonable testing programs that CPSC has found to be effective. The proposed elements of a reasonable testing program would be necessary to demonstrate a product's compliance at the time of certification and as production of the product continues after certification. Because the requirement for a reasonable testing program would apply to a wide variety of product types and manufacturing processes, it is designed to be scalable to production volumes and adaptable to the specifics of the product. A manufacturer may develop the scope and details of each element of a reasonable testing program based on the manufacturer's knowledge and expertise regarding the product and its manufacturing processes.

The Commission's primary concern is ensuring that manufacturers produce safe and compliant products. Testing is not an end in itself, but rather one part of a process to ensure the safety of consumer products. For this reason, the Commission believes the primary objective in a reasonable testing program is determining whether or not a manufacturer produces safe and compliant products. When CPSC staff discovers unsafe or noncompliant products, CPSC may have reason to examine a manufacturer's programs and processes. Because the Commission recognizes that even the best processes can occasionally yield noncompliant products, the Commission is especially concerned about unsafe or noncompliant products emerging from defective processes.

Proposed § 1107.10(b) would describe the five elements that a reasonable testing program must contain. The Commission invites comments on these five elements of a reasonable testing program. How well do these elements fall within the elements of existing quality assurance/quality control programs? In cases where no quality assurance/quality control programs exist, what activities will have to occur to implement the proposed reasonable testing program? Please explain.

Proposed § 1107.10(b)(1) would state that a reasonable testing program must have a product specification. The product specification would contain a description of the consumer product and lists the applicable rules, bans, standards or regulations to which the product is subject. A product specification should describe the product listed on a general conformity certification in sufficient detail to identify the product and distinguish it from other products made by the manufacturer. Proposed § 1107.10(b)(1) would state that the product specification may include items such as a color photograph or illustration, model names or numbers, a detailed bill of materials, a parts listing, raw material selection and sourcing requirements. Proposed § 1107.10(b)(1)(i) would state that a product specification must include any component parts that are certified pursuant to 16 CFR part 1109. (Elsewhere in this issue of the **Federal Register**, the Commission is issuing a proposed rule regarding component part testing.)

Proposed § 1107.10(b)(1)(ii) would state that product specifications that identify individual features of a product that would not be considered a material change may use the same product specification for all products manufactured with those specific features. Features that would not be considered a material change include different product sizes or other features that cover variations of the product where those variations do not affect the product's ability to comply with applicable rules. For example, several sizes of the same article of clothing made with the same materials would not be considered a material change. Another example would be if a product specification lists a number of complying component parts that are grouped in a number of different combinations for separate products, the differences in the number of component parts between the products would not be considered a material change. Additionally, a product with different versions of software downloaded into various units that would not affect compliance, such as various language packages downloaded into various educational toys, would not be considered a material change.

Proposed § 1107.10(b)(1)(iii) would state that each manufacturing site must have a separate product specification. This would be required because a manufacturer cannot assume that units of the same product manufactured in more than one location are identical in all material respects.

Proposed § 1107.10(b)(2) would state that a manufacturer must conduct certification tests on a product before issuing a general conformity certificate for that product. Certification tests provide evidence that a product identified in a product specification complies with the applicable rules, bans, standards, or regulations. Certification tests are required as part of a reasonable testing program in lieu of a test of each product. Proposed § 1107.10(b)(2) would state that a certification test would be a test performed on samples of the product that are identical to the finished product in all material respects to demonstrate that the product complies with the applicable safety rules. Proposed § 1107.10(b)(2) would require certification tests to contain certain elements.

Proposed § 1107.10(b)(2)(i) would state that, for purposes of proposed § 1107.10, a sample means a component part of the product or the finished product which is subjected to testing. Samples submitted for certification testing would be required to be identical in all material respects to the product to be distributed in commerce. The manufacturer would be required to submit a sufficient number of samples for certification testing so as to provide a high degree of assurance that the certification tests accurately represent the product's compliance with all applicable rules.

Proposed § 1107.10(b)(2)(i)(A) would only allow finished products or component parts listed on the product specification to be submitted for certification testing. Proposed § 1107.10(b)(2)(i)(B) would allow a manufacturer to substitute component part testing for finished product testing pursuant to 16 CFR part 1109 unless the rule, ban, standard or regulation applicable to the product requires testing of the finished product. If a manufacturer relies upon certification testing of component part(s) (rather than tests of the finished product), the manufacturer would be required to demonstrate how the combination of testing of component part(s), portions of the finished product, and finished product samples demonstrate, with a high degree of assurance, compliance with all applicable rules, bans, standards, or regulations.

Proposed § 1107.10(b)(2)(ii) would state that a material change is any change in the product's design, manufacturing process, or sourcing of component parts that a manufacturer exercising due care knows, or should know, could affect the product's ability to comply with the applicable rules, bans, standards, or regulations. Proposed § 1107.10(b)(2)(ii)(A) would state that when a previously-certified product undergoes a material change that only affects the product's ability to comply with certain applicable rules, bans, standards, or regulations, certification for the new product specification may be based on certification testing of the materially changed component part, material, or process, and the passing certification tests of the portion of the previously-certified product that were not materially changed. For example, if a material change is limited to using a different paint on the product, new certification testing of that product may be limited to evaluating the paint to the applicable safety rules.

Proposed § 1107.10(b)(2)(ii)(B) would require a manufacturer to conduct a certification test of the finished product if a material change affects the finished product's ability to comply with an applicable rule, ban, standard, or regulation. Proposed § 1107.10(b)(2)(ii)(C) would require a manufacturer to exercise due care to ensure that reliance on anything other than retesting of the finished product after a material change occurs does not allow a noncompliant product to be distributed in commerce. A manufacturer should resolve any doubts in favor of retesting the finished product for certification.

Proposed § 1107.10(b)(3) would explain that a production testing plan describes what tests must be performed and the frequency at which those tests must be performed to provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable safety rules, bans, standards, or regulations. A production testing plan may include recurring testing or the use of process management techniques, such as control charts, statistical process control programs, or failure modes and effects analyses (FMEAs), designed to control potential variations in product manufacturing that could affect the product's ability to comply with the applicable rules, bans, standards, or regulations.

Proposed § 1107.10(b)(3)(i) through (iii) would require a production test plan to contain the following elements:

- A description of the production testing plan, including, but not limited to, a description of the tests to be conducted or the measurements to be taken, the intervals at which the tests or measurements will be made, the number of samples tested, and the basis for determining that such tests provide a high degree of assurance of compliance if they are not the tests prescribed in the applicable rule, ban, standard, or regulation.
- A separate production testing plan for each manufacturing site; and
- Production testing intervals selected to be short enough to ensure that, if the samples selected for production testing comply with an applicable rule, ban, standard, or regulation, there is a high degree of assurance that the untested products manufactured during that interval also will comply with the applicable rule, ban standard, or regulation. Production test intervals should be appropriate for the specific testing or alternative measurements being conducted.

Proposed § 1107.10(b)(3)(iii)(A) would allow a manufacturer to use measurement techniques that are nondestructive and tailored to the needs of an individual product instead of conducting product performance tests to assure a product complies with all applicable rules, bans, standards, or regulations. For example, a manufacturer may have determined that, by controlling the particle size and water content of cellulose insulation, it is possible to determine compliance to the cellulose insulation critical radiant flux test (16 CFR part 1209.6) by examination of a sample of a fixed volume under a graduated microscope and measuring its weight. Sizes and weights within certain limits mean that the insulation will pass the critical radiant flux test. As another example, a manufacturer may choose to determine compliance to the requirements for garage door opener photoelectric sensors (16 CFR 1211.11) by placing the sensor in a fixture with a calibrated light flux, then measuring the response voltage of the light-sensitive element directly. An element output voltage above a threshold would indicate passing performance for the tests described in the safety standard.

Proposed § 1107.10(b)(3)(iii)(B) would require any production test method used to conduct production testing to be as effective in detecting noncompliant products as the tests used for certification. Proposed § 1107.10(b)(3)(iii)(C) would state that if a manufacturer is uncertain whether a production test is as effective as the certification test, the manufacturer must use the certification test. For example, if the probability that all production products are compliant using the tests methods used for certification is 95 percent, the probability that all production products are compliant using alternative testing methods should be at least 95 percent. If there is uncertainty whether the test method

will achieve the same level of detection of compliance, then the specific tests required by the applicable rules should be used.

Proposed § 1107.10(b)(4) would describe the remedial action plan. Proposed § 1107.10(b)(4)(i) would state that a remedial action plan describes the steps to be taken whenever samples of a product or a component part of a product fails a test or fails to comply with an applicable rule, ban, standard, or regulation. A remedial action plan would be required to contain procedures the manufacturer must follow to investigate and address failing test results in addition to any reporting obligation it may have. Manufacturers would be required to take remedial action after any failing test result to ensure with a high degree of assurance that the products manufactured after the remedial action has been taken comply with the applicable rules, bans, standards, or regulations. The type of remedial action may differ depending upon the applicable rule, ban, standard, or regulation. Proposed § 1107.10(b)(4)(i) also would state that a remedial action can include, but is not limited to, the following:

- Changes to the manufacturing process, the equipment used to manufacture the product, the product's materials, or design;
- Reworking the product produced; or
- Other actions deemed appropriate by the manufacturer, in the exercise of due care, to assure compliant products.

Proposed § 1107.10(b)(4)(ii) would state that any remedial action that results in a material change to a product's design, parts, suppliers of parts, or manufacturing process that could affect the product's ability to comply with any applicable rules would require a new product specification for that product. Before a product covered by the new product specification can be certified as compliant with the applicable rules, bans, standards, or regulations, a manufacturer would be required to have passing certification test results for the applicable rules, bans, standards, or regulations.

Proposed § 1107.10(b)(5) would impose recordkeeping requirements to document the reasonable testing program. Documentation is necessary to establish the identity of the product, and to demonstrate that the product complies with the applicable rules, when it is certified and on a continuing basis as production progresses. Documentation supports the validity of a general conformity certificate and provides validation that a test of each product produced is not necessary.

Proposed § 1107.10(b)(5)(i)(A) through (b)(5)(i)(E) would identify the records that a manufacturer of a nonchildren's product would be required to maintain. In brief, these records would be:

- Records of the general conformity certificate for each product;
- Records of each product specification;
- Records of each certification test and, if the manufacturer elected to have a third party conformity assessment body test the product, identification of any third party conformity assessment body on whose testing the certificate depends. Records of certification tests would be required to describe how the product was certified as meeting the requirements, including how each applicable rule was evaluated, the test results, and the actual values of the tests;
- Records to demonstrate compliance with the production testing plan requirement, including a list of the applicable rules, bans, standards, or regulations, a description of the types of production tests conducted, the number of samples tested, the production interval selected for performance of each test, and the test results. Records of a production test program would be required to describe how the production tests demonstrate that the continuing production complies with the applicable rules. References to techniques in relevant quality management and control standards, such as ANSI/ISO/ASQ Q9001–2008: Quality management systems—Requirements, ANSI/ASQ Z1.4–2008: Sampling Procedures and Tables for Inspection by Attributes, and/or ANSI/ASQ Z1.9–2008: Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming, would be allowed to demonstrate that the production tests have the necessary accuracy, precision sensitivity, repeatability, and confidence to distinguish between compliant and noncompliant products. These standards are widely recognized in industry and were developed by organizations with international exposure and millions of members. Retaining test results can help identify the events that led to the creation of noncompliant products, the number of products affected, and their disposition; and
- Records of all remedial actions taken, including the specific action taken, the date the action was taken, the person who authorized the actions, and any test failure which necessitated the action. Records of remedial action would be required to relate the action taken to the product specification of the product that was the subject of that remedial action and the product specification of any new product resulting from any remedial action.

Proposed § 1107.10(b)(5)(ii) would require a manufacturer to create a new set of records for a product if a remedial action results in a new product specification.

Proposed § 1107.10(b)(5)(iii) would require a manufacturer to maintain the records specified in subpart B at the location within the United States specified in 16 CFR 1110.11(d) or, if the records are not maintained at the custodian's address, at a location within the United States specified by the custodian. The manufacturer would be required to make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

Proposed § 1107.10(b)(5)(iv) would require a manufacturer to maintain records (except for test records) for as long as the product is being produced or imported by the manufacturer plus five years. The proposal also would require test records to be maintained for five years and all records to be available in the English language. Records would be required to be maintained for five years because the statute of limitations under 28 U.S.C. 2462 allows the Commission to bring an action within that time. It would be unnecessarily burdensome to require a manufacturer to maintain records beyond the time the Commission could pursue an action.

Proposed § 1107.10(c) would state that, if any certification test results in a failure, a manufacturer cannot certify a product until the manufacturer has taken remedial action, and the product manufactured after the remedial action passes certification testing.

Proposed § 1107.10(d) would state that a manufacturer of a nonchildren's product may, but is not required to, use a third party conformity assessment body to conduct certification testing. The third party conformity assessment body would not have to be a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products.

Proposed § 1107.10(e) would state that manufacturers of children's products may voluntarily establish a reasonable testing program consistent with this subpart.

*3. Proposed Subpart C—Certification of Children's Products*

Proposed subpart C would contain the requirements pertaining to the certification of children's products. The subpart would consist of seven sections, and most sections would implement the

requirements in section 14(d)(2)(B) of the CPSA.

Some industries have developed and implemented testing and certification programs that are intended to determine compliance with specific standards. The Commission invites comments about such programs.

a. Proposed § 1107.20—General Requirements

Proposed § 1107.20(a) would require manufacturers to submit a sufficient number of samples of a children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body for testing to support certification. The proposal would not specify the exact number of samples to be tested; instead, the proposal would require that the number of samples selected provide a high degree of assurance that the tests conducted for certification purposes accurately demonstrate the ability of the children's product to meet all applicable children's product safety rules.

Proposed § 1107.20(b) would state that, if the manufacturing process for a children's product consistently creates parts that are uniform in composition and quality, a manufacturer may submit fewer samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules. If the manufacturing process for a children's product results in variability in the composition or quality of children's products, a manufacturer may need to submit more samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules. An example of a manufacturing process that consistently creates highly similar parts would be die casting. Manufacturing processes with greater inherent variability may necessitate testing of more samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules. An example of a manufacturing process with greater inherent variability would be hand assembly of the product.

Proposed § 1107.20(c) would state that, except where otherwise specified by a children's product safety rule, a manufacturer may substitute component part testing for finished product testing pursuant to 16 CFR part 1109 if the component part, without the remainder of the finished product, is sufficient to determine compliance for the finished product. For example, assume that a children's product is a cotton sweater with a metal zipper and that the manufacturer wishes to test the sweater for compliance to the lead limits in section 101 of the CPSIA. Because the Commission has determined that textiles, such as cotton, do not exceed the statutory lead limits, the manufacturer would test the metal zipper only for lead rather than the cotton in the sweater. In this example, therefore, testing the component part (the metal zipper) is sufficient to determine the finished product's compliance with the lead limit.

Proposed § 1107.20(d) would state that, if a product sample fails certification testing, even if other samples have passed the same certification test, the manufacturer must investigate the reasons for the failure and take remedial action. A manufacturer would not be allowed to certify the children's product until the manufacturer establishes, with a high degree of assurance, that the finished product does comply with all applicable children's product safety rules.

b. Proposed § 1107.21 Periodic Testing

Section 14(d)(2)(B)(i) of the CPSA requires children's products to be tested periodically for compliance with all applicable children's product safety rules. Although the statute does not require all periodic testing to be conducted by a third party conformity assessment body, the Commission proposes to require that manufacturers submit samples of their products to a third party conformity assessment body for testing to the applicable children's product safety rules at least once every two years if they have a reasonable testing program. As proposed by the Commission, not every periodic test has to be done by a third party conformity assessment body if the manufacturer has implemented four elements of a reasonable testing program as described in subpart B of this part (certification for children's products is covered by proposed § 1107.20 of this part). Depending upon the type and rigor of the production testing done by a manufacturer, and the manufacturer's ability to do in-house compliance testing of the product or component part to the applicable children's product safety rule(s), production testing may serve as the non-third party periodic compliance testing. The Commission recognizes that some compliance testing may be too complex for a manufacturer to undertake in-house. In that case, the manufacturer may elect to have the product or a component part tested by a third party which may or may not be a third party conformity assessment body, depending upon whether the test satisfies the schedule for periodic testing described above. Other circumstances may arise during production of the product that may require consideration of additional testing by a third party conformity assessment body. The factors described in proposed § 1107.21(c)(2) may provide some guidance in those circumstances.

Proposed § 1107.21(a) would implement the periodic testing requirement in section 14(d)(2)(B)(i) of the CPSA by requiring each manufacturer to conduct periodic testing at least annually, except as otherwise provided in paragraphs (b) and (d) of this section (which we discuss later in this part of the preamble) or as provided in regulations under this title. Manufacturers may need to conduct periodic tests more frequently than on an annual basis to ensure a high degree of assurance that the product being tested complies with all applicable children's product safety rules. More frequent periodic testing may help a manufacturer identify noncompliant products more quickly and, as a result, may limit the scope of any potential product recall. In addition, more frequent testing may reduce the manufacturer's liability for civil penalties resulting from a noncompliant product, reduce potential damage to a manufacturer's reputation, and increase the manufacturer's confidence in the effectiveness of the periodic testing.

Proposed § 1107.21(b) would state that, if a manufacturer has implemented a reasonable testing program as described in subpart B of this part (with the exception of the certification element which, for children's products, would be required to comply with the requirements in proposed § 1107.20), it would be required to submit samples of its product to a third party conformity assessment body for periodic testing to all applicable children's product safety rules at least once every two years. If a manufacturer's reasonable testing program fails to provide a high degree of assurance of compliance with all applicable children's product safety rules, the Commission may require the manufacturer to meet the requirements of proposed § 1107.21(c) or modify its reasonable testing program to ensure a high degree of assurance. Currently, the rule on children's bicycle helmets is the only children's product safety rule that contains requirements for a reasonable testing program. The reasonable testing program requirements in this rule are not intended to replace that preexisting testing requirement. For existing rules that contain testing requirements and do not contain specific testing programs, the reasonable testing program and the

two year minimum third party conformity assessment testing requirement establishes the minimum set of requirements for periodic testing. As the Commission promulgates new or revised children's product safety rules, it may establish different testing requirements for those children's products than the requirements described in this proposed rule.

Proposed § 1107.21(c) would state that, if a manufacturer has not implemented a reasonable testing program as described in subpart B of this part, then all periodic testing would be required to be conducted by a third party conformity assessment body, and the manufacturer would be required to conduct periodic testing described in proposed § 1107.21(c)(1) and (c)(2). In brief, proposed § 1107.21(c)(1) would require the manufacturer to develop a periodic test plan to assure that children's products manufactured after the issuance of a children's product certification, or when the previous periodic testing was conducted, continue to comply with all applicable children's product safety rules. The periodic test plan would have to include the tests to be conducted, the intervals at which the tests will be conducted, the number of samples tested, and the basis for determining that the periodic testing plan provides a high degree of assurance that the product being tested continues to comply with all applicable children's product safety rules. The proposal would require the manufacturer to have a separate periodic testing plan for each manufacturing site producing a children's product.

Proposed § 1107.21(c)(2) would require the periodic testing interval selected to be short enough to ensure that, if the samples selected for periodic testing pass the test, there is a high degree of assurance that the other untested children's products manufactured during the interval comply with the applicable children's product safety rules. The interval for periodic testing may vary depending upon the specific children's product safety rules that apply to the children's product. For example, the intervals selected to test for small parts where there is variability in the factors assuring that no small parts are created, and for lead in paint, where one tested container is used for a large production volume, may not be the same. Assuring that products do not generate small parts may require more frequent testing than that required to assure that the paint used does not contain lead in excess of the acceptable limits. The appropriate periodic testing interval may vary for a manufacturer depending on the manufacturer's knowledge of the product and its manufacturing processes. Under proposed § 1107.21(c)(2)(i) through (c)(2)(ix), factors to be considered when determining the periodic testing interval would include, but not be limited to:

- High variability in test results, as indicated by a relatively large sample standard deviation in quantitative tests;
- Measurements that are close to the allowable numerical limit for quantitative tests;
- Known manufacturing process factors which could affect compliance with a rule. For example, if the manufacturer knows that a casting die wears down as the die nears the end of its useful life, the manufacturer may wish to test more often as the casting die wears down;
- Consumer complaints or warranty claims;
- Nonmaterial changes such as introduction of a new set of component parts into the assembly process, or the manufacture of a fixed number of products;
- Potential for serious injury or death resulting from a noncompliant children's product;
- The number of children's products produced annually, such that a manufacturer should consider testing a children's product more frequently if the product is produced in very large numbers or distributed widely throughout the United States;
- The children's product's similarity to other children's products with which the manufacturer is familiar and/or whether the children's product has many different component parts compared to other children's products of a similar type; and
- The inability to determine the children's product's noncompliance easily through means such as visual inspection.

Proposed § 1107.21(d) would pertain to the periodic testing frequency for low-volume manufacturers. In brief, the proposal would not require a manufacturer to conduct periodic testing unless it has produced or imported more than 10,000 units of a particular product. (See Appendix A of the Memorandum *Requirements for Certification and Continued Testing of Children's Products, Established by the Consumer Product Safety Improvement Act of 2008* from Randy Butturini, Office of Hazard Identification and Reduction, for Commission staff's rationale for selecting the 10,000 number). The proposed rule would not require periodic testing at every 10,000 units manufactured; instead, once that threshold has been reached, the manufacturer would be subject to the periodic testing requirements of proposed § 1107.21(a), and (b) or (c). The manufacturer is responsible for deciding how often such periodic testing will occur. In other words, assume that a manufacturer produces 9,000 units of product X. Under the proposal, the manufacturer would not have to engage in periodic testing unless it produces 10,000 units of product X; at that time, the manufacturer would be required to conduct periodic testing on an annual basis (under proposed § 1107.21(a)) and it would be required to comply with the requirements of proposed § 1107.21(b) or § 1107.21 (c) (depending on whether the manufacturer has implemented a reasonable testing program under subpart B). The proposal would not require the manufacturer to engage in periodic testing every time it produces 10,000 units of product X.

The low-volume exception would apply both to manufacturers and importers who produce or import a specific product at a low volume (10,000 units under the proposed rule). In other words, proposed § 1107.21(d) would focus on the volume of a specific product rather than attempt to distinguish between "large" and "small" manufacturers. Thus, an individual who hand carves 30 products would fall within proposed § 1107.21(d), as would a multinational corporation who makes 9,000 units of a particular product.

c. Proposed § 1107.22—Random Samples

Proposed § 1107.22 would implement the testing of random samples requirement in section 14(d)(2)(B)(ii) of the CPSA by requiring each manufacturer of a children's product to select samples for periodic testing by using a process that assigns each sample in the production population an equal probability of being selected. We recognize that there are alternative approaches for deciding whether something represents a "random" sample. One alternative approach would be to say that a random sample is a sample not intentionally identified beforehand for testing. Another possible approach would be to require only that a random sample adequately represent the production sample pool from which it was chosen. The Commission chose neither alternative because the purpose of random sampling is to establish a basis for inferring compliance about a population of untested products from a set of tested products. If the products selected for testing are not randomly selected, there is no statistical basis for inferring the compliance of the untested

products. Manufacturers may select additional samples based on the manufacturer's knowledge of the product and its production to provide greater assurance of compliance. For example, if a manufacturer knows its control over compliance degrades with continuing production, the manufacturer may always test the last unit produced. Proposed § 1107.22 would state that the production population is the number of products manufactured or imported after the initial certification or last periodic testing of a children's product. Proposed § 1107.22 would allow a manufacturer to use a procedure that randomly selects items from a list to determine which samples are the random samples for testing before production begins. For example, if the planned production quantity in a period is 50,000, and 12 random samples are to be selected for periodic testing, before the products are manufactured, a random process would have to identify which 12 of the 50,000 will be selected for periodic testing. Manufacturers that produce products that continue to be distributed in commerce as they are manufactured may wish to test the random samples as they are selected to minimize the potential quantity of noncompliant products if a test has failing test results.

Proposed § 1107.22 would allow manufacturers to select samples for testing as they are manufactured. Proposed § 1107.22 would allow manufacturers who produce children's products that continue to be distributed in commerce as they are manufactured to test the samples as they become available instead of waiting until all the random samples have been selected before conducting testing.

d. Proposed § 1107.23—Material Change

Proposed § 1107.23 would implement the requirement in section 14(d)(2)(B)(i) of the CPSA to test a children's product when a material change has occurred. Proposed § 1107.23(a) would state that if a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts, that a manufacturer exercising due care knows or should know that such material change could affect the product's ability to comply with the applicable children's product safety rules, the manufacturer must submit a sufficient number of samples of the materially changed product for testing by a third party conformity assessment body. Such testing would be required before a manufacturer could certify the children's product. The extent of such testing would depend on the nature of the material change. Proposed § 1107.23(a) would state that, when a material change is limited to a component part of the finished children's product and does not affect the ability of the children's product to meet other applicable children's product safety rules, a manufacturer may issue a children's product certificate based on the earlier third party certification tests and on test results of the changed component part conducted by a third party conformity assessment body. For example, if the paint is changed on a children's product, issuance of a children's product certificate may be based on previous product testing and on tests of the new paint for compliance to lead, heavy metal, and phthalate concentrations.

Proposed § 1107.23(a) also would state that changes that cause a children's product safety rule to no longer apply to a children's product are not considered to be material changes. For example, assume that a children's product consists of a cotton sweater with metal buttons and that the children's product would be subject to the lead limits in section 101 of the CPSIA. If the manufacturer decided to use wooden buttons instead of metal buttons, the use of wooden buttons would eliminate the need to test the product for lead, and the change to wooden buttons, while arguably a change in the product's component parts, would not be a "material change" under proposed § 1107.23(a) for the purposes of complying with the lead content limits. However, for other children's product safety rules, such as small parts, the change may be a material change.

Proposed § 1107.23(a) also would require a manufacturer to exercise due care to ensure that reliance on anything other than retesting of the finished product after a material change would not allow a noncompliant children's product to be distributed in commerce. A manufacturer should resolve any doubts in favor of retesting the finished product for certification. Additionally, a manufacturer would be required to exercise due care to ensure that any component part undergoing component-part-level testing is the same as the component part on the finished children's product in all material respects.

Proposed § 1107.23(b) would state that, for purposes of proposed subpart B, the term "product design" includes all component parts, their composition, and their interaction and functionality when assembled. To determine which children's product safety rules apply to a children's product, a manufacturer should examine the product design for the children's product as received by the consumer. For example, if a children's product has a component part that contains lead or has a sharp edge, but is inaccessible when the product is assembled, then the lead and sharp edge requirements would not be applicable to the finished product. Changes to a product's design may result in a product being subject to additional children's product safety rules. For example, if a wooden button on a children's product is replaced with a plastic button, the wooden button previously excluded from testing for lead content has been replaced with a component part that would be subject to testing for compliance with the lead content requirements.

Proposed § 1107.23(c) would state that a material change in the manufacturing process is a change in how the children's product is made that could affect the finished children's product's ability to comply with the applicable children's product safety rules. For each change in the manufacturing process, a manufacturer should exercise due care to determine if compliance to an existing applicable children's product safety rule could be affected or if the change results in a newly-applicable children's product safety rule. The following are some examples of a material change to the manufacturing process of a children's product:

- A new technique is used to fasten buttons to a doll's dress which could affect the children's products ability to comply with the small parts rule;
- New solvents are used to clean equipment employed in the manufacture of children's products; the new solvents could affect the children's products ability to comply with the lead content and phthalates requirements; and
- A new mold for an accessible metal component part of a children's product is introduced into the assembly line which could affect the children's products ability to comply with requirements for sharp edges.

Proposed § 1107.23(d) would state that a material change in the sourcing of component parts results when the replacement of one component part of a children's product with another component part could affect compliance with the applicable children's product safety rules. This would include, but is not limited to, changes in component part composition, component part supplier, or the use of a different component part from the same supplier who provided the initial component part.

e. Proposed § 1107.24—Undue Influence

Proposed § 1107.24(a) would implement the requirement to safeguard against undue influence, pursuant to section 14(d)(2)(B)(iv) of the CPSA, by requiring each manufacturer to establish procedures to safeguard against the exercise of undue influence by a manufacturer on a third party conformity assessment body.

Proposed § 1107.24(b)(1) would require the procedures established under proposed § 1107.24(a) to include, at a minimum:

- Safeguards to prevent attempts by the manufacturer to exercise undue influence on a third party conformity assessment body, including a written policy statement from company officials that the exercise of undue influence is not acceptable, and directing that appropriate staff receive annual training on avoiding undue influence, and sign a statement attesting to participation in such training;
- A requirement to notify the Commission immediately of any attempt by the manufacturer to hide or exert undue influence over test results; and
- A requirement to inform employees that allegations of undue influence may be reported confidentially to the Commission and to describe the manner in which such a report can be made.

f. Proposed § 1107.25—Remedial Action

Proposed § 1107.25(a) would require each manufacturer of a children's product to have a remedial action plan that contains procedures the manufacturer must follow to investigate and address failing test results. A manufacturer would be required to take remedial action after any failing test result to ensure, with a high degree of assurance, that the children's products manufactured after the remedial action has been taken comply with all applicable children's product safety rules.

Proposed § 1107.25(b) would not permit a manufacturer to certify a product if any certification test by a third party conformity assessment body results in a failure, until the manufacturer has taken remedial action and the product manufactured after the remedial action passes certification testing.

Proposed § 1107.25(c) would require a manufacturer whose children's product has received a failing test result to take remedial action to ensure, with a high degree of assurance, that the children's product complies with all applicable children's product safety rules. The proposal would state that remedial action can include, but is not limited to, redesign, changes in the manufacturing process, or changes in component part sourcing. For existing production, remedial action may include rework, repair, or scrap of the children's product. If a remedial action results in a material change, the proposed rule would require a manufacturer to have a third party conformity assessment body retest the redesigned or remanufactured product before the manufacturer can certify the product.

g. Proposed § 1107.26—Recordkeeping

Proposed § 1107.26(a) would require a children's product manufacturer subject to an applicable children's product safety rule to maintain the following records:

- Records of the children's product certificate for each product. The children's product covered by the certificate must be clearly identifiable and distinguishable from other products;
- Records of each third party certification test. The manufacturer must have separate certification tests records for each manufacturing site;
- Records of the periodic test plan and periodic test results for a children's product;
- Records of descriptions of all material changes in product design, manufacturing process, and sourcing of component parts, and the certification tests run and the test values;
- Records of the undue influence procedures, including training materials and training records of all employees trained on these procedures; and
- Records of all remedial actions taken following a failing test result, including the rule that was tested, the specific remedial action taken, the date the action was taken, the person who authorized the action, any test failure which necessitated the action, and the results from certification tests showing compliance after the remedial action was taken.

Proposed § 1107.26(b) would require a manufacturer to maintain the records specified in subpart C at the location within the United States specified in 16 CFR 1110.11(d) or, if the records are not maintained at the custodian's address, at a location within the United States specified by the custodian. The manufacturer would be required to make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

Proposed § 1107.26(c) would require a manufacturer to maintain records (except for test records) for as long as the product is in production or imported by the manufacturer plus 5 years. Test records would be required to be maintained for 5 years. All records would be required to be available in the English language.

*4. Proposed Subpart D—Consumer Product Labeling Program*

a. Introduction

Proposed subpart D, consisting of one section, would implement the label provision at section 14(d)(2)(A) of the CPSA. Section 14(d)(2)(A) of the CPSA requires the Commission to initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements in section 14(a) of the CPSA.

b. Proposed § 1107.40 Labeling Consumer Products To Indicate That the Certification Requirements of Section 14 of the CPSA Have Been Met

Proposed § 1107.40(a) would allow manufacturers and private labelers of a consumer product to indicate, by a uniform label on or provided with the product, that the product complies with any consumer product safety rule under the CPSA, or with any similar rule, ban, standard or regulation under any other act enforced by the CPSC.

Proposed § 1107.40(b) would require the label to be printed in bold typeface, using an Arial font of not less than 12 points, be visible and legible, and state "**Meets CPSC Safety Requirements**".

The Commission considered whether a shorter label statement would adequately convey the intended message and concluded that it would not. Acronyms such as "CPSIA" or "CPSA" were considered. However, the Commission concluded that the meaning of the acronym might not be known to a sufficient number of people. Further, even those persons who might know what the acronyms stood for would not necessarily know why it was marked on the label or product. The acronym "CPSC" might be more widely recognized, but viewers still may not know why it is present. Further, the Commission does not want the presence of a "CPSC" marking on a label, package, or product to give the impression that the CPSC has tested, approved, or endorsed the product.

The Commission also considered the statement "Meets CPSC Requirements," but this statement did not seem very informative for persons who did not recognize the term "CPSC." Inserting the word "safety" to form the statement "Meets CPSC Safety Requirements" would convey the message that the product met some safety requirements, even to those persons who are not familiar with CPSC. Giving the full

name of the CPSC would make the statement too long to be practical in some cases, and the length could discourage viewers from reading the message. Therefore, the proposal would have the statement say "Meets CPSC Safety Requirements" to indicate that the product has been certified by the manufacturer or private labeler as complying with all applicable safety requirements enforced by CPSC.

Proposed § 1107.40(c) would allow a consumer product to bear the label if the manufacturer or private labeler has certified, pursuant to section 14 of the CPSA, that the consumer product complies with all applicable consumer product safety rules under the CPSA and with all rules, bans, standards, or regulations applicable to the product under any other act enforced by the Consumer Product Safety Commission.

Proposed § 1107.40(d) would allow a manufacturer or private labeler to use another label on the consumer product as long as such label does not alter or mislead consumers as to the meaning of the label described in proposed § 1107.40(b). A manufacturer or private labeler would not be allowed to imply that the CPSC has tested, approved, or endorsed the product.

**D. Regulatory Flexibility Act**

*1. Introduction*

The Commission has examined the impact of the proposed rule under the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Commission has conducted an initial regulatory flexibility analysis of the proposed rule regarding the potential impact on small entities.

*2. Objectives and Legal Basis for Proposed Rule*

The Commission is proposing this rule to implement sections 14(a) and 14(d)(2)(A) and (B) of the CPSA, as amended by the CPSIA. The objective of the rule is to reduce the risk of injury from consumer products, especially from products intended for children aged 12 years and younger. The rule will accomplish this objective by requiring that manufacturers of nonchildren's products that are subject to consumer product safety rules develop and maintain a reasonable testing program that provides a high degree of assurance that their products conform to all the applicable safety standards. For children's products, an additional layer of protection is provided by requiring that certain testing be performed by a third party conformity assessment body. The proposed testing programs should allow manufacturers to discover noncompliant products and take the necessary corrective actions to keep noncompliant products from entering commerce or to remove them expeditiously if they have been introduced into commerce.

*3. Number of Small Firms Impacted*

The number of firms that could be impacted was estimated by reviewing every category in the North American Industrial Classification System (NAICS) and selecting those firms that manufacture or sell any consumer product that could be covered by a consumer product safety rule. These firms include any establishment that could manufacture or sell a nonchildren's product or children's products. Firms are classified by an NAICS code that describes their primary activity. Therefore, firms that might manufacture or import consumer products covered by a consumer product safety rule as a secondary or tertiary activity might not have been counted. There is no separate NAICS category for importers. Firms that import product might be classified as manufacturers, wholesalers, or retailers.

a. Manufacturers

According to the criteria established by the Small Business Administration (SBA), manufacturers are generally considered to be small entities if they have fewer than 500 employees. Table 2 shows the number of manufacturers that are classified by the NAICS categories that cover most children's and general use products that are subject to a consumer product safety rule. Although there are more than 36,000 manufacturers that would be considered small in these categories, not all of these firms are engaged in manufacturing children's products or general use products that are subject to a consumer product safety rule. It would be expected that most of the firms engaged in *Doll, Toy, and Game* manufacturing produce some products that are intended for children age 12 and younger. On the other hand, *All Other Miscellaneous Chemical Product and Preparation Manufacturing* includes some products such as matchbooks and fireworks, subject to consumer product safety rules but also includes products, such as distilled water and hydraulic fluids, that are not subject to consumer product safety rules. *All Other Miscellaneous Electrical Equipment and Component Manufacturing* includes consumer products such as garage door openers as well as non consumer products such as particle accelerators. The *Surgical Appliance and Supplies Manufacturing* category includes bicycle helmets, but most of the other products in this category are not under CPSC jurisdiction.

TABLE 2—MANUFACTURERS

| NAICS code | Description | Small firms | Total firms |
|---|---|---|---|
| 31411 | Carpet and Rug Mills | 261 | 284 |
| 31519 | Other Apparel Knitting Mills (Outerwear, Underwear, and Sleepwear) | 235 | 246 |
| 3152 | Cut and Sew Apparel Manufacturing | 9,313 | 9,388 |
| 3159 | Apparel Accessories and Other Apparel Manufacturing | 907 | 920 |
| 316211 | Rubber and Plastic Footwear Manufacturing | 52 | 56 |
| 316212 | House Slipper Manufacturing | 2 | 2 |
| 316219 | Other Footwear Manufacturing | 68 | 69 |
| 321911 | Wood Window and Door Manufacturing | 1,241 | 1,297 |
| 32551 | Paint and Coating Manufacturing | 1,042 | 1,093 |
| 325998 | All Other Misc. Chemical Product and Preparation Manufacturing | 957 | 1,045 |
| 326191 | Plastics Plumbing Fixture Manufacturing | 465 | 488 |
| 326299 | All Other Rubber Product Manufacturing | 633 | 681 |
| 332321 | Metal Window and Door Manufacturing | 1,071 | 1,138 |
| 332998 | Enameled Iron and Metal Sanitary Ware Manufacturing | 60 | 72 |
| 333112 | Lawn and Garden Tractor and Home Lawn and Garden Equip. Mfg. | 117 | 134 |
| 33422 | Radio, Television Broadcasting and Wireless Comm. Equip. Mfg. | 811 | 894 |
| 335222 | Household Refrigerator and Home Freezer Manufacturing | 12 | 18 |

TABLE 2—MANUFACTURERS—Continued

| NAICS code | Description | Small firms | Total firms |
|---|---|---|---|
| 335999 | All Other Misc. Electrical Equipment and Component Mfg. | 737 | 791 |
| 336991 | Motorcycle, Bicycle, and Parts Manufacturing | 456 | 466 |
| 33712 | Household and Institutional Furniture Manufacturing | 6,052 | 6,179 |
| 33791 | Mattress Manufacturing | 448 | 462 |
| 339113 | Surgical Appliance and Supplies Manufacturing | 1,601 | 1,691 |
| 33991 | Jewelry and Silverware Manufacturing | 2,737 | 2,752 |
| 33992 | Sporting and Athletic Goods Manufacturing | 1,886 | 1,930 |
| 33993 | Doll, Toy and Game Manufacturing | 763 | 776 |
| 339999 | All Other Miscellaneous Manufacturing | 4,440 | 4,499 |
| Total Manufacturers | | 36,367 | 37,371 |

Source: U.S. Census Bureau, 2006 County Business Patterns.

b. Wholesalers

Wholesalers would be impacted by the proposed rule if they import any children's products or general use products that are subject to a consumer product safety rule. Wholesalers that obtain their products strictly from domestic manufacturers or from other wholesalers would not be impacted by the proposed rule since the manufacturer would be responsible for testing and certifying the product. Table 3 shows the number of wholesalers by NAICS code that would cover most children's products and general use products that are subject to a consumer product safety rule. According to the SBA criteria, wholesalers are generally considered to be small entities if they have fewer than 100 employees. Although there are more than 77,000 wholesalers that would be considered small in these categories, not all of these firms are engaged in importing children's or general use products that are subject to a consumer product safety rule. A significant proportion of the firms classified as *Toy and Hobby Goods and Supplies Merchant Wholesalers* probably import at least some children's products. However, the only firms classified as *Motor Vehicle and Motor Vehicle Parts and Suppliers* would be those that import all terrain vehicles or other off-road vehicles, especially those intended for children age 12 years and younger.

TABLE 3—WHOLESALERS

| NAICS Code | Description | Small firms | Total firms |
|---|---|---|---|
| 4231 | Motor Vehicle and Motor Vehicle Parts and Suppliers | 16,947 | 17,858 |
| 4232 | Furniture and Home Furnishing Merchant Wholesalers | 10,534 | 10,981 |
| 42362 | Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers | 2,147 | 2,269 |
| 42391 | Sporting and Recreational Goods and Supplies Merchant Wholesalers | 4,397 | 4,552 |
| 42392 | Toy and Hobby Goods and Supplies Merchant Wholesalers | 2,170 | 2,248 |
| 42394 | Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers | 7,735 | 7,815 |
| 42399 | Other Miscellaneous Durable Goods Merchant Wholesalers | 10,146 | 10,367 |
| 42432 | Men's and Boy's Clothing and Furnishings Merchant Wholesalers | 3,235 | 3,393 |
| 42433 | Women's, Children's, and Infant's Clothing, and Accessories Merchant Wholesalers | 5,965 | 6,186 |
| 42434 | Footwear Merchant Wholesalers | 1,434 | 1,493 |
| 42499 | Other Miscellaneous Nondurable Goods Merchant Wholesalers | 12,497 | 12,753 |
| Total | | 77,207 | 79,915 |

Source: U.S. Census Bureau, 2006 County Business Patterns.

c. Retailers

Retailers that obtain all of their products from domestic manufacturers or wholesalers will not be directly impacted by the proposed rule, since the direct impact of the proposed rule would be experienced by the manufacturer. However, there are some retailers that manufacture or directly import some products and, therefore, would be responsible for ensuring that these products are subjected to testing by third party conformity assessment bodies. The number of such retailers is not known. Table 4 shows the number of retailers by NAICS code that would cover most children's products. According to the SBA criteria, retailers are generally considered to be small entities if their annual sales are less than $7 million ($27 million in the case of *general merchandise stores*). Because of the way in which the data were reported, Table 4 shows the total number of firms in each of the categories that operated all year and the number with sales of less than $5 million ($25 million in the case of *general merchandise stores*). Although there are more than 125,000 that would be considered to be small businesses in these categories, it is not known how many of these firms are engaged in importing or manufacturing children's or general use products that are subject to a consumer product safety rule. Many of these firms probably obtain all of their products from domestic wholesalers or manufacturers and would not be directly impacted by the rule.

TABLE 4—RETAILERS

| NAICS Code | Description | Small firms | Total firms |
|---|---|---|---|
| 441221 | Motorcycle, ATV, and Personal Watercraft Dealers | 3,969 | 4,001 |
| 4421 | Furniture Stores | 16,282 | 17,542 |
| 44813 | Children's and Infant's Clothing Stores | 2,146 | 2,200 |
| 44814 | Family Clothing Stores | 5,998 | 6,240 |
| 4482103 | Children's & juveniles' shoe stores | 300 | 305 |
| 4483 | Jewelry, luggage, & leather goods stores | 16,341 | 16,778 |
| 45111 | Sporting goods stores | 14,451 | 14,831 |
| 45112 | Hobby, toy, & game stores | 4,832 | 4,903 |
| 452 | General Merchandise Stores | 7,387 | 7,494 |
| 45322 | Gift, Novelty, and Souvenir Store | 21,412 | 21,637 |
| 453998 | All Other Misc. Store Retailers (except Tobacco Stores) | 11,934 | 12,228 |
| 4542 | Vending machine operators | 4,081 | 4,278 |
| 45439 | Other direct selling establishments | 15,938 | 16,431 |
| Total | | 125,071 | 128,868 |

Source: U.S. Census Bureau, 2002 Economic Census, Release date 11/25/2005.

*4. The Potential Effects of the Proposed Rule*

a. Reasonable Testing Program

The proposed rule would require any manufacturer of a nonchildren's product to establish a reasonable testing program for the product unless they test every product. Most manufacturers probably have some quality control programs in place that are intended to demonstrate that the products as manufactured meet the manufacturer's specifications, including their specifications for complying with any safety regulations. In some cases, these programs would meet the requirements of the reasonable testing program as described in the proposed rule. Other manufacturers may have to modify their current programs to ensure that they meet the requirements of the proposed rule. For example, some manufacturers might have to modify their programs to ensure that the testing program adequately covers all consumer product safety rules that are applicable to their products. Some manufacturers might have to increase their testing frequency. Some manufacturers might have some informal testing programs that would have to be formalized and better documented. There may also be some manufacturers that do not have a program in place. These firms will have to develop reasonable testing programs.

Compliance with the proposed rule would require a variety of professional skills on the part of manufacturers. Lawyers may be required to review CPSC regulations in order to determine which regulations are applicable to a product. Depending upon the specific product and the safety rules that are applicable to it, people with knowledge of subjects such as engineering and chemistry may be required to develop the product specifications, conduct the certification tests, and to design a program for production testing. Statistical skills or statistical consultants may be required to determine the frequency, sample size, and collection method for production testing. For some production tests, professionals such as engineers or chemists might be required, depending upon the consumer product safety rules applicable to the product. In some cases, the production tests could be carried out by the firm's production workers or technicians, perhaps working under the supervision of an engineer, chemist, or similar professional. When the manufacturer does not have the internal capability to perform some of the required production testing, the testing may need to be performed by a third party testing assessment body.

The cost to firms of complying with this provision of the proposed rule would depend upon the extent of the changes that firms will have to make to their existing testing programs. For firms that already have testing programs that would meet the requirements of the proposed rule, there could be no additional costs. For other firms, the cost of complying with the requirements of the proposed rule will depend upon several factors, including the characteristics of their products and the steps that the firm will have to take to comply with the requirements. Because of the wide variety of products and manufacturers that would be covered by the proposed rule and because the characteristics of each product and the circumstances of each firm are different, the Commission cannot reliably estimate the cost to manufacturers of the reasonable testing program requirement of the proposed rule. The Commission invites comments that provide more information on the cost and other impacts of this requirement on manufacturers.

b. Third Party Testing of Children's Products

The proposed rule would establish requirements for the continued testing of children's products by third party conformity assessment bodies for certification, periodically, and when there has been a material change in the products design or manufacturing process, including the sourcing of component parts.

Manufacturers will have to develop and maintain records that demonstrate compliance with the third party testing requirements. The Commission welcomes comment on these requirements, including comments on the possible burden that these recordkeeping requirements might impose.

It is expected that the cost of the third party testing requirements could have a significant impact on a substantial number of small entities. The cost of third party testing is influenced by many factors, including the amount and skill of the labor required to conduct the tests, the cost of the equipment involved, the cost of transporting the product samples to the test facility, and the geographic area where the tests are conducted. Some tests require a substantial amount of time to conduct including the preparation of the sample. It might take a couple of days, for example, to test a bicycle for compliance with the bicycle standard (16 CFR part 1512). Similarly, a chemist testing the lead content of a product might be able to test only a few component parts a day due to the amount of time required to prepare the samples and to clean and calibrate the equipment between tests.

It should be noted that the price that a given manufacturer pays for testing is often the result of negotiations between the testing laboratory and the

manufacturer. Manufacturers that do a large volume of business with a testing laboratory can frequently obtain substantial discounts on the laboratory's normal charges, whereas manufacturers that do only a small volume of business may not.

Some information on the cost of third party testing for some of the applicable tests is provided below. The information was collected from a number of sources, including published price lists from some testing laboratories, conversations with representatives of testing laboratories, and actual invoices provided by consumer product manufacturers. The data are not based upon a statistically valid survey of testing laboratories. Additionally, the costs are only the costs that would be charged by the testing laboratory and do not include the costs of the products consumed in destructive tests or the cost of shipping the samples to the laboratories.

i. Costs Associated With Various Third Party Tests

*Lead Content and Lead-in-Paint:* The cost per component part for testing for lead content and lead-in-paint using inductively coupled plasma (ICP) analysis will range from a low of about $20 per test to more than $100 per test. The lowest per unit cost represents a substantially discounted price charged to a particular customer by a laboratory in China and might not be typical. Within the United States, typical prices range from around $50 to more than $100 per test.

The cost of testing for lead content using XRF technology is significantly less expensive. Some firms have offered to screen products for lead content for as little as $2 per test. These offers were generally directed to stores or businesses that wanted to check their inventory for conformity with the retroactive lead content requirements that were contained in the CPSIA. Some testing laboratories will charge for XRF testing at an hourly rate, which can be around $100. Ten to 30 components parts can be tested in an hour. However, with the exception of some plastics, XRF is not acceptable for all certification purposes.

*Phthalates:* The cost of testing for phthalate content will range from around $100 (a discounted price by a laboratory in China) to about $350. These are the costs per component part and include testing for all six of the prohibited phthalates specified in the CPSIA.

*Bicycle Standard:* According to one testing laboratory, it takes 1 to 2 days to test a bicycle. The estimated price for testing one bicycle may range from around $700, if the testing is performed in China, to around $1,100 if the testing is performed in the United States. A manufacturer that needs several models of bicycle tested at the same time might be able to obtain discounts from these prices. However, this does not include the testing of component parts for lead and phthalates, which would add to the costs of bicycle testing.

*Bicycle Helmets:* One laboratory quoted a price of $600 for testing one model of a bicycle helmet to the CPSC bicycle helmet standard. A price list from another laboratory stated that conducting the certification testing to the Snell Foundation's bicycle helmet standard (which is similar to the CPSC standard, but considered by some to be more stringent) was $830.

*Full-Size Cribs:* As with bicycles, testing cribs requires a substantial amount of labor time to assemble the crib, take the appropriate measurements and perform the required tests. The cost of testing a full-size crib will be around $1,200 in the United States. The cost can vary depending on the features of the individual cribs that require testing and between laboratories. Some manufacturers might receive discounted prices. This does not include testing the crib for lead and phthalates, which, to the extent necessary, would add to the cost of testing a crib to all applicable safety rules.

*Toys:* The ASTM F963 toy standard was made a mandatory standard by the CPSIA. The standard includes a wide variety of tests, including tests for soluble heavy metals in surface coatings and for various physical and mechanical criteria. Based on the itemized prices on several invoices from testing laboratories that have been provided to CPSC staff or otherwise made public, the cost of the physical and mechanical tests range from about $50 to $245. The cost of the chemical test for the presence of heavy metals ranges from about $60 to $190 per surface coating. Again, these costs do not include testing for lead and phthalates, which add to the total cost.

The flammability requirements of ASTM F963 were not made mandatory by the CPSIA, but the Commission was directed to examine the flammability requirements and consider promulgating rules addressing the issue. If some flammability tests are eventually required, the cost per test could be in the range of $20 to $50 based on some observed costs for the ASTM F963 flammability tests.

ii. Cost of Third Party Testing by Product

The cost to obtain the required third party testing for a product depends on the types and number of tests that must be performed on each product, the size of the sample that is required to provide a high degree of assurance that the products comply with the applicable safety rules, and the extent to which component part testing can be used. Because of the wide variety of manufacturers, and importers, and products that would be affected by the proposed rule, we cannot provide comprehensive estimates of the impact of the proposed rule on all products or firms. The discussion immediately below is intended to provide some perspective on the potential impact. The Commission invites additional public comments on the discussion and more specific information on the impact and cost of the third party testing requirements of the proposed rule.

The third party testing costs discussed in this section apply to the costs associated with either the periodic testing requirement or the requirement that additional third party testing be conducted if there is a material change in the product's design or manufacturing process. However, in the latter case, the testing might be limited to those rules where compliance might have been impacted by the change.

*Number of units for testing:* The proposed rule would require the manufacturer to submit enough units to the conformity assessment body to provide a high degree of assurance that the products comply with the applicable consumer product safety rules. The exact number will depend upon the characteristics of the product, the lot size, whether the tests produce quantitative or qualitative data, whether the product has an established reasonable testing program, and the interpretation of a high degree of assurance. A discussion of the statistical aspects of designing a sampling plan was presented by Dr. Michael Greene of the CPSC staff at the Product Testing Workshop on December 10, 2009.

Quantitative testing data is data where the relevant variable can be measured with some degree of precision. For example, the lead content of a substance can be measured in terms of parts per million (ppm). Qualitative data is where the outcome of a test is simply a "pass" or "fail." For example, in a drop test the result might simply be whether a sharp edge was exposed (a "fail") or a sharp edge was not exposed (a "pass"). When the data is qualitative, the sample size

will usually have to be larger than when the data is quantitative.

For example, as of August 14, 2011 the lead content of children's products must be no greater than 100 ppm unless the Commission determines that a limit of 100 ppm is not technologically feasible for a product or product category. If, for illustrative purposes, a high degree of assurance means at least a 95 percent probability that all products are in compliance and a manufacturer is testing a component part for lead content, then the manufacturer could determine the appropriate sample size if it knew the mean lead content of the component part, the standard deviation about the mean, and the size of the lot that was to be tested. Table 5 shows the sample sizes that would be required to provide a high degree of assurance for different lot sizes by mean and standard deviation (assuming a normal distribution). Larger sample sizes would be required for products with higher means, larger standard deviations, and larger lot sizes. Smaller sample sizes would be required for products with lower means, standard deviations and lot sizes.

TABLE 5—SAMPLE SIZES REQUIRED TO PROVIDE AT LEAST 95 PERCENT PROBABILITY THAT THE LOT IS COMPLIANT (GIVEN THE AVAILABILITY OF QUANTITATIVE TEST DATA)

| Mean (ppm) | Standard deviation (ppm) | Lot size (units) | Sample size (units) | Probability that the lot is compliant |
|---|---|---|---|---|
| 10 | 1 | 1,000 | 4 | .998 |
| 10 | 1 | 2,500 | 4 | .995 |
| 10 | 1 | 10,000 | 4 | .992 |
| 10 | 1 | 25,000 | 5 | .978 |
| 10 | 1 | 50,000 | 5 | .957 |
| 15 | 3 | 1,000 | 5 | .993 |
| 15 | 3 | 2,500 | 5 | .983 |
| 15 | 3 | 10,000 | 6 | .992 |
| 15 | 3 | 25,000 | 6 | .981 |
| 15 | 3 | 50,000 | 6 | .962 |
| 35 | 5 | 1,000 | 6 | .965 |
| 35 | 5 | 2,500 | 7 | .976 |
| 35 | 5 | 10,000 | 8 | .972 |
| 35 | 5 | 25,000 | 9 | .978 |
| 35 | 5 | 50,000 | 9 | .957 |

Where only qualitative (*e.g.,* pass/fail) testing data is available, the sample sizes needed to provide a high degree of assurance will be higher than those in Table 5. Such tests include some of the use and abuse tests for testing children's products (*e.g.,* the drop test). As discussed by Dr. Michael Greene at the CPSIA Product Testing Workshop, more samples may be necessary because there is more uncertainty in the test data. In other words, with only pass/fail data, it is not known if the result was close to the threshold or far from the threshold. In these cases, it might be necessary to define a high degree of assurance as a probability that no more than a given proportion of noncompliant products. For example, as discussed by Dr. Greene at the Product Testing Workshop, a 95 percent probability that no more than a certain proportion "p" of the units in a lot do not comply is approximately given by the formula $p \approx 3/k$, where "k" is the sample size. Thus, if 50 items were tested and no noncompliant items were found, there is a 95 percent probability that no more than 6 percent of the items in the lot do not comply. In other words, if the lot size were 1,000 and 50 units were tested and no noncompliant product were found, there is a 95 percent probability that no more than 60 units in the entire lot are not in compliance. If the lot size were 10,000 units, there would be a 95 percent probability that no more than 600 of the products would be noncompliant. If a higher level of assurance were required, the sample size would have to be larger. If a lower level of assurance were acceptable the sample size could be smaller.

The examples in Table 5 illustrate the disproportionate impact that the proposed rule could have on small businesses or businesses with low-volume products. In the first example in Table 5, the same number of units would have to be submitted to a third party testing conformity assessment body whether 1,000 units or 10,000 units were in the lot. In other words, the total third party testing costs would be the same, but the cost per unit for a manufacturer producing only 1,000 units would be 10 times the cost per unit for a manufacturer producing 10,000 units.

The examples in table 5 also illustrate the potential that component part testing could offer for reducing the cost of testing. For example, assume a manufacturer produces five products in lots of 10,000 units, but uses a common component part on each of the products that it purchases in lots of 50,000. The manufacturer could conduct the applicable chemical tests on the component part rather than on the finished product. If, following the sample sizes in Table 5, the mean of the component was 10 and the standard deviation was 1, this would reduce the cost of testing that component part by a factor of four over the cost that would apply if only tests on the finished product were acceptable. This is because without component part testing, the manufacturer would have to conduct tests on the component part as it was used in each of the five products. If each product were produced in lots of 10,000 units, this would amount to four tests on the component for each product or 20 total tests on the same component part. With component part testing, the manufacturer could simply conduct the tests on the component part, which was assumed to be purchased in a lot of 50,000 units, which would only require five tests of the component to provide a 95 percent probability that all of the units in the lot were in compliance.

*Random Samples:* The proposed rule would require that samples for periodic testing for children's products be selected randomly. A random sample is one in which each unit has an equal chance of being included in the sample. The proposed rule would specify that each unit produced or imported by the firm since the last random sample was drawn must have an equal chance of being selected. There will be some

additional cost associated with selecting a random sample rather than a convenience sample. The Commission invites comments on this proposed provision and is especially interested in comments describing the cost or other burdens that this proposed provision would impose.

iii. Hypothetical Product Testing Examples

To provide some information on what the magnitude of the third party testing costs may be for some manufacturers of children's products, this section discusses the potential cost of conducting third party testing for two product categories: Bicycles and toys. These examples are hypothetical and are intended to illustrate some potential cost implications of the proposed rule but might not be representative of every manufacturer in each category. The costs per test that are assumed in the examples can vary significantly. The Commission invites any comments that provide better information on the potential impacts on individual manufacturers.

*Bicycles:* Children's bicycles must be tested for compliance with the CPSC bicycle standard, which was estimated above to cost between $700 and $1,100. Additionally, the paint used on the bicycle must be tested for compliance with the lead-in-paint standard and the accessible component parts on the bicycle must be tested for lead content. The number of paints and component parts that require testing can vary among different models, but information provided by CPSC Compliance staff suggests that 75 components parts might be a reasonable estimate for the average. This example will use estimates in the middle of these ranges for the testing costs discussed above and assume that the cost of testing to the bicycle standard is $900 and the cost for testing a component part for lead content is $50. It is further assumed that quantitative data is available for all applicable tests and that the variation is low enough that testing four units will provide the high degree of assurance desired that products comply with the applicable safety rules. To the extent that some of the tests in the bicycle standard might be qualitative in nature, the sample size for testing would need to be larger.

If component part testing is not available to this manufacturer, the cost of testing the bicycle to each applicable safety rule one time would be about $4,650 (testing to the bicycle standard itself at $900 and testing 75 components parts for lead content). If a sample of four units were required to be tested to provide the required high degree of assurance, then the cost of the third party testing to the manufacturer would be $18,600.

The manufacturer in this example might be able to reduce the testing costs with component part testing if some of the components parts were used on more than one model. If component part testing reduced the cost of the lead content testing by this manufacturer by a factor of four, then the cost of testing to the bicycle standard itself would still be $900, but the average cost of testing the lead content of the component parts would be reduced to $12.50 per component part. Therefore the cost of testing the bicycle once would be $1,837.50. The cost to test four units to provide the required high degree of assurance would be $7,350.

The total cost of the third party testing to the manufacturer would depend upon the number of youth model bicycles that the manufacturer offered. If the manufacturer had five different models, and if component part testing could reduce the costs of the lead-content testing by a factor of four, the total cost of the third party testing to the firm would be about $36,750.

*Toys:* Toys are subject to the requirements for lead and phthalate content, and to several physical and mechanical requirements, including the requirements of ASTM F963, which was made a mandatory standard by the CPSIA. In this example, it is assumed that the testing costs are at the low to middle part of the ranges and that the hypothesized toy contains one metal component part that must be tested for lead content using ICP analysis (at $50) and two plastic component parts for which XRF analysis can be used for determining the lead content (two tests at $6 each). The plastic component parts also must be tested for phthalate content (two tests at $225 each). Additionally, it is assumed that the toy contains four different paints that must be tested for both lead content ($50/test) and soluble heavy metals ($125/test). Finally, it is assumed that the toy is subject to some mechanical requirements that include use and abuse testing for which only qualitative data is available at $50 per test. Thus, the cost of testing this toy for compliance to each applicable rule one time would be $1,262: $1,212 is associated with the chemical (lead, heavy metal, and phthalate) testing and $50 is associated with the mechanical testing (including use and abuse testing).

If the means and standard deviations of the lead, heavy metal, and phthalate contents of all of the product components parts are sufficiently low that testing four units could statistically provide the required high degree of assurance, then the cost the chemical testing for this toy would be $4,848 ($1,212 × 4). If the means or standard deviations of the lead, heavy metal, or phthalate content were higher, which is likely the case for some materials, more units might have to be tested to provide the required high degree of assurance and the resulting cost would also be higher.

Because the testing data for mechanical requirements are qualitative in nature, the number of units that might have to be tested to provide the required high degree of assurance would be more than required for the chemical tests. If a high degree of assurance were considered to be a 95 percent probability that no more than 6 percent of the units in the lot did not comply, then 50 units would have to be tested. In this case, the cost of mechanical testing would be $2,500 ($50 × 50).

Combining the cost of the chemical tests and the cost of the tests for mechanical or physical requirements, the total cost to this hypothetical manufacturer to obtain the required high degree of assurance that the products complied with all applicable safety rules would be $7,348. If, as in the bicycle example, component part testing could be used to reduce the cost of the chemical testing by a factor of four, then the total cost of testing the toy could be reduced to $3,712 ($4,848/4 + $2,500).

Again, the total cost to the manufacturer would depend upon factors such as the complexity of the products, the variation in the materials used, the opportunities to use component part testing, and the number of different toys that were offered. For example, if the manufacturer offered five similar toys and the third party testing costs were similar for each toy and component part testing allowed the manufacturer to reduce the costs of chemical testing by a factor of four, the total cost to the manufacturer for testing the toys would be $18,560. The annual cost would be higher if the testing had to be repeated more than once annually or there were material changes in the design of the products or production processes during the year.

iv. Impact of Third Party Testing on Firms

Whether such costs would have a substantial adverse impact on a firm depends upon the individual circumstances of the firm. One factor that can give an indication of whether something will have a significant impact is the magnitude of the impact in

relation to the revenue of the firm. A typical profit rate is about 5 percent of revenue. In other words, for every $1 of revenue, only 5 cents might remain after paying all expenses. Therefore, a new cost that amounted to 1 percent of revenue could, all other things equal, reduce the profit by 20 percent and might be considered to be a significant impact by some firms. This would be consistent with what some other agencies consider to be significant. OSHA, for example, considers an impact to be significant if the costs exceed 1 percent of revenue or 5 percent of profit.

Using the toy example above, with component part testing, if the third party testing costs were spread over 10,000 units, the cost of the testing would be about $0.37 per unit ($3,712/10,000). According to a toy industry representative, the average retail price of a toy is about $8. However, depending upon the channels of distribution and the practices in the particular market or industry, the price that a manufacturer receives for a product can be less than half of what the product eventually sells for at retail. Therefore, if the manufacturer received $4 for the toy that cost $0.37 per unit to test, the third party testing costs would be 9.2 percent of revenue ($0.37/$4) and could exceed the expected profit. Even if the manufacturer received $30 per unit for the toy (which might indicate a retail price of around $60 or more), the third party testing cost would still exceed 1 percent of the revenue per unit and might be considered to be a significant impact.

It is possible that the impact could be reduced if the manufacturer had an established reasonable testing program that met the requirements of the proposed rule. In such cases, manufacturers would be required to conduct periodic third party tests per rule at least once every two years rather than at least once a year. For example, if the hypothetical manufacturer of the toy used in the above example had a reasonable testing program and determined that obtaining one periodic third party test per applicable rule were sufficient, and the annual production volume were 10,000 units, then the per unit testing cost (without any component testing) would be about $0.06 ($1,262/20,000). (However, it should be noted that testing a product for compliance with each applicable rule one time is likely to require that the manufacturer submit more than one sample of the product to the testing laboratory. This is because some required tests cannot be performed on the same sample that has been used for another test. For some chemical tests, it may be necessary to use more than one sample of the product to obtain enough of a component to test.) If the manufacturer received $4 for each unit, then the periodic third party testing costs would amount to about 1.5 percent of revenue ($0.06/$4), which still could be considered to be a significant impact. If component part testing reduced the cost of the chemical tests by a factor of four, then the cost of the periodic third party testing could be reduced to $353 ($50 + $1,212/4) or about $0.02 per unit, if 10,000 units were produced annually and third party testing were conducted only once every two years. This would be about 0.5 percent of revenue if the manufacturer received $4 for each unit, which might not be considered significant. If the production volume were lower or the revenue per unit received by the manufacturer were lower, the impact would be greater. If the production volume were higher or the revenue per unit received by the manufacturer were higher, then the impact of the third party testing requirement would be lower.

It should be noted that the only cost considered in this hypothetical example is the cost of the third party testing. Any additional costs associated with in-house periodic testing or a reasonable testing program would be in addition to these costs and increase the impact, as would any additional third party testing costs associated with material changes in the product's design, the manufacturing processes, or the sourcing of component parts. Other costs that were not considered were the cost of the samples consumed in the testing and the cost of shipping the samples to the third party conformity assessment body.

v. Caveats and Possible Market Reactions to Third Party Testing Requirements

Manufacturers can be expected to react to a significant increase in their costs due to testing requirements in several ways. Some manufacturers might attempt to redesign their products to reduce the number of tests required, by reducing the features or the number of components parts used in their products. Manufacturers could also be expected to reduce the number of children's products that they offer or, in some cases, exit the market for children's products entirely. Some may go out of business altogether.

The requirement for third party certification testing could be a barrier to new firms entering the children's product market, unless they expect to have relatively high volume products. This could be especially important for firms that expected to serve a niche market, including products intended for children with special needs. The requirement for third party testing when there is a material change in a product's design or manufacturing process could cause some small or low-volume manufacturers to forgo or delay implementing some improvements to a product's design or manufacturing process in order to avoid the cost of the third party testing.

The cost of testing some toys and other children's products could be higher than those in the above examples. The cost would be higher, for example, for products that had more components parts or where the variability in the test results was greater, which would require more samples to be tested. The cost of testing would also be higher if there was less opportunity for component part testing. The cost of testing could be lower for products that were subject to fewer safety rules or that contained fewer component parts. For some apparel articles, for example, the only tests required might be for lead content on some components parts for which component part testing might be permissible.

Although the above examples illustrate the potential for component part testing to reduce the costs of testing, it might not be an option for all products or manufacturers. Component part testing is most likely to be an option for component parts that are common to multiple products (*e.g.,* paints, bolts of a standard size). The potential for component part testing to reduce the cost of testing would be less for products that have component parts that are unique to that product.

*5. Protection Against Undue Influence*

The proposed rule would require all manufacturers of children's products to establish procedures to prevent attempts to exercise undue influence on a third party conformity assessment body and to report to the Commission immediately of any attempt by any interested party to exert undue influence over test results, and that employees are aware that they may report any allegations of undue influence to the Commission confidentially. There would be some cost to firms to develop the materials or training programs to comply with these requirements. The Commission invites comments from the public providing information on the cost and other impacts of this provision.

*6. Consumer Product Labeling Program*

The consumer product labeling program that would be established by the proposed rule would allow firms to label any product that complies with the certification requirements for the product with a label that states that the product "*Meets CPSC Safety Requirements*." This provision is not expected to have a significant impact on firms because the program is voluntary and the costs of adding or modifying a label on a product are expected to be low.

*7. Summary of Impact on Small Businesses*

The proposed rule, if finalized, could have a significant adverse impact on a substantial number of small businesses. The provisions of the proposed rule that are expected to have the most significant impact are provisions related to requirements for the third party testing of children's products with and without a reasonable testing program. The impact of the proposed rule would be expected to be disproportionate on small and low-volume manufacturers. This is because testing costs are relatively fixed. Therefore, the per unit impact of testing costs will be greater on low-volume producers than on high-volume producers.

The provisions of the proposed rule that would require manufacturers of nonchildren's products to establish and maintain a reasonable testing program also could have an adverse impact on some manufacturers. The impact of these provisions are expected to be less significant than the impact of the provisions related to children's products because many manufacturers are believed to already have at least some quality assurance or testing programs in place. The provisions related to the proposed requirement for a reasonable testing program are intended to provide manufacturers with a high degree of flexibility in designing and implementing the programs, which would also serve to reduce the potential impact on a firm.

The other requirements in the proposed rule for protection against undue influence over a conformity assessment body and the consumer product labeling program are less likely to have a significant adverse impact on a substantial number of small businesses. The Commission invites comments on these provisions.

*8. Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule*

The proposed rule would establish the minimum requirements for testing and certification of consumer products. Some individual consumer product safety rules contain specific testing requirements. Manufacturers would be expected to meet the more stringent requirements whether they are the provisions of this proposed rule or the requirements in the specific safety rule. However, the rules would not require manufacturers to duplicate their efforts to comply with both sets of requirements. Testing and recordkeeping required to comply with the more stringent rule would also meet the requirements of the less stringent rule. Manufacturers will not be required to duplicate tests or recordkeeping to comply with both sets of rules. There are no known Federal rules that conflict with the proposed rule.

*9. Alternatives for Reducing the Adverse Impact on Small Businesses*

The Commission recognizes that the proposed rule could have a significant and disproportionate impact on small and low-volume manufacturers. The Commission has incorporated some provisions into the proposed rule that are intended to lessen the impact on small businesses. These include some relief from the periodic testing requirement for children's products, the ability to use component part testing (which would be addressed by a separate Commission rule elsewhere in this issue of the **Federal Register**). The Commission invites comments on these provisions and other provisions or alternatives that could lessen the adverse impact on small or low-volume businesses.

The Commission is proposing that manufactures that have implemented reasonable testing programs that meet the requirements contained in the proposed rule would be obligated to conduct third party periodic tests at least once every two years instead of at least once every year if they have not implemented reasonable testing programs. This provision could significantly reduce the third party periodic testing costs of manufacturers that have such programs. However, the reduction could be limited for firms that do not have the ability to conduct the tests in-house, for importers that do have significant control over the actual production of their products, and for manufacturers who might have more frequent material changes in their products' designs, manufacturing processes, or sourcing of component parts. The Commission invites comment on this provision, including whether this provision would provide sufficient relief to enough firms to maintain this provision in the final rule.

a. Partial Exemption From Periodic Testing

The proposed rule would require that all children's products be tested periodically by a third party conformity assessment body and establishes one year as the maximum interval between third party periodic tests if the manufacturer does not have a reasonable testing program and two years if the manufacturer does have a reasonable testing program. However, if fewer than 10,000 units of a product have been manufactured or imported since the last time the product was submitted to a third party conformity assessment body, the manufacturer would not be subject to the periodic testing requirements unless 10,000 units have been manufactured or imported. This provision would allow low-volume manufacturers to spread their periodic testing costs over more units. The exemption would not relieve the manufacturer from the obligation to have the product tested by a third party conformity assessment body before the product is introduced into commerce, or when there has been a material change in the product's design or production processes, nor would the exemption extend beyond the initial exemption for the first 10,000 units.

b. Component Testing

The proposed rule would allow firms to submit component parts for third party testing when the required testing does not need to be performed on the finished product. This can reduce the cost to manufacturers particularly where one component part might be common to more than one product. Such component parts might include paints, polymers used in molding different parts, and standard-sized bolts. In these cases the component parts might be received in larger lots than the production lots of the products in which they are used. Therefore, the testing costs for those component parts will be spread over more units than if they were required to be tested on the finished products.

*10. Alternatives That May Further Reduce the Impact on Small Businesses*

The Commission also invites comments on other alternatives that could provide some relief to small businesses that would be adversely impacted by the proposed rule. Alternatives could include things such as: (1) The establishment of different compliance or reporting requirements that take into account the resources available to small businesses; (2) the clarification, consolidation, or

simplification of compliance and reporting requirements for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule thereof, for small entities to the extent statutorily permissible under section 14 of the CPSA. In providing such comments, the Commission requests that the comments provide specific suggestions and well developed justifications for the suggestions. Some possible alternatives that could be considered are discussed below.

a. Less Stringent Requirements for Third Party Testing

The proposed rule would require that enough third party tests be conducted to provide a high degree of assurance that the products comply with the applicable rules. This could require most manufacturers to submit multiple samples for third party testing each year, especially if they have not implemented a reasonable testing program. However, the Commission could adopt an alternative that would limit the number of samples required for third party testing. For example, the Commission could simply require that manufacturers submit sufficient samples to a third party conformity assessment body so that compliance with each rule could be assessed at least once annually.

The proposed rule would require that periodic third party testing be conducted at least once a year or at least once every two years if the manufacturer has established a reasonable testing program. A year was chosen as the maximum interval between periodic testing because many children's products are produced on an annual or seasonal cycle, but, in the case of manufacturers with reasonable testing programs, the Commission believed that the information about the products provided the manufacturer by the internal testing programs could substitute for some third party tests. The Commission could, however, consider a different maximum interval between the periodic tests. For example, the Commission could consider requiring that third party tests be conducted at less frequent or more frequent intervals.

The advantage of less stringent requirements is that they could significantly reduce the cost of the third party testing requirement. The disadvantage is that the testing would provide less information about whether all of the products produced were in compliance with the applicable safety rules. Requiring third party tests more frequently would provide additional assurance that the products comply with the applicable safety rules. However, this would also increase the costs associated with third party testing.

The Commission invites comments on these and similar alternatives. For example, should the Commission consider a less stringent requirement? If so, what should the alternative requirement be? Should the less stringent requirement apply to all manufacturers or only those that meet certain criteria, such as to small or low-volume manufacturers?

b. Limits on Third Party Testing for Small or Low-Volume Manufacturers

The Commission could consider additional alternatives that would provide relief to small or low-volume manufacturers. Substantial relief could be provided to small or low-volume manufacturers. The Commission invites comments on third party testing limits for small or low-volume manufacturers that still meet statutory requirements of section 14(d) of the CPSA. In providing such comments, it is important to note that the Commission cannot exempt small or low-volume manufacturers of children's products from initial third party certification testing to applicable standards, regulations, or bans or from third party testing when there is a material change to the product and has already specified limits on periodic testing where a manufacturer produces less than 10,000 units of a particular product. The Commission seeks comments on additional alternatives that may provide testing cost relief to small or low-volume manufacturers while still satisfying the testing and compliance requirements of section 14(d) of the CPSA.

c. Alternative Test Methods for Small or Low-Volume Manufacturers

Some small manufacturers have encouraged the Commission to allow alternative test methods such as those relying on XRF technology. XRF testing methods are significantly less expensive than the ICP analysis that the Commission currently requires for most lead content testing (with the exception of homogenous polymer products). The Commission staff uses XRF for screening samples.

The Commission invites comments on the possibility of using alternative testing technologies for reducing the burden on small and low-volume manufacturers. For example, could the Commission allow small or low-volume manufacturers to use less expensive, but potentially less accurate third party testing methods? If so, under what conditions?

**E. Paperwork Reduction Act**

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520). We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We particularly invite comments on: (1) Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Title:* Testing and Labeling Pertaining to Product Certification.

*Description:* The proposed rule would implement section 102(b) of the CPSIA, which requires certifications of compliance with safety standards for each product subject to a consumer product safety rule, ban, standard, or regulation promulgated and/or enforced by the CPSC. A certification that a nonchildren's product complies with applicable consumer products safety rules, bans, standards, and regulations must be supported by a reasonable testing program or a test of each product. A certification that a children's product complies with the applicable children's product safety rules must be supported by testing performed by an approved third party conformity assessment body. The proposed rule would impose recordkeeping requirements related to those testing and certification requirements. The recordkeeping requirements are intended to allow one to uniquely identify each product and establish that it was properly certified before it enters commerce and has been properly retested for conformity with all applicable rules on a continuing basis, including after a material change in the product's design or manufacturing

processes, including the sourcing of component parts.

Each manufacturer or importer of a consumer product subject to an applicable safety rule would be required to establish and maintain the following records:

- A copy of the certificate of compliance for each product. In the case of nonchildren's products, the required certificate is a general conformity certificate. In the case of children's products, the certificate must be based upon testing by a third party conformity assessment body. (Proposed §§ 1107.10(a)(5)(i)(A), 1107.26(a)(1))
- For nonchildren's products, a record of each product specification, including any new product specification resulting from remedial action. (Proposed § 1107.10(a)(5)(i)(B) and (E))
- Records of each certification test, including identification of the third party conformity assessment body, if any, that conducted the test. (Proposed §§ 1107.10(a)(5)(i)(C), 1107.26(a)(2))
- Records of the production testing and periodic test plans and results. (Proposed §§ 1107.10(a)(5)(i)(D), 1107.26(a)(3))
- For children's products, records relating to all material changes. (Proposed § 1107.26(a)(4))
- Records of all remedial actions taken. (Proposed §§ 1107.10(a)(5)(i)(E), 1107.26(a)(6))
- For children's products, records of undue influence procedures. (Proposed § 1107.26(a)(5))

*Description of Respondents:* The recordkeeping requirements contained in this proposed rule would apply to all manufacturers or importers of consumer products that are covered by one or more consumer product safety rules promulgated and/or enforced by the CPSC. The CPSC reviewed every category in the NAICS and selected those that included firms that could manufacture or sell any consumer product that could be covered by a consumer product safety rule. Using data from the U.S. Census Bureau, we determined that there were over 37,000 manufacturers, almost 80,000 wholesalers, and about 128,000 retailers in these categories. However, not all of the firms in these categories manufacture or import products that are covered by consumer product safety rules. Therefore, these numbers would constitute a high estimate of the number of firms that are subject to the recordkeeping requirements.

*Estimate of the Burden:* The hour burden of the recordkeeping requirements will likely vary greatly from product to product depending upon such factors as the complexity of the product and the amount of testing that must be documented. CPSC staff does not have comprehensive data on the universe of products that will be impacted. Therefore, estimates of the hour burden of the recordkeeping requirements are somewhat speculative. The CPSC invites comments that can provide more information about the number of hours required for the recordkeeping requirements of the proposed rule.

Previously, the CPSC staff estimated that the recordkeeping burden of the mattress open flame flammability standard would be about one hour per model (prototype) per year. Many of the recordkeeping requirements in that standard are comparable to the requirements in this proposed rule. However, that rule concerned only the recordkeeping requirements for one rule (mattress flammability) while manufacturers of children's products will frequently have to document their compliance with more than one product safety rule (*e.g.,* lead-in-paint, lead content, phthalates, and some product specific rules, such as the ASTM F963 toy standard). Therefore, one can assume the burden of the proposed rule could be twice the hour burden of the recordkeeping required for the mattress flammability rule. (Information on the product safety rules that apply to different consumer products can be found at *http://www.cpsc.gov/businfo/regsbyproduct.html.*)

According to a representative of a trade association, there are an estimated 50,000 to 60,000 individual toys on the market. It is likely that there are at least that many other children's products in product categories such as wearing apparel, accessories, jewelry, juvenile products, children's furniture, etc. Additionally nonchildren's products that are subject to product safety rules include paints, nonmetal furniture (for lead-in-paint), all-terrain vehicles, bicycles, and bunk beds. Therefore, we estimate that there are approximately 100,000 to 150,000 individual products to which the recordkeeping requirements would apply.

Assuming the annual recordkeeping burden per product will be two hours and that there are between 100,000 and 150,000 products to which the recordkeeping requirements would apply, the total hour burden for the recordkeeping requirements is estimated to be between 200,000 and 300,000 hours.

The total cost burden of the recordkeeping requirements is expected to be between $9.8 and $14.7 million. This estimate is obtained by multiplying the total burden hours by $48.91, which is the total hourly compensation for private sector workers in management, professional, and related occupations. The recordkeeping requirements are not expected to result in any additional cost to the Federal government. The CPSC will likely request access to these records only when it is investigating potentially defective or noncomplying products. Investigating potentially defective or noncomplying product is a regular ongoing activity of the Commission. It is anticipated that access to the records required by this rule will make it easier for the investigators to narrow the scope of their investigations to particular production or import lots.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to fax comments regarding information collection by June 21, 2010, to the Office of Information and Regulatory Affairs, OMB (*see* **ADDRESSES**).

### F. Environmental Considerations

This proposed rule falls within the scope of the Commission's environmental review regulations at 16 CFR 1021.5(c)(2) which provides a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for product certification rules.

### G. Executive Order 12988

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, of new regulations. The proposed regulation would be issued under authority of the CPSA and the CPSIA. The CPSA provision on preemption appears at section 26 of the CPSA. The CPSIA provision on preemption appears at section 231 of the CPSIA. The preemptive effect of this rule would be determined in an appropriate proceeding in by a court of competent jurisdiction.

### H. Effective Date

The Commission is proposing that any final rule based on this proposal become effective 180 days after its date of publication in the **Federal Register**.

### List of Subjects in 16 CFR Part 1107

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Toys.

Accordingly, the Commission proposes to add 16 CFR part 1107 to read as follows:

## PART 1107—TESTING AND LABELING PERTAINING TO PRODUCT CERTIFICATION

### Subpart A—General Provisions

Sec.
1107.1 Purpose.
1107.2 Definitions.

### Subpart B—Reasonable Testing Program for Nonchildren's Products

1107.10 Reasonable testing program for nonchildren's products.

### Subpart C—Certification of Children's Products

1107.20 General requirements.
1107.21 Periodic testing.
1107.22 Random samples.
1107.23 Material change.
1107.24 Undue influence.
1107.25 Remedial action.
1107.26 Recordkeeping.

### Subpart D—Consumer Product Labeling Program

1107.40 Labeling consumer products to indicate that the certification requirements of section 14 of the CPSA have been met.

**Authority:** 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110–314, 122 Stat. 3016, 3017, 3022.

## Subpart A—General Provisions

### § 1107.1 Purpose.

This part establishes the requirements for: A reasonable testing program for nonchildren's products; third party conformity assessment body testing to support certification and continuing testing of children's products; and labeling of consumer products to indicate that the certification requirements have been met pursuant to sections 14(a)(1), and (a)(2), (d)(2)(B) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(1), (a)(2), (d)(2)(B)).

### § 1107.2 Definitions.

Unless otherwise stated, the definitions of the Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008 apply to this part. The following definitions apply for purposes of this part:

*CPSA* means the Consumer Product Safety Act.

*CPSC* means the Consumer Product Safety Commission.

*Detailed bill of materials* means a list of the raw materials, sub-assemblies, intermediate assemblies, sub-component parts, component parts, and the quantities of each needed to manufacture a finished product.

*Due care* means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

*High degree of assurance* means an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture.

*Identical in all material respects* means there is no difference with respect to compliance to the applicable rules between the samples and the finished product.

*Manufacturer* means the parties responsible for certification of a consumer product pursuant to 16 CFR part 1110.

*Manufacturing process* means the techniques, fixtures, tools, materials, and personnel used to create the component parts and assemble a finished product.

*Production testing plan* means a document that shows what tests must be performed and the frequency at which those tests must be performed to provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable safety rules.

*Third party conformity assessment body* means a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products.

## Subpart B—Reasonable Testing Program for Nonchildren's Products

### § 1107.10 Reasonable testing program for nonchildren's products.

(a) Except as otherwise provided in a specific regulation under this title or a specific standard prescribed by law, a manufacturer certifying a product pursuant to a reasonable testing program must ensure that the reasonable testing program provides a high degree of assurance that the consumer products covered by the program will comply with all applicable rules, bans, standards, or regulations.

(b) A reasonable testing program must consist of the following elements:

(1) *Product Specification.* The product specification is a description of the consumer product and lists the applicable rules, bans, standards or regulations to which the product is subject. A product specification should describe the product listed on a general conformity certification in sufficient detail to identify the product and distinguish it from other products made by the manufacturer. The product specification may include, but is not limited to, a color photograph or illustration, model names or numbers, a detailed bill of materials, a parts listing, raw material selection and sourcing requirements.

(i) A product specification must include any component parts that are certified pursuant to 16 CFR Part 1109.

(ii) Product specifications that identify individual features of a product that would not be considered a material change may use the same product specification for all products manufactured with those specific features. Features that would not be considered a material change include different product sizes or other features that cover variations of the product where those variations do not affect the product's ability to comply with applicable rules, bans, standards, or regulations.

(iii) Each manufacturing site must have a separate product specification.

(2) *Certification Tests.* A manufacturer must conduct certification tests on a product before issuing a general conformity certificate for that product. A certification test is a test performed on samples of the product that are identical to the finished product in all material respects to demonstrate that the product complies with the applicable safety rules, bans, standards, or regulations. Certification tests must contain the following elements:

(i) *Samples.* For purposes of this section, a sample means a component part of the product or the finished product which is subject to testing. Samples submitted for certification testing must be identical in all material respects to the product to be distributed in commerce. The manufacturer must submit a sufficient number of samples for certification testing so as to provide a high degree of assurance that the certification tests accurately represent the product's compliance with all applicable rules.

(A) Only finished products or component parts listed on the product specification can be submitted for certification testing.

(B) A manufacturer may substitute component part testing for finished product testing pursuant to 16 CFR part 1109 unless the rule, ban, standard or regulation applicable to the product requires testing of the finished product. If a manufacturer relies upon certification testing of component part(s) (rather than tests of the finished product), the manufacturer must demonstrate how the combination of testing of component part(s), portions of the finished product, and finished product samples demonstrate, with a high degree of assurance, compliance with all applicable rules, bans, standards, or regulations.

(ii) *Material Change.* A material change is any change in the product's design, manufacturing process, or

sourcing of component parts that a manufacturer exercising due care knows, or should know, could affect the product's ability to comply with the applicable rules, bans, standards, or regulations.

(A) When a previously-certified product undergoes a material change that only affects the product's ability to comply with certain applicable rules, bans, standards, or regulations, certification for the new product specification may be based on certification testing of the materially changed component part, material, or process, and the passing certification tests of the portions of the previously-certified product that were not materially changed.

(B) A manufacturer must conduct certification tests of the finished product if a material change affects the finished product's ability to comply with an applicable rule, ban, standard, or regulation.

(C) A manufacturer must exercise due care to ensure that reliance on anything other than retesting of the finished product after a material change occurs does not allow a noncompliant product to be distributed in commerce. A manufacturer should resolve any doubts in favor of retesting the finished product for certification.

(3) *Production Testing Plan.* A production testing plan describes what tests must be performed and the frequency at which those tests must be performed to provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable safety rules, bans, standards, or regulations. A production testing plan may include recurring testing or the use of process management techniques such as control charts, statistical process control programs, or failure modes and effects analyses (FMEAs) designed to control potential variations in product manufacturing that could affect the product's ability to comply with the applicable rules, bans, standards, or regulations. A production testing plan must contain the following elements:

(i) A description of the production testing plan, including, but not limited to, a description of the tests to be conducted or the measurements to be taken, the intervals at which the tests or measurements will be made, the number of samples tested, and the basis for determining that such tests provide a high degree of assurance of compliance if they are not the tests prescribed in the applicable rule, ban, standard, or regulation;

(ii) Each manufacturing site must have a separate production testing plan;

(iii) The production testing interval selected must be short enough to ensure that, if the samples selected for production testing comply with an applicable rule, ban, standard, or regulation, there is a high degree of assurance that the untested products manufactured during that interval also will comply with the applicable rule, ban, standard, or regulation. Production test intervals should be appropriate for the specific testing or alternative measurements being conducted.

(A) A manufacturer may use measurement techniques that are nondestructive and tailored to the needs of an individual product instead of conducting product performance tests to assure a product complies with all applicable rules, bans, standards, or regulations.

(B) Any production test method used to conduct production testing must be as effective in detecting noncompliant products as the tests used for certification.

(C) If a manufacturer is uncertain whether a production test is as effective as the certification test, the manufacturer must use the certification test.

(4) *Remedial Action Plan.*

(i) A remedial action plan describes the steps to be taken whenever samples of a product or a component part of a product fails a test or fails to comply with an applicable rule, ban, standard, or regulation. A remedial action plan must contain procedures the manufacturer must follow to investigate and address failing test results. Manufacturers must take remedial action after any failing test result to ensure with a high degree of assurance that the products manufactured after the remedial action has been taken comply with the applicable rules, bans, standards, or regulations. The type of remedial action may be different depending upon the applicable rule, ban, standard, or regulation. Remedial action can include, but is not limited to:

(A) Changes to the manufacturing process, the equipment used to manufacture the product, the product's materials, or design;

(B) reworking the product produced; or

(C) other actions deemed appropriate by the manufacturer, in the exercise of due care, to assure compliant products.

(ii) Any remedial action that results in a material change to a product's design, parts, suppliers of parts, or manufacturing process that could affect the product's ability to comply with any applicable rules requires a new product specification for that product. Before a product covered by the new product specification can be certified as compliant with the applicable rules, bans, standards, or regulations, a manufacturer must have passing certification test results for the applicable rules, bans, standards, or regulation.

(5) *Recordkeeping.*

(i) A manufacturer of a nonchildren's product must maintain the following records:

(A) Records of the general conformity certificate for each product;

(B) Records of each product specification;

(C) Records of each certification test and, if the manufacturer elected to have a third party conformity assessment body test the product, identification of any third party conformity assessment body on whose testing the certificate depends. Records of certification tests must describe how the product was certified as meeting the requirements, including how each applicable rule was evaluated, the test results, and the actual values of the tests;

(D) Records to demonstrate compliance with the production testing plan requirement, including a list of the applicable rules, bans, standards, or regulations, a description of the types of production tests conducted, the number of samples tested, the production interval selected for performance of each test, and the test results. Records of a production test program must describe how the production tests demonstrate that the continuing production complies with the applicable rules. References to techniques in relevant quality management and control standards, such as ANSI/ISO/ASQ Q9001–2008: Quality management systems—Requirements, ANSI/ASQ Z1.4–2008: Sampling Procedures and Tables for Inspection by Attributes, and/or ANSI/ASQ Z1.9–2008: Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming, may be used to demonstrate that the production tests have the necessary accuracy, precision sensitivity, repeatability, and confidence to distinguish between compliant and noncompliant products;

(E) Records of all remedial actions taken, including the specific action taken, the date the action was taken, the person who authorized the actions, and any test failure which necessitated the action. Records of remedial action must relate the action taken to the product specification of the product that was the subject of that remedial action and the product specification of any new product resulting from any remedial action;

(ii) If a remedial action results in a new product specification, the manufacturer must create a new set of records for the product.

(iii) A manufacturer must maintain the records specified in this subpart at the location within the United States specified in 16 CFR 1110.11(d) or, if the records are not maintained at the custodian's address, at a location within the United States specified by the custodian. The manufacturer must make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

(iv) A manufacturer must maintain records (except for test records) for as long as the product is in production or imported by the manufacturer plus five years. Test records must be maintained for five years. All records must be available in the English language.

(c) If any certification test results in a failure, a manufacturer cannot certify a product until the manufacturer has taken remedial action, and the product manufactured after the remedial action passes certification testing.

(d) Manufacturers of a nonchildren's product may use a third party conformity assessment body to conduct certification testing but are not required to use a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products.

(e) Manufacturers of children's products may voluntarily establish a reasonable testing program consistent with this subpart.

## Subpart C—Certification of Children's Products

### § 1107.20 General requirements.

(a) Manufacturers must submit a sufficient number of samples of a children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body for testing to support certification. The number of samples selected must provide a high degree of assurance that the tests conducted for certification purposes accurately demonstrate the ability of the children's product to meet all applicable children's product safety rules.

(b) If the manufacturing process for a children's product consistently creates finished products that are uniform in composition and quality, a manufacturer may submit fewer samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules. If the manufacturing process for a children's product results in variability in the composition or quality of children's products, a manufacturer may need to submit more samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules.

(c) Except where otherwise specified by a children's product safety rule, a manufacturer may substitute component part testing for complete product testing pursuant to 16 CFR part 1109 if the component part, without the remainder of the finished product, is sufficient to determine compliance for the entire product.

(d) If a product sample fails certification testing, even if other samples have passed the same certification test, the manufacturer must investigate the reasons for the failure and take remedial action. A manufacturer cannot certify the children's product until the manufacturer establishes, with a high degree of assurance, that the finished product does comply with all applicable children's product safety rules.

### § 1107.21 Periodic testing.

(a) Each manufacturer must conduct periodic testing at least annually, except as otherwise provided in paragraphs (b) and (d) of this section or as provided in regulations under this title. Manufacturers may need to conduct periodic tests more frequently than on an annual basis to ensure a high degree of assurance that the product being tested complies with all applicable children's product safety rules.

(b) If a manufacturer has implemented a reasonable testing program as described in subpart B of this part, it must submit samples of its product to a third party conformity assessment body for periodic testing to the applicable children's product safety rules at least once every two years. If a manufacturer's reasonable testing program fails to provide a high degree of assurance of compliance with all applicable children's product safety rules, the Commission may require the manufacturer to meet the requirements of paragraph (c) of this section or modify its reasonable testing program to ensure a high degree of assurance.

(c) If a manufacturer has not implemented a reasonable testing program as described in subpart B of this part, then all periodic testing must be conducted by a third party conformity assessment body, and the manufacturer must conduct periodic testing as follows:

(1) *Periodic Test Plan.* Manufacturers must develop a periodic test plan to assure that children's products manufactured after the issuance of a children's product certification, or when the previous periodic testing was conducted, continue to comply with all applicable children's product safety rules. The periodic test plan must include the tests to be conducted, the intervals at which the tests will be conducted, the number of samples tested, and the basis for determining that the periodic testing plan provides a high degree of assurance that the product being tested continues to comply with all applicable children's product safety rules. The manufacturer must have a separate periodic testing plan for each manufacturing site producing a children's product.

(2) *Testing Interval.* The periodic testing interval selected must be short enough to ensure that, if the samples selected for periodic testing pass the test, there is a high degree of assurance that the other untested children's products manufactured during the interval comply with the applicable children's product safety rules. The interval for periodic testing may vary depending upon the specific children's product safety rules that apply to the children's product. Factors to be considered when determining the periodic testing interval include, but are not limited to, the following:

(i) High variability in test results, as indicated by a relatively large sample standard deviation in quantitative tests;

(ii) Measurements that are close to the allowable numerical limit for quantitative tests;

(iii) Known manufacturing process factors which could affect compliance with a rule. For example, if the manufacturer knows that a casting die wears down as the die nears the end of its useful life, the manufacturer may wish to test more often as the casting die wears down;

(iv) Consumer complaints or warranty claims;

(v) Nonmaterial changes, such as introduction of a new set of component parts into the assembly process, or the manufacture of a fixed number of products;

(vi) Potential for serious injury or death resulting from a noncompliant children's product;

(vii) The number of children's products produced annually, such that a manufacturer should consider testing a children's product more frequently if the product is produced in very large numbers or distributed widely throughout the United States;

(viii) The children's product's similarity to other children's products with which the manufacturer is familiar and/or whether the children's product has many different component parts

compared to other children's products of a similar type; or

(ix) Inability to determine the children's product's noncompliance easily through means such as visual inspection.

(d) For a product produced or imported at low volumes, a manufacturer is not subject to the periodic testing requirements of paragraphs (a) and (b) or (c) of this section unless it produces 10,000 units of the product. Once a manufacturer has produced or imported 10,000 units of the product, the frequency at which the manufacturer must engage in periodic testing must comply with paragraph (a), and (b) or (c) of this section and does not depend on how often the manufacturer produces or imports every 10,000 units of the product.

**§ 1107.22 Random samples.**

Each manufacturer must select samples for periodic testing by using a process that assigns each sample in the production population an equal probability of being selected. For purposes of this section, the production population is the number of products manufactured or imported after the initial certification or last periodic testing of a children's product. A manufacturer may use a procedure that randomly selects items from a list to determine which samples are the random samples used for periodic testing before production begins. A manufacturer may select samples for testing as they are manufactured. Manufacturers who produce children's products that continue to be distributed in commerce as they are manufactured may wish to test the samples as they become available instead of waiting until all the random samples have been selected before conducting testing.

**§ 1107.23 Material change.**

(a) *General Requirements.* If a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts, that a manufacturer exercising due care knows, or should know, could affect the product's ability to comply with the applicable children's product safety rules, the manufacturer must submit a sufficient number of samples of the materially changed product for testing by a third party conformity assessment body. Such testing must occur before a manufacturer can certify the children's product. The extent of such testing may depend on the nature of the material change. When a material change is limited to a component part of the finished children's product and does not affect the ability of the children's product to comply with other applicable children's product safety rules, a manufacturer may issue a children's product certificate based on the earlier third party certification tests and on test results of the changed component part conducted by a third party conformity assessment body. Changes that cause a children's product safety rule to no longer apply to a children's product are not considered to be material changes. A manufacturer must exercise due care to ensure that reliance on anything other than retesting of the finished product after a material change would not allow a noncompliant children's product to be distributed in commerce. A manufacturer should resolve any doubts in favor of retesting the finished product for certification. Additionally, a manufacturer must exercise due care to ensure that any component part undergoing component-part-level testing is the same as the component part on the finished children's product in all material respects.

(b) *Product Design.* For purposes of this subpart, the term product design includes all component parts, their composition, and their interaction and functionality when assembled. To determine which children's product safety rules apply to a children's product, a manufacturer should examine the product design for the children's product as received by the consumer.

(c) *Manufacturing Process.* A material change in the manufacturing process is a change in how the children's product is made that could affect the finished children's product's ability to comply with the applicable children's product safety rules. For each change in the manufacturing process, a manufacturer should exercise due care to determine if compliance to an existing applicable children's product safety rule could be affected, or if the change results in a newly-applicable children's product safety rule.

(d) *Sourcing of Component Parts.* A material change in the sourcing of component parts results when the replacement of one component part of a children's product with another component part could affect compliance with the applicable children's product safety rules. This includes, but is not limited to, changes in component part composition, component part supplier, or the use of a different component part from the same supplier who provided the initial component part.

**§ 1107.24 Undue influence.**

(a) Each manufacturer must establish procedures to safeguard against the exercise of undue influence by a manufacturer on a third party conformity assessment body.

(b) The procedures required in paragraph (a) of this section, at a minimum, must include:

(1) Safeguards to prevent attempts by the manufacturer to exercise undue influence on a third party conformity assessment body, including a written policy statement from company officials that the exercise of undue influence is not acceptable, and directing that appropriate staff receive annual training on avoiding undue influence, and sign a statement attesting to participation in such training;

(2) A requirement to notify the Commission immediately of any attempt by the manufacturer to hide or exert undue influence over test results; and

(3) A requirement to inform employees that allegations of undue influence may be reported confidentially to the Commission and to describe the manner in which such a report can be made.

**§ 1107.25 Remedial action.**

(a) Each manufacturer of a children's product must have a remedial action plan that contains procedures the manufacturer must follow to investigate and address failing test results. A manufacturer must take remedial action after any failing test result to ensure, with a high degree of assurance, that the children's products manufactured after the remedial action has been taken comply with all applicable children's product safety rules.

(b) A manufacturer must not certify a product if any certification test by a third party conformity assessment body results in a failure until the manufacturer has taken remedial action and the product manufactured after the remedial action passes certification testing.

(c) Following a failing test result, a manufacturer must take remedial action to ensure, with a high degree of assurance, that the children's product complies with all applicable children's product safety rules. Remedial action can include, but is not limited to, redesign, changes in the manufacturing process, or changes in component part sourcing. For existing production, remedial action may include rework, repair, or scrap of the children's product. If a remedial action results in a material change a manufacturer must have a third party conformity assessment body retest the redesigned or remanufactured product before the manufacturer can certify the product.

**§ 1107.26 Recordkeeping.**

(a) A manufacturer of a children's product subject to an applicable children's product safety rule must maintain the following records:

(1) Records of the children's product certificate for each product. The children's product covered by the certificate must be clearly identifiable and distinguishable from other products;

(2) Records of each third party certification test. The manufacturer must have separate certification tests records for each manufacturing site;

(3) Records of the periodic test plan and periodic test results for a children's product;

(4) Records of descriptions of all material changes in product design, manufacturing process, and sourcing of component parts, and the certification tests run and the test values;

(5) Records of the undue influence procedures, including training materials and training records of all employees trained on these procedures; and

(6) Records of all remedial actions taken following a failing test result, including the rule that was tested, the specific remedial action taken, the date the action was taken, the person who authorized the action, any test failure which necessitated the action, and the results from certification tests showing compliance after the remedial action was taken.

(b) A manufacturer must maintain the records specified in this subpart at the location within the United States specified in 16 CFR 1110.11(d) or, if the records are not maintained at the custodian's address, at a location within the United States specified by the custodian. The manufacturer must make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

(c) A manufacturer must maintain records (except for test records) for as long as the product is in production or imported by the manufacturer plus five years. Test records must be maintained for five years. All records must be available in the English language.

## Subpart D—Consumer Product Labeling Program

**§ 1107.40 Labeling consumer products to indicate that the certification requirements of section 14 of the CPSA have been met.**

(a) Manufacturers and private labelers of a consumer product may indicate, by a uniform label on or provided with the product, that the product complies with any consumer product safety rule under the CPSA, or with any similar rule, ban, standard or regulation under any other act enforced by the CPSC.

(b) The label must be printed in bold typeface, using an Arial font of not less than 12 points, be visible and legible, and consist of the following statement: **Meets CPSC Safety Requirements**

(c) A consumer product may bear the label if the manufacturer or private labeler has certified, pursuant to section 14 of the CPSA, that the consumer product complies with all applicable consumer product safety rules under the CPSA and with all rules, bans, standards, or regulations applicable to the product under any other act enforced by the Consumer Product Safety Commission.

(d) A manufacturer or private labeler may use another label on the consumer product as long as such label does not alter or mislead consumers as to the meaning of the label described in paragraph (b) of this section. A manufacturer or private labeler must not imply that the CPSC has tested, approved, or endorsed the product.

Dated: May 7, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–11365 Filed 5–19–10; 8:45 am]

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# Part III

# Department of Labor

## Office of Labor-Management Standards

**29 CFR Part 471**

**Notification of Employee Rights Under Federal Labor Laws; Final Rule**

**DEPARTMENT OF LABOR**

**Office of Labor-Management Standards**

**29 CFR Part 471**

**RIN 1215–AB70; RIN 1245–AA00**

## Notification of Employee Rights Under Federal Labor Laws

**AGENCY:** Office of Labor-Management Standards, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** On August 3, 2009, the Office of Labor-Management Standards ("OLMS") in the Department of Labor ("the Department") issued a proposed rule implementing Executive Order 13496. This final rule sets forth the Department's review of and response to comments on the proposal and any changes made to the rule in response to those comments.

President Barack Obama signed Executive Order 13496 ("Executive Order" or "E.O. 13496") on January 30, 2009. The Executive Order requires nonexempt Federal departments and agencies to include within their Government contracts specific provisions requiring contractors and subcontractors with whom they do business to post notices informing their employees of their rights as employees under Federal labor laws. The Executive Order requires the Secretary of Labor ("Secretary") to prescribe the size, form, and content of the notice that must be posted by a contractor under paragraph 1 of the contract clause described in section 2 of the Order. Under the Executive Order, unless a specified exception or exemption applies, Federal Government contracting departments and agencies must include the required contract provisions in every Government contract. As required by the Executive Order, this final rule establishes the content of the notice required by the Executive Order's contract clause, and implements other provisions of the Executive Order, including provisions regarding sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order and the implementing regulations.

**DATES:** *Effective Date:* This rule will be effective on June 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** The Regulatory Information Number (RIN) identified for this rulemaking changed with publication of the Spring Regulatory Agenda due to an organizational restructuring. The old RIN was assigned to the Employment Standards Administration, which no longer exists; a new RIN has been assigned to the Office of Labor-Management Standards.

### I. Background on the Rulemaking

On August 3, 2009, the Department issued a Notice of Proposed Rulemaking ("NPRM" or "proposed rule"), 74 FR 38488, to implement Executive Order 13496, "Notification of Employee Rights Under Federal Labor Laws," 74 FR 6107, Feb. 4, 2009. The Department invited written comments on the proposed regulations from interested parties, including current and potential Government contractors, subcontractors, and vendors, and current and potential employees of such entities; labor organizations; public interest groups; Federal contracting agencies; and the public. In addition, when proposing certain provisions of the rule, the Department invited public comment regarding issues addressed in those specific provisions. The public comment period closed on September 2, 2009, and the Department has considered all timely comments received in response to the proposed rule.[1]

The Department received 86 unique and timely comments from a wide variety of sources. Commenters included individuals, labor organizations, and other organizations and associations representing the interests of employees, employers and government contractors and subcontractors. The Department recognizes and appreciates the value of comments, ideas, and suggestions from members of the public, labor organizations, employers, industry associations and other interested parties.

### II. The Executive Order

On January 30, 2009, President Barack Obama signed Executive Order 13496, entitled "Notification of Employee Rights Under Federal Labor Laws." 74 FR 6107, Feb. 4, 2009. The purpose of the Executive Order is "to promote economy and efficiency in Government procurement" by ensuring that employees of certain Government contractors are informed of their rights under Federal labor laws. *Id.,* Sec. 1. As the Order states, "When the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers' productivity is enhanced when workers are well informed of their rights under Federal labor laws, including the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.*" *Id.* The Order reiterates the declaration of national labor policy contained in the National Labor Relations Act ("NLRA"), 29 U.S.C. 151, that "encouraging the practice and procedure of collective bargaining and * * * protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection" will "eliminate the causes of certain substantial obstructions to the free flow of commerce" and "mitigate and eliminate these obstructions when they have occurred." *Id.,* Sec. 1, quoting 29 U.S.C. 151. As the Order concludes, "[r]elying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government's contracts." *Id.*

The Executive Order achieves the goal of notification to employees of federal contractors of their legal rights through two related mechanisms. First, Section 2 of the Order provides the complete text of a contract clause that Government contracting departments and agencies must include in all covered Government contracts. Sec. 2, 74 FR at 6107–08. Second, through incorporation of the specified clause in its contracts with the Federal government, contractors thereby agree to post a notice in conspicuous places in their plants and offices informing employees of their rights under Federal

[1] The Department received a single request to extend the comment period for an additional 30 days. The commenter, a law firm, asserted that the 30-day comment period was too brief and that, as a result, many interested parties were unaware of the proposed rule. After due consideration, the Department has determined that the 30-day comment period was sufficient, and additional time in which to respond is not warranted. The commenter requesting the extension was able to submit a lengthy, substantive comment within the 30-day period and attached additional comments from many of its clients. In addition, the Department received within the 30-day period a notable number of substantive comments representing a broad spectrum of interests associated with the proposed rule. Finally, no other commenter requested such an extension.

labor laws. Sec. 2, para. 1, 74 FR at 6107–08.

The Executive Order states that the Secretary "shall be responsible for [its] administration and enforcement." Sec. 3, 74 FR at 6108. To that end, the Executive Order delegates to the Secretary the authority to "adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order." *Id.,* Sec. 3(a). In particular, the Executive Order requires the Secretary to prescribe the content, size, and form of the employee notice. *Id.,* Sec. 3(b). In addition, the Executive Order permits the Secretary, among other things, to make modifications to the contractual provisions required to be included in Government contracts (Sec. 3(c)); to provide exemptions for contracting departments or agencies with respect to particular contracts or subcontracts or classes of contracts or subcontracts for certain specified reasons (Sec. 4); to establish procedures for investigations of Government contractors and subcontractors to determine whether the required contract provisions have been violated (Sec. 5); to conduct hearings regarding compliance (Sec. 6); and to provide for certain remedies in the event that violations are found (Sec. 7). 74 FR at 6108–09.

## III. Statutory Authority for the Executive Order and the Department's Regulation

### *A. Legal Authority*

The President issued Executive Order 13496 pursuant to his authority under "the Constitution and laws of the United States," expressly including the Federal Property and Administrative Services Act ("Procurement Act"), 40 U.S.C. 101 *et seq.* The Procurement Act authorizes the President to "prescribe policies and directives that [he] considers necessary to carry out" the statutory purposes of ensuring "economical and efficient" government procurement and supply. 40 U.S.C. 101, 121(a). Executive Order 13496 delegates to the Secretary of Labor the authority to "adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order." Sec. 3, 74 FR at 6108. The Secretary has delegated her authority to promulgate these regulations to the Office of Federal Contract Compliance Programs ("OFCCP") and the Office of Labor-Management Standards ("OLMS"). Secretary's Order 7–2009, 74 FR 58834, Nov. 13, 2009; Secretary's Order 8–2009, 74 FR 58835, Nov. 13, 2009.

### *B. Interagency Coordination*

Section 12 of the Executive Order requires the Federal Acquisition Regulatory Council ("FAR Council") to take action to implement provisions of the Order in the Federal Acquisition Regulation (FAR). 74 FR at 6110. Accordingly, the Department has coordinated with the FAR Council for the insertion of language into the FAR that implements the Executive Order.

## IV. Summary of the Final Rule and Discussion of the Comments

This final rule establishes standards and procedures for the implementation and enforcement of Executive Order 13496. Subpart A of the rule sets out definitions, the prescribed requirements for the size, form and content of the employee notice, exceptions for certain types of contracts, and exemptions that may be applicable to contracting departments and agencies with respect to a particular contract or subcontract or class of contracts or subcontracts. Subpart B of the rule sets out standards and procedures related to complaint procedures, compliance evaluations, and enforcement of the rule. Subpart C sets out other standards and procedures related to certain ancillary matters. This preamble follows the same organizational outline, and within each section of the preamble the Department has noted and responded to the comments addressed to that particular section of the rule.

During the interagency review process that preceded the publication of the NPRM, the Department received requests to improve the readability and understandability of the regulatory text by employing "plain language," which includes, among other things, the use of common, everyday words, except for necessary technical terms, the use of the active rather than the passive voice, and the use of short sentences. The Department has made revisions to the regulatory text of the final rule in accordance with these guidelines.

As part of a Departmental restructuring, effective November 8, 2009, the Department abolished the Employment Standards Administration ("ESA"), which was the administrative umbrella for several agencies within the Department, including OLMS and OFCCP. As the administrator overseeing both OLMS and OFCCP, the Assistant Secretary for Employment Standards had designated administrative and enforcement functions under the proposed rule. Due to the elimination of ESA and the position of Assistant Secretary for Employment Standards, the final rule has been revised so that the roles and functions assigned to the Assistant Secretary in the proposed rule are reassigned. *See* §§ 471.2, 471.13, 471.14, 471.15, 471.16, 471.21, 471.22, and 471.23. Generally speaking, the Assistant Secretary's enforcement review functions have been reassigned to the Department's Administrative Review Board, and the administrative functions in the rule have been reassigned to the Directors, formerly called the Deputy Assistant Secretaries, of OFCCP or OLMS, or both.[2] In addition, the definition of "Assistant Secretary" has been deleted from § 471.1, and definitions have been added for easy reference to the "Director of OFCCP" and the "Director of OLMS" in the body of the rule.

### *A. The Purpose of Executive Order, Statutory Authority and Preemption*

The Department received a number of comments about the Executive Order and its purpose, the President's authority to issue it, and the asserted preemption of the Order or the Department's regulation by the National Labor Relations Act ("NLRA"), 29 U.S.C. 151, *et seq.* First, the Department received several comments opposing the Executive Order generally, each of which suggests, for various reasons, that the Executive Order constitutes unnecessary interference with private enterprise. Several commenters also commented on the purpose of the Executive Order. Some commenters were doubtful that the Executive Order would fulfill its stated goals of promoting economy and efficiency in government procurement through notifying employees of their rights, and suggested instead the Executive Order would have the opposite effect and actually increase costs to taxpayers and amplify labor-management conflict, among other negative effects cited. Other commenters stated that the Executive Order would undoubtedly achieve its stated goals. In particular, these commenters indicated that informing employees of their rights will enhance industrial peace and worker productivity, promote a stable workforce and improve employee morale, reduce intimidation, misinformation, harassment, and fear in the workplace, eliminate injustice, and contribute to positive labor-management relations—all of which will foster labor peace and reduce costs to the government.

[2] For ease of reference and to avoid confusion, the Directors of OLMS and of OFCCP are referred to in this preamble by their current title, "Director," even when this preamble is discussing passages of the NPRM that refer to their former title, "Deputy Assistant Secretary."

One commenter suggested that the Procurement Act provides an insufficient basis of authority for the President to issue Executive Order 13496. Although the comment acknowledges that the courts have rejected a similar challenge alleging insufficient authority under the Procurement Act for the issuance of an executive order requiring federal contractors to post notices to their employees, the commenter suggests that the scope of the notice required by Executive Order 13496 is broader than the Procurement Act permits.

The Department disagrees with the assertion that Executive Order 13496 is not within the President's authority under the Procurement Act. The Procurement Act authorizes the President to "prescribe policies and directives that the President considers necessary to" "provide the Federal Government with an economical and efficient system" of government procurement. 40 U.S.C. 101, 121. The Procurement Act grants the President flexibility and "broad-ranging authority," and executive orders issued under the authority of the Procurement Act need only meet a "lenient standard" that requires that the order have a "sufficiently close nexus" to the values of providing the government an economical and efficient system for procurement and supply. *UAW-Labor Employment Training Corp. v. Chao,* 325 F.3d 360, 367–68 (DC Cir. 2003). Various executive orders have passed this "lenient standard," even in cases in which the link between the order and efficient procurement may seem attenuated, where an argument can be made that the order will have the opposite effect of its stated goal, or when the order increases costs to the government in the short term. *Id.* at 367–68.[3] Executive Order 13496, which is intended to reduce government procurement costs through better informing employees of their rights so that obstructions to commerce stemming from labor unrest will be mitigated or eliminated, certainly meets this standard.

Five commenters contend that the Executive Order or the Department's regulations implementing it are preempted by the National Labor Relations Act. The comments invoke both theories of NLRA preemption fashioned by the Supreme Court, so-called *Garmon* preemption (*San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236, 244 (1959)), which prohibits regulation of activities that are protected by Section 7 or prohibited by Section 8 of the NRLA, and so-called *Machinists* preemption (*Int'l Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n,* 427 U.S. 132, 144 (1976)), which prohibits regulation of areas that Congress intended to be left "unregulated and to be controlled by the free play of economic forces." 427 U.S. at 144. The Court has described *Machinists* pre-emption as creating a "free zone from which all regulation, 'whether federal or State,' is excluded." *Golden State Transit Corp. v. Los Angeles,* 493 U.S. 103, 111 (1989), *quoting Machinists,* 427 U.S. at 153.

The Department disagrees with the contention that the Executive Order or this implementing regulation is preempted by the NLRA. *Garmon* preemption is inapplicable because the activity regulated by the Executive Order—the posting of an accurate, noncoercive notice of employee rights—is not conduct that is either protected by Section 7 or prohibited by Section 8 of the NLRA. Similarly, *Machinists* preemption is inapplicable because the provision of accurate, noncoercive information to employees about their NLRA rights is not within the zone of conduct intended by Congress to be reserved for market freedom. Further, *Chamber of Commerce v. Brown,* 128 S.Ct. 2408 (2008), in which the Court held that *Machinists* preemption invalidated a State statute that prohibited employers that receive State funds from assisting, promoting, or deterring union organizing, is distinguishable because the State law in that case attempted regulation of speech about unionization that was within the zone of conduct intended to be left to market forces. In this case, federal contractors remain free to advocate about unionization, and there is no interference with speech rights protected by Section 8(c) of the NLRA. Further, the regulation does not interfere with the primary jurisdiction of the National Labor Relations Board ("NLRB" or "Board") to draw the lines defining coercive speech that violates Section 8 of the NLRA, 29 U.S.C. 158, or that is prejudicial to a fair representation election under Section 9, 29 U.S.C. 159.

*B. The Definitions*

Section 471.1 of the final rule contains definitions of terms used in the rule. The Department received six comments from the public about the proposed definitions and, as noted below, has made some modifications to the definitions after reviewing the comments.

The Department received three related to the definitions of "contractor" and "contract." The NPRM defined a "contractor" to include both a prime contractor and a subcontractor, and defined "contract" to include both a Government contract and a subcontract. The effect of these definitions, taken together with the substantive obligations of the Executive Order and the rule, creates no differentiation between the obligations of the prime contractor—the contractor that directly does business with the Federal government—and the subcontractors of the prime contractor. The three comments noted that the broad definitions of "contractor" and "contract" improperly and without limitation impose the substantive obligations of the rule on all subcontractors. The three comments all suggest that the definitions should be modified to reflect some limitation on the application of the rule to subcontractors, such as the application of the simplified acquisition threshold, 41 U.S.C. 403, to subcontractors or a limitation on the application of the rule to subcontractors below the first tier. One of the three comments notes that although the proposed rule stated that the simplified acquisition threshold did not apply to subcontracts, because the definition of "contract" and "contractors" included "subcontract"

[3] Since the passage of the Procurement Act in 1949, successive administrations have issued executive orders governing labor and employment practices of federal contractors, and such orders have been sustained in the federal courts of appeals against attacks asserting that the President exceeded his authority under the Procurement Act. *See, e.g.,* Executive Order 11246, 3 CFR 339 (1964–65 Compilation) (1965) (applying equal opportunity principles to federal contractors), upheld by *Contractors Ass'n of Eastern Pennsylvania v. Secretary of Labor,* 442 F.2d 159 (3d Cir.), *cert. denied,* 404 U.S. 854, (1971); Executive Order 12092, 43 FR 51,375 (1978) (imposing wage controls on federal contractors), upheld by *AFL–CIO v. Kahn,* 618 F.2d 784 (DCCir.) (en banc), *cert. denied,* 443 U.S. 915 (1979); Executive Order 13202, 66 FR 11225 (2001) (agencies and entities receiving federal assistance for construction projects may neither require nor prohibit bidders or contractors from entering into project labor agreements), upheld by *Bldg. and Constr.. Trades Dept, AFL–CIO v. Allbaugh,* 295 F.3d 28 (DC Cir. 2002); E.O. 13201, 66 FR 11221 (2001) (requiring federal contractors to include in their contracts a provision agreeing to post notices informing employees of *Beck* rights), upheld by *UAW-Labor and Employment Training Corp. v. Chao,* 325 F.3d 360 (DCCir. 2003). *See also City of Albuquerque v. U.S. Dept. of Interior,* 379 F.3d 901 (10th Cir. 2004) (Procurement Act provided a sufficient statutory foundation for executive order directing that in meeting federal space needs in urban areas, first consideration be given to centralized community business areas; order's directions were sufficiently related to the Act to be a valid exercise of the Act's delegated authority); *AFL–CIO v. Carmen,* 669 F.2d 815 (DC Cir. 1981) (executive action to phase out free parking for federal employees was authorized since the institution of parking charges for federal employees would assist government in utilizing its property efficiently and economically).

and "subcontractor," the rule arguably applies the simplified acquisition threshold to subcontracts. 74 FR at 38491.

The remaining comments about the definitional section of the rule were all submitted by one commenter. This commenter noted that the limited definition of "collective bargaining agreement" in the proposed rule is inconsistent with the definition of "collective bargaining agreement" in the NLRA, and may lead to confusion. The same commenter requests an explanation for the inclusion of "weatherization" in the definition of "construction," noting that the definition of "construction" in similar Departmental regulations does not include the term. Finally, this commenter recommends that the definition of "government contract" should expressly exclude contracts for the purchase of "commercial items," as defined in the Federal Acquisition Regulation, 48 CFR 2.101, so that the terms and conditions of sales of commercial items to the government will be as similar as possible to sales in the private sector where a contract with the government is not involved.

After full consideration of these comments about the definitions in the proposed rule, the Department has made the following decisions. The Department endorses the definitions of "contract" and "contractor" as set out in the proposal, and has made no change to these definitions in the final rule. As discussed in greater detail below, the obligations of the final rule apply to both the government contractor and its subcontractors at any tier. In addition, the exception in the Executive Order, and in this implementing rule, for government contracts below the simplified acquisition threshold applies only to the prime contract and not to subcontracts of the prime contract. Finally, as further explained below, the Department has decided to except from application of the final rule subcontracts that are *de minimis* in value, which the Department has defined as those subcontracts that do not exceed $10,000. This exception has been incorporated into the rule in § 471.3(a), and no modification to the definitions is required in order to implement this new exception for *de minimis* value subcontracts.

The Department declines to exclude from the definition of "government contract" contracts for commercial items as defined in the Federal Acquisition Regulations, 48 CFR 2.101. The Department acknowledges, as the comment suggests, that the application of this rule to contracts for commercial items means that such contracts will differ from the purchase of the same items when the Federal government is not the purchaser. However, the judgment underlying the Executive Order, and the Department's judgment in this implementing rule, is that cost savings in Federal contracting can be made when employees are well informed of their NLRA rights, and this principle holds true whether the contract is for commercial items or for some other product or service.

The Department agrees that the definition of "collective bargaining agreement" in the rule, which is intended only to identify a class of collective bargaining agreements under the Federal Service Labor Management Relations Statute ("FSLMRS"), 5 U.S.C. 7101 *et seq.,* that are excepted from coverage under the Executive Order, may be confusing to readers accustomed to the usage of the same term in the NLRA. Therefore, the definition of this term has been removed from § 471.1, and the exception for collective bargaining agreements entered into under the FSLMRS is set out more fully in § 471.3 without cross-reference to the definitional section. In order to treat the other coverage exception similarly, the definition of "simplified acquisition threshold" has been removed from § 471.1, and the exception for government contracts below the simplified acquisition threshold has been made more explicit in § 471.3 without cross-reference to the definitional section. In addition, in response to a comment, the Department notes that because of the Federal government's increased emphasis on energy efficiency, the inclusion of weatherization activities within the definition of "construction" was important to ensure that Federal contracts involving weatherization are subject to the rule. For consistency, a similar revision has been made to the definition of "construction work site." Finally, in response to a comment received during interagency review of the final rule, the Department has modified the definition of "labor organization" to more precisely duplicate the definition of "labor organization" in the NLRA, 29 U.S.C. 152(5).

*C. The Content of the Employee Notice*

1. Statutory Rights Included in the Notice

Executive Order 13496 requires the Secretary to "prescribe the size, form and content of the notice" that contractors must post to notify employees of their rights. Sec. 3(b), EO 13496, 74 FR at 6108. Appendix A to Subpart A of the proposed regulatory text presented the content of the Secretary's proposed notice, which sets forth employee rights under the NLRA. 74 FR at 38498–99. As a threshold matter, the Department concluded in the NPRM that providing notice of employee rights under the NLRA best effectuates the purpose of the Executive Order. 74 FR at 38489–90. Section 1 of the Executive Order clearly states that the Order's policy is to attain industrial peace and enhance worker productivity through the notification of workers of "their rights under Federal labor laws, including the National Labor Relations Act." Sec. 1, 74 FR at 6107. The policy of the Executive Order goes on to emphasize the foundation underlying the NLRA, which is to encourage collective bargaining and to protect workers' rights to freedom of association and self-organization, and notes that efficiency and economy in government contracting is promoted when contractors inform their employees of "such rights." Further, the contract clause prescribed by the Executive Order requires Federal contractors to post the notice "in conspicuous places in and about plants and offices where employees covered by the National Labor Relations Act engage in activities related to performance of the contract. * * *" Sec. 2, para. 1, 74 FR at 6107 (emphasis added). Because of these specific references to the NLRA, the NPRM proposed including in the notice only employee rights contained in the NLRA.

The Department received one comment noting a textual ambiguity in the Executive Order relating to the content of the notice. The commenter pointed out that the Executive Order refers to the provision of notice about "rights under Federal labor laws, including the National Labor Relations Act," which, the commenter submits, suggests that the Department should include rights under other "Federal labor laws" in the notice as well. In particular, this commenter suggested that the notice should include statutory rights under the Railway Labor Act ("RLA"), 45 U.S.C. 151–188, the Federal law governing labor-management relations in the airline and rail industries. Two other commenters suggested the inclusion in the notice of rights under the Labor-Management Reporting and Disclosure Act ("LMRDA") 29 U.S.C. 401 *et seq.,* which guarantees certain rights to union members. A final commenter on this subject agreed with the Department that

the notice should be limited to rights under the NLRA.

The Department has considered the inclusion of other statutory rights in the notice, but has concluded that there is overwhelming textual support in the Executive Order, as noted above, for its original conclusion that rights under the NLRA should be the sole focal point of the required notice. Taken together, these provisions of the Executive Order offer strong evidence that its intent is to provide notice to employees of rights under the NLRA. Furthermore, no other Federal labor or employment laws are mentioned expressly in the Executive Order.[4] Therefore, there is no textual support—other than the plural reference to "Federal labor laws"—that would support the inclusion of rights under either the LMRDA or the RLA, as suggested by the comments. Inclusion of rights under the RLA is precluded for another reason as well. Because Executive Order 13496 requires that the notice be posted "where employees covered by the National Labor Relations Act" work, 74 FR 6107, and the NLRA expressly excludes from its coverage employers covered under the RLA and their employees, 29 U.S.C. 152(2) and (3), when the Executive Order and the NLRA are read together, federal contractors that are covered by the RLA are excluded from the requirements of the Executive Order.

2. Overview of the Comments on the Content of the Proposed Notice

As noted in the NPRM, the Department considered the level of detail the notice should contain regarding NLRA rights. The Department considered requiring a verbatim replication of the NLRA's enumeration of employee rights in Section 7, 29 U.S.C. 157, or a simplified list of rights based upon that statutory provision.[5] In the end, however, the Department concluded in the NPRM that inclusion of the statutory language itself or a simplified list of rights in a notice would be unlikely to convey the information necessary to best inform employees of their rights under the Act. Instead, the Department proposed a statement of employee rights, contained in Appendix A to Subpart A of Part 471 ("NPRM notice" or "proposed notice"), 74 FR at 38498–99, that provided greater detail of NLRA rights derived from Board or court decisions and that would more effectively convey such rights to employees. The proposed notice also contained examples of general circumstances that constitute violations of employee rights under the Act. Thus, the Department proposed a notice that provided employees with more than a rudimentary overview of their rights under the NLRA, in a user-friendly format, while simultaneously not overwhelming employees with information that is unnecessary and distracting in the limited format of a notice. The Department specifically invited comment on the statement of employee rights proposed for inclusion in the required notice to employees. In particular, the Department requested comment on whether the notice contains sufficient information of employee rights under the Act; whether the notice effectively conveys the information necessary to best inform employees of their rights under the Act; and whether the notice achieves the desired balance between providing an overview of employee rights under the Act and limiting unnecessary and distracting information.

The content of the proposed notice received more comments than any other single topic addressed in the proposed rule. Many comments from both individuals and organizations offered general support for the content of the proposed notice, stating that employee awareness of basic legal rights will promote a fair and just workplace, improve employee morale, and foster workforce stability, among other benefits. Several employee and civil rights organizations registered support for the rule, and maintained that because employers are required to post notices informing employees of other federal workplace rights, this notice represents little or no additional burden and, in fact, is long overdue given the other required notices.[6] Labor organizations were also supportive of the proposed notice generally, noting that employees' awareness of their basic workplace rights in a clear and effective manner will promote the free exercise of those rights and prevent employer interference and intimidation of employees regarding self-organization and collective bargaining.

Other commenters were less enthusiastic about the content of the proposed notice. A significant number of commenters—approximately one-third—including many employer, industry and interest groups, argued that the content of the notice is not balanced, and appears to promote unionization instead of employee freedom of association. In particular, many commenters stated that among the rights contained in Section 7 of the NLRA is the right to refrain from union activity, but this right is given little attention in comparison to other rights in the proposed notice. In addition, many of these commenters also noted that the examples of employer and union unfair labor practices are unbalanced—the list of employer misconduct in the proposed notice was seven items long, while the example of union misconduct contained only one item. Several commenters also noted that the proposed notice excludes rights associated with an anti-union position, including the right to *seek* decertification of a bargaining representative, the right to abstain from union membership in so-called right-to-work states, and rights associated with the Supreme Court's decision in *Communication Workers* v. *Beck,* 487 U.S. 735 (1988), permitting employees to *seek* reimbursement of that portion of dues or fees collected under a union security clause in a collective bargaining agreement that is not used for collective bargaining, contract administration, or grievance adjustments. Many of these comments noted that a neutral and even-handed government position on unionization would be more inclusive of these rights.

Many comments addressed the issue of complexity, as it pertains both to the

[4] The Postal Reorganization Act, 39 U.S.C. 101 *et seq.,* extended the jurisdiction of the NLRB to employees of the United States Postal Service. *See* 39 U.S.C. 1201–1209.

[5] Section 7 of the NLRA, 29 U.S.C. 157, states that: "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title]."

[6] The Department of Labor implements employee notification requirements pertaining to employers covered by the Fair Labor Standards Act, 29 U.S.C. 211 (implementing regulation 29 CFR 516.4); the Occupational Safety and Health Act, 29 U.S.C. 657(c) (implementing regulation 29 CFR 1903.2); the Family Medical Leave Act, 29 U.S.C. 2601 *et seq.,* (implementing regulation 29 CFR 825.300, .402); the Uniformed Service Employment and Reemployment Rights Act, 38 U.S.C. 4334 (implementing regulation 20 CFR 1002); Employee Polygraph Protection Act, 29 U.S.C. 2003 (implementing regulation 29 CFR 801.6); and the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1821(b), 1831(b) (implementing regulation 29 CFR 500.75, .76). Federal contractors specifically have additional notification requirements, including equal employment opportunity rights under Executive Order 11246, the Rehabilitation Act of 1973, 29 U.S.C. 793, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, (implementing regulations at 41 CFR Chapter 60–l .42; 41 CFR 60–250.4(k); and 41 CFR 60–74 1.5(a)(4)), and rights under the Davis-Bacon Act, 40 U.S.C. 3142(c)(2) (implementing regulation 29 CFR 5.5(a)(l)) and the Service Contract Act, 29 U.S.C. 351(a)(4) (implementing regulation 29 CFR 4.6(e), .184).

law and to the content of the proposed notice. Approximately ten comments stated that the Department's attempt to summarize NLRA decisional law was flawed because the law is far too complex to condense into a single workplace notice. Many of these comments noted that NLRA law has been developed over 75 years, and involves interpretations by both the NLRB and the federal courts, sometimes with conflicting results. Some commenters noted that because of Board member turnover, which alters the political composition of the Board, legal precedent changes frequently, thus requiring frequent updates to the content of the notice. Several commenters cited the NLRB's *Basic Guide to the National Labor Relations Act: General Principles of Law Under the Statute and Procedures of the National Labor Relations Board* (*Basic Guide to the NLRA*) (1997), *available at http://www.nlrb.gov/nlrb/shared_files/brochures/basicguide.pdf,* to make their point about legal complexity. In the Foreword to the *Basic Guide to the NLRA,* the Board's General Counsel states that "[a]ny effort to state basic principles of law in a simple way is a challenging and unenviable task. This is especially true about labor law, a relatively complex field of law." The thrust of these comments about legal complexity was that NLRA decisional law is too complex, dynamic, and nuanced, and any attempt to summarize it in a workplace notice will result in an oversimplification of the law and lead to confusion, misunderstanding, inconsistencies, and some say, heightened labor-management antagonism.

Similarly, six comments stated that the proposed notice itself was too complex to be helpful or informative to employees. Some said the notice was too long and wordy, and therefore likely to confuse or mislead employees, which, as one commenter noted, is contrary to the purpose of the Executive Order. Another said the notice is too long and contains examples of employer misconduct that are arbitrary and too specific.

Comments asserting that the content of the proposed notice was too detailed dovetailed with the many comments suggesting that the required notice should specify only those rights contained in Section 7 of the NLRA or, alternatively, those rights and obligations as stated in employee advisories on the NLRB's Web site.[7] Approximately sixteen comments suggested this simplified approach, while only three advocated in favor of the level of complexity in the notice, noting particularly that the detail in the notice comports with the Executive Order's requirement that employees should be "well informed of their rights." Those comments favoring a more streamlined notice suggested that a simplified version of the notice based on Section 7 or the NLRB's Web site advisory would be clear, straightforward, and easily understood; would not be stated in "legalese"; would be unlikely to confuse or inflame tensions; would defer to the statute's drafters or to the NLRB's expertise to provide a statement of rights; would be unbiased; and would decrease the likelihood of misleading employees; and would improve readability.

In addition to these general comments about the proposed notice, many comments offered suggestions for specific revisions to individual provisions within the four sections of the proposed notice: the preamble, the statement of affirmative rights, the examples of unlawful conduct, and the enforcement and contact information. The following discussion presents in succession the comments related to individual provisions of the notice, followed by the Department's decisions regarding the content of the final notice made in response to all comments on the content of the notice.

3. Comments Addressing the Preamble of the Proposed Notice

The preamble of the proposed notice stated that "[i]t is the policy of the United States to encourage collective bargaining and protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection." 74 FR at 38498. The proposed preamble was based on Section 1 of the NLRA, 29 U.S.C. 151, and Executive Order 13496, Section 1. The Department specifically sought comment on this description of policy in the proposed notice.

Five commenters support the statement in the preamble that U.S. policy encourages collective bargaining and the full exercise of worker self-determination rights. Many supportive comments noted that the preamble is appropriate given that Section 1 of the Executive Order also reiterates the policy of encouraging collective bargaining. Fourteen commenters opposed the preamble on various grounds. Many negative commenters noted that the preamble resembles text from Section 1 of the NLRA, "Findings and Policies," 29 U.S.C. 151, but substantially misstates it.[8] These commenters note that U.S. policy as stated in Section 1 of the NLRA is "to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred," and that one means to achieve that policy goal is through the encouragement of collective bargaining and free exercise of rights. By overlooking the statute's true stated purpose to eliminate obstructions to commerce, these commenters say, the notice's preamble improperly elevates the "encouragement of collective bargaining" to a guiding principle rather than simply a means to achieve the free flow of commerce. Other commenters noted that the policy of the U.S. is, or should be, to remain neutral regarding labor-management relations, and the preamble should reflect neutrality by emphasizing employee choice, which includes the right to refrain from collective bargaining or other union activities. One commenter noted that Section 1 of the NLRA must be read together with Section 9 of the NLRA, 29 U.S.C. 159, which establishes procedures for the election of a collective bargaining representative by a vote of a majority, thus underscoring that U.S. policy encourages collective bargaining only when a majority of employees have freely chosen workplace representation. Observing some differences between the text of the notice's preamble and the statement of purpose in the Executive Order, two commenters noted that the preamble does not accurately track the Executive Order's precatory language.[9] Finally,

[7] *See http://www.nlrb.gov/Workplace_Rights/employee_rights.aspx.*

[8] Section 1 of the NLRA states that "[i]t is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C. 151.

[9] Section 1 of the Executive Order, 74 FR 6107, states:

As the [NLRA] recognizes, "encouraging the practice and procedure of collective bargaining and * * * protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection" will "eliminate the causes of certain substantial obstructions to the free flow of commerce" and "mitigate and eliminate these obstructions when they have occurred." 29 U.S.C. 151.

several commenters suggested that the preamble be eliminated altogether so that these drafting issues need not be addressed.

4. Comments Addressing the Statement of Affirmative Rights in the Proposed Notice

*The proposed notice contains the following statement of affirmative rights:*

Under federal law, you have the right to:

Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.

Form, join or assist a union.

Bargain collectively through a duly selected union for a contract with your employer setting your wages, benefits, hours, and other working conditions.

Discuss your terms and conditions of employment with your co-workers or a union; join other workers in raising work related complaints with your employer, government agencies, or members of the public; and *seek* and receive help from a union subject to certain limitations.

Take action with one or more co-workers to improve your working conditions, including attending rallies on non-work time, and leafleting on non-work time in non-work areas.

Strike and picket, unless your union has agreed to a no-strike clause and subject to certain other limitations. In some circumstances, your employer may permanently replace strikers.

Choose not to do any of these activities, including joining or remaining a member of a union.

Comments on the statement of affirmative rights offered both general guidance on the provisions overall, as well as specific recommendations for revising each provision individually. Generally, two labor organizations suggested that the statement of affirmative rights should present only the basic rights without any attempt to present the limitations to those basic rights that have developed over the decades of decisional law. The first labor organization argues that such limitations are themselves subject to further exceptions, which cannot be included in the notice without overwhelming and confusing employees. This comment notes that the limitations to the basic rights included on the notice involve fact-dependent scenarios that do not assist employees in understanding their basic rights. None of the basic rights, the comment asserts, have ever been understood as absolutes without any exceptions or limitations, so the attempt to include those in the notice is unnecessary and confusing. One commenter from the retail industry noted generally that the statement of affirmative rights should contain a disclaimer that "certain types of speech and expression in the workplace are not protected." As an example, the commenter indicated that some employers may permissibly prohibit third-party solicitations or leafleting, or wearing of any insignia, in a retail setting. The final general comment regarding the statement of affirmative rights suggested that the use of the second-person pronouns "you" and "your" is overly inclusive because not all casual readers of the poster are covered by the statement of rights. This comment suggests that the notice must make it clear that the enumerated rights apply only to covered employees, as the Department has done with the notice required by the Family and Medical Leave Act, 29 CFR part 825 Appendix C. This comment notes that a statement regarding eligibility would eliminate confusion for employees who are not covered by the NLRA but may read the notice.

Many comments about the notice's statement of affirmative rights were directed at whether each individual provision, *e.g.,* the right to bargain collectively or the right to discuss union issues with coworkers, constitutes an informative, accurate, and/or complete statement of the law. Some general conclusions emerge from a review of the comments on each provision, which is set out in more detail below. First, labor organizations tended to favor statements of rights that were short and without qualifications or exceptions, and disfavored the "subject to certain exceptions" limitations added to some of the provisions. Groups representing employers, on the other hand, argued in favor of adding exceptions and limitations to the notice, sometimes to the extent that the notice would lose the quality of a poster and would become instead a more comprehensive manual.

a. The Right To Organize and the Right To Form, Join and Assist a Union

There were no comments, positive or negative, specifically about the text of the notice referencing employees' rights to organize a union or form, join or assist a union.

b. The Right To Bargain Collectively

Two comments suggested that the statement that employees have the right to bargain collectively with their employers through a duly selected union over wages and other terms and conditions of employment is misleading and vague. The first comment argues that the statement is misleading because it fails to acknowledge that an employer does not have an obligation under the NLRA to consent to the establishment of a collective bargaining agreement, but instead only has the statutory duty to "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." 29 U.S.C. 158(d). Moreover, the failure to reach an agreement is not *per se* unlawful, and the finding of an unfair labor practice instead depends on whether the parties engaged in good faith bargaining. This commenter suggests that the notice should instead note that the NLRA requires the parties to bargain in good faith but does not compel agreement or the making of concessions, and that, in some instances, a bargaining impasse will result, permitting the parties to exercise their economic weapons, such as strikes or lockouts. A few other commenters similarly suggested that the notice should include a statement that both employers and unions have an obligation to bargain in good faith.

The second comment submitted about this particular provision argues that the term "duly selected" union is so vague that it permits misunderstanding. For instance, the comment suggests, the phrase permits the reader to erroneously conclude that an employer is obligated to bargain with a union supported by the majority of employees signing union authorization cards but not certified by the NLRB following a government-supervised secret ballot election. Alternatively, the comment submits that the phrase permits readers to erroneously believe that an employer must bargain with a minority union. To remedy the misstatements in this and other sections of the notice, the comment suggests that the Department rely on the text of the NLRB's very brief brochure entitled, *Protecting Workplace Democracy.*[10]

c. Discuss With Coworkers, Join With Other Coworkers

Both labor organizations and management groups suggested changes to the third provision in this section of the notice. One labor organization suggested significant streamlining of this provision so that it references only employees' "communication" rights, and recommends the inclusion of the other "action" rights ("join other workers," etc.) in the following provision. This comment advised that separation of communication from action would clarify each provision. Thus, the comment suggests that this provision should read simply: "Discuss your terms and conditions of employment or union organizing with your coworkers or with a union." A second labor organization

[10] The brochure can be accessed at *http://www.nlrb.gov/nlrb/shared_files/brochures/OutreachBrochure_Rev_10-30-07.pdf.*

agreed that communication and action rights should be separated, but adds that this provision should emphasize employees' rights to communicate with their coworkers *at their place of work* about union issues. While this comment suggests that this provision reference "employee's rights of workplace access/communication," it makes no specific proposal for revision of the text.

Comments from the groups representing employer interests generally suggest one of two approaches—either that the provisions should be stricken entirely because the law in this area is too complex to summarize or that the general statement in the provision is inaccurate because it fails to include limitations and qualifications on an employee's right to discuss union issues with coworkers. One law firm representing employers suggests that the provision be stricken entirely, because the notice cannot possibly accurately summarize Board law on this point, which is constantly evolving. Four other commenters assert that the following complexities or subtleties are missed in the overly succinct statement about communication rights: The statement fails to notify employees that employers can lawfully prohibit certain communication, such as a no-talk rule about a drug investigation or disparagement of employer's product or service; the statement fails to include the Board's recently articulated rules governing employee use of and access to employer e-mail for union talk,[11] omits references to the fact that an employee does not have an absolute right to speak to a union organizer on an employers' property, does not discuss the meaning of "mutual aid," fails to discuss an employees' duty not to disparage employers' products or services, and does not reference the limitations on so-called *Weingarten* rights involving an employee's right to have a union representative present in a disciplinary meeting; and the provision does not clarify that concerted activity must be both "concerted" and "for the mutual aid and protection" of employees, nor does it reflect that not all action taken together with coworkers is protected, for example, a sit down strike; and the provision does not explain that certain expressions or conduct, for instance, profanity directed at the employer, may not be protected (Jackson Lewis). As proposed revisions to this provision, one comment suggests that provisions should include the general "subject to certain limitations" language; another suggests sole reliance on the NLRB's brochure, *Protecting Workplace Democracy, See supra* n. 12; and the remaining comments suggest the inclusion of the level of detail that would effectively turn the notice into a multi-page legal reference.

d. Attending Rallies

All four comments about the right to attend rallies suggest that this provision should be eliminated. One comment suggests that the term "rally" has no legal history or meaning under the NLRA, and that the reference is misleading because it erroneously indicates that there might be some legal protection for a rally on company property on non-work time. Other comments similarly suggest that the provision is flawed because it does not distinguish between types of protected and unprotected rallies and is confusing. In addition to deleting the reference to rallies, one labor organization's proposed revision suggests deleting the reference to leafleting, discussed further below, and establishing this provision as the "action" provision in counterpoint to the "communication" provision above. Thus, this comment suggests the following revision: "Take action with one or more of your co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and *seeking* help from a union."

e. Leafleting

Four of the five comments about the inclusion of the right to leaflet on non-work time in non-work areas level criticisms similar to criticisms of other provisions—that the provision is too general and does not distinguish between types of leafleting conduct that are protected and those that are unprotected. For instance, the comments indicate that the provision fails to note limitations related to the rights of off-duty employees to handbill, that leafleting can be prohibited in patient care areas, and that some types of communications, such as the disparagement or vilification of an employer's reputation, are unprotected. The fifth comment on this topic suggests elimination of the provision because the right to engage in literature distribution is adequately addressed in the examples of violations and need not be addressed in the statement of affirmative rights.

f. Striking and Picketing

The notice's reference to the right to strike and picket received eight comments, and the comments are aligned generally as they have been with other provisions: Labor organizations suggest the removal of the "subject to certain other limitations" language and the suggestion that "[i]n some circumstances, your employer may permanently replace strikers," while comments representing employer interests suggest the provision is flawed because of the absence of further limitations, exceptions, and distinctions.

One labor organization suggests that the right to strike and picket be presented as are the other rights in the notice, with a plain affirmative statement of the right and without describing possible limitation on the exercise of the right in question. The reference to the limitation on the right in the presence of a contractual no-strike clause both overstates and understates the possible limitations on the right, this commenter submits, depending, for example, on the nature of the no-strike clause in question. A second labor organization echoes the criticism, and further suggests that the introduction of the complex law regarding an employer's right to permanently replace certain striking employees adds an unnecessary and ultimately confusing limitation, which will lead employees to fear exercising the right. Other labor organizations specifically endorse this criticism.

Among the permutations missed in the proposed formulation, other commenters argue, are the distinctions that may lead to a determination that certain strike activity is unprotected, such as whether the strike is for recognition or bargaining, whether the strike has a secondary purpose, whether picketing involves a reserved-gate, whether the strike is a sit-down or minority strike, whether the conduct is a slow down and not a full withholding of work, whether the strike is partial or intermittent, whether the strike involves violence, and whether the strike is an unfair labor practice strike or an economic strike. One law firm suggests this area of law is so complex that it cannot be reduced to a single provision in the notice, and thus should be eliminated altogether.

g. Choosing To Refrain From Union Activity

All nine comments about the right to refrain from engaging in union activity universally criticized its lack of prominence, two of these comments asserting that the provision's prominence was so diminished that they did not notice the statement at all. Some comments accused the Department of "burying" the provision in the text far below the other rights to

[11] *See The Register Guard,* 351NLRB 1110 (2007).

engage in union activity, further exemplifying, some say, that the Department favors union activity. Suggested revisions to amplify the prominence of the provision include stating that employees have the right to refrain from protected, concerted activities and/or union activities; stating that employees' right to refrain includes the right to actively oppose unionization, to not sign union authorization cards, to request a secret ballot election, to decertify a union representative, to not be a member of a union or pay dues or fees (addressed further below); and stating that employees have the right to be fairly represented even if not a member of the union. One employer suggested that if the notice retains its current emphasis favoring union activity and disfavoring the freedom to refrain from such activity, employers will be compelled to post their own notices, which the commenter states is not unlawful, that emphasize and elaborate on the right to refrain. Rather than subject employees to two posters, the commenter suggests, the Department should better balance this notice.

h. Rights Related to Union Membership

Eight commenters want the notice to include a statement about an employee's rights under *Communication Workers v. Beck,* 487 U.S. 735 (1988) ("*Beck* rights"). Typical of these comments is a submission suggesting that the notice should include the right to not be a member of a union, to not pay union dues or fees as condition of employment if the employee is in a so-called right-to-work state, and not to pay full union dues as condition of employment in non-right-to-work state. This commenter suggests that the failure to include these rights would make clear the Secretary's purpose to assist unions and union officials that themselves enjoy no rights under the NLRA. Another commenter made a somewhat different point about *Beck* rights, suggesting that the notice must include the right to refrain from being a full dues-paying member although an employee may have to pay representational fees; the right to refuse to pay any dues in a right-to-work state; and the right to withhold dues earmarked for political, lobbying or other non-representational activities. A third commenter suggests that if *Beck* rights are included, the Department may find it difficult to explain "compulsory unionism."

5. The Examples of Unlawful Conduct in the Notice

*The proposed Notice contained the following examples of unlawful conduct:*

It is illegal for your employer to:

Prohibit you from soliciting for the union during non-work time or distributing union literature during non-work time, in non-work areas.

Question you about your union support or activities.

Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in other activity for mutual aid and protection, or because you choose not to engage in any such activity.

Threaten to close your workplace if workers choose a union to represent them.

Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances, for example, as where doing so might interfere with patient care.

Spy on or videotape peaceful union activities and gatherings or pretend to do so.

It is illegal for a union or for the union that represents you in bargaining with your employer to: Discriminate or take other adverse action against you based on whether you have joined or support the union.

As a general matter and as noted earlier, there were many comments about the disproportionate number of examples of employer misconduct as compared to the single example of union misconduct. Thirteen comments made this point, many relying on the number of paragraphs devoted to illegal employer conduct (7) and the number of paragraphs devoted to illegal union conduct (1). Several comments indicated that when one compares the employer misconduct listed in Section 8(a) of the NLRA with union misconduct listed in Section 8(b), no such imbalance appears in the text of the statute. In order to comply with the Executive Order's directive to accurately inform workers of their rights, several comments indicated, additional examples of illegal union conduct must be included. Many suggested reliance on the statutory text of Section 8 to achieve the proper balance. Several commenters provided additional examples of union misconduct that may be listed, including the refusal to process a grievance because the employee is not a union member, requiring nonmembers to pay a fee to receive contract benefits, videotaping non-striking employees, disciplining members for engaging in activity adverse to a union-represented grievant, disciplining members for refusing to engage in unprotected activity, engaging in perfunctory or careless grievance handling, failing to notify employees of their *Beck* rights, causing or attempting to cause an employer to discriminate against an employee regarding union security, requiring employees to agree to dues checkoff instead of direct payment, discriminatorily applying hiring hall rules, and conditioning continued employment on the payment of a fine.

Four commenters offered general comments about the examples of unlawful employer conduct. Of those, two suggested relatively minor revisions—one asked for more specific examples of violations and one suggested the inclusion of the concept that low-level supervisors must not engage in misconduct. A third suggested the inclusion of examples of employer misconduct that interferes with or restrains an employee's right to oppose unionization. The fourth, from a labor organization, suggests that the Department should delete the specific references to solicitation, distribution and insignia, and instead categorically state that "it is unlawful for employers to interfere with any and all employee rights, including all examples of rights listed above." This comment contends that this would be clearer and more accurate than the current provision, which lists only some but not all violations.

As with the notice's statement of affirmative rights, the individual provisions in this section of the notice each received numerous comments and suggestions for improvement. The vast majority of the comments about the specific provisions are from representatives of employers, and most suggest that the examples are too broad and fail to reflect the various permutations that would convert some conduct from prohibited to permitted.

a. No Solicitation and No Distribution Rules

Seven commenters were critical of the provision stating that an employer cannot lawfully prohibit employees from "soliciting for the union during non-work time or distributing union literature during non-work time, in non-work areas." Of those, two labor organizations suggest that the references to "non-work time" and "non-work areas" are too abstract, ambiguous and confusing, and suggest additions to the text to explain the references. Thus, one labor organization proposes that the notice state that employers may not "prohibit you from soliciting for a union during non-work time, such as before or

after work or during break times; or from distributing union literature during such non-work time, in non-work areas, such as parking lots or break rooms." [12] The second labor organization offered the same clarification of the reference to non-work time, but goes further. This comment suggested that "solicitation" has a narrow meaning and involves asking someone to join the union by signing an authorization card, which is subject to the restrictions suggested in the notice. The comment submits, however, that this should be distinguished from more general "union talk"—discussing the advantages and disadvantages of unionization—which, the comment asserts, cannot be lawfully restricted by employers.

The remaining comments criticize the provision for failing to note any limitations on employees' rights to solicit and distribute, such as the limited rights of off-duty employees, and limitations in the retail and health care establishments. One comment, in particular, wants the notice to advise hospital employees that they do not enjoy a protected right to solicit in immediate patient care areas or where their activity might disturb patients, and proposes including the qualification, "except that a hospital or other health care employer may prohibit all solicitation in immediate patient care areas or outside those areas when necessary to avoid disrupting health care operations or disturbing patients." Another comment suggested that the law in this area is so complex that no meaningful but succinct provision can be constructed, and therefore recommends deleting it entirely.

b. Interrogating Employees About Union Activity

Four commenters, all representing employer interests, suggested that the notice's provision indicating that it is unlawful for an employer to question an employee about his or her union support or activities is too broadly stated. Three of the four suggested that the provision should include the Board's standard for analysis of interrogation charges, *i.e.,* whether the questioning interferes with an employee's rights given the totality of the circumstances. Two of those three suggested the inclusion of the circumstances that might be considered to determine whether questioning is unlawful, including the presence of employer hostility to unions, the identity of the questioner, the place and method used, and the employee's response. The fourth comment asserted that the provision should be stricken because the law in this area is too complex to summarize.

c. Taking Adverse Action Against Employees for Engaging in Union-Related Activity

Four comments, all from employer groups, disapprove of the provision describing unlawful employer discrimination against employees for engaging in union activity. Two of the four suggest that the provision is inadequate because it does not recognize the application of the Board's burden-shifting analysis in *Wright Line, Inc.,* 251 NLRB 1083 (1980) to determine whether unlawful discrimination has occurred. Another comment suggests that the provision is inaccurate because it does not reflect that in states without right-to-work laws and where a collective bargaining agreement contains a union security clause, some employers may be required to terminate employees who choose not to join the union or pay union dues or fees. The final comment complains that this provision is inaccurate because it does not include or explain protection for "concerted activity."

d. Threats To Close

Five comments, all from employer groups, criticize the overgeneralization of the provision stating that it is unlawful to threaten to close if a union is chosen to represent employees. Most comments note that, as with unlawful interrogation, a threat to close is evaluated under a totality of circumstances, and that an employer is permitted to state the effects of unionization on the company so long as the statement is based on demonstrably probable consequences of unionization. Also, as with other provisions, one commenter suggested that the provision should be eliminated because the law in this area is too complex to capture. A final comment suggests that the provision implies that a union can guarantee job security.

e. Promising Benefits

One comment from a group representing employer interests states that this provision is "the only substantive statement that the Department has proposed in the notice that we do not find fault with." The only two other comments state that the provision fails to recognize that an employer may promise or grant benefits that are not coercive in nature.

f. Prohibitions on Union Insignia

Two labor organizations and six employer groups are critical of this provision. One labor organization criticizes both the inclusion of the "special circumstances" exception as well as the reference to "patient care areas" as an example of a special circumstance. In addition to asserting that it inaccurately states the law because it fails to include "immediate" as a characterization of "patient care areas," this comment suggests that the provision would be better stated as an affirmative right rather than an employer unfair labor practice. The second labor organization suggests the elimination of "patient care area" as an example of the "special circumstances" exception.

The six remaining comments suggest that the provision fails to illuminate the conditions under which "special circumstances" may exist, including in hotels or retail establishments where the insignia may interfere with the employer's public image, or when the insignia is profane or vulgar. Another comment indicates that the provision is overly broad because it does not reflect that a violation depends on the work environment and the content of the insignia. All either suggest that more detail should be added to the provision to narrow its meaning, or it should be stricken.

g. Spying or Videotaping

Five commenters challenged the accuracy of this provision, asserting primarily that observation of union activity that occurs out in the open and videotaping for security purposes is lawful. Aside from the common suggestion that the provision be stricken, no specific revisions were suggested in the comments.

h. Union Discrimination or Adverse Action

There were no comments specifically addressing the one example of unlawful union conduct.

6. The Enforcement and Contact Information in the Notice

The proposed notice included NLRB contact information and basic enforcement procedures to enable employees to find out more about their rights under the Act and to proceed with enforcement if necessary. Accordingly, the required notice stated that illegal conduct will not be permitted, provided information regarding the NLRB and filing a charge with that agency, and indicated that the Board will prosecute violators of the Act. Furthermore, the notice indicated

[12] This comment also suggested changing the reference in the proposed provision from "*the* union" to "*a* union" to avoid the suggestion that there is a preferred union, such as an incumbent union. This suggestion has been adopted.

that there is a 6-month statute of limitations applicable to making allegations of violations and provides NLRB contact information for use by employees. The Department invited suggested additions or deletions to these procedural provisions that would improve the content of the notice.

Three commenters offered suggestions for this section of the notice. One commenter provided the following text to substitute for the paragraph in the proposed notice that begins, "If you believe your rights * * *":

> If you believe your rights or the rights of others have been violated, you should contact the NLRB immediately. You may inquire concerning possible violations without your employer or anyone else being informed of the inquiry. If the NLRB representative with whom you speak believes that a violation might have occurred he or she will inform you how you may file a charge seeking redress of the violation. Charges may be filed by any person and need not be filed by the employee directly affected by the violation.

The same commenter also suggested that the NLRB's telephone number appear before its Web site information because, the comment asserts, more people are likely to use the telephone to make the contact. A second commenter suggested that the contact information provide the important assurance that employees may raise employment questions or concerns with the NLRB in confidence, which is a revision that the first commenter's proposed paragraph incorporates. Finally, a third commenter suggested that the admonition in the notice that an employee "must contact the NLRB within six months of the unlawful treatment" if the employee believes a violation has occurred suggests that contacting the NLRB is mandatory and ignores those employees who may not want to contact the NLRB. The commenter suggests that the provision include the phrase, "if you desire relief from the NLRB."

7. Suggestions To Incorporate Three Additional Provisions

One comment suggested that the use in the proposed notice of the second-person pronouns "you" and "your" is overly inclusive because not all casual readers of the poster will be covered by the NLRA. This comment suggested that the notice should clarify that the specified rights apply only to covered employees in order to eliminate confusion for employees who are not covered by the NLRA but may read the Notice.

Four commenters suggested that the Notice include a provision referencing the NLRA's obligation on employers and labor organizations to bargain in good faith. One of these comments requested the inclusion as an express limitation on the provision that employees have the right to bargain collectively, in order to clarify that the employer's obligation was only to bargain in good faith and not necessarily to reach an agreement.

One commenter from the retail industry noted generally that the statement of affirmative rights should contain a qualification that "certain types of speech and expression in the workplace are not protected." As an example, the commenter indicated that some employers may permissibly prohibit third-party solicitations or leafleting, or wearing of any insignia, in a retail setting. Although this comment suggests a statement indicating limitations on certain employee speech rights, the Department has considered whether such a statement may be appropriate more broadly for application to all the rights and obligations listed in the notice, particularly in light of the many comments criticizing the proposed notice because its provisions do not indicate that the rights and obligations are subject to exceptions and limitations.

8. Revisions to the Notice Based on the Comments

After fully considering these comments, the Department has decided to revise the employee notice that will be included in the final rule ("final notice") as follows.

a. The Introduction to the Final Notice

The Department has substantially revised the preamble, or introduction, to the final notice to achieve several goals. First, the Department agrees with those comments suggesting that the preamble included in the NPRM notice contained content that did not promote employees' awareness of their *specific* rights under the NLRA, and that such a prominent place on the notice merited text that better served that goal. Second, the Department has included in this premier paragraph the concept that the NLRA prohibits both employer and union misconduct. Third, the Department agrees with comments suggesting that the final notice should contain a provision indicating which employers and employees are covered by the NLRA, and that coverage provision has been added with an asterisk in the new introduction. Fourth, in response to the many comments indicating that the NPRM notice included only broad generalities and did not include exceptions or limitations to the general rights listed in the notice based on particular facts or circumstances, which, if heeded, would convert a simple employee notice into a lengthy legal guide, the Department has included a cautionary note at the outset that the stated rights are general in nature, and the notice is not intended to provide specific advice about their application in all circumstances. Finally, the Department has made prominent the NLRB investigation and enforcement role, and has suggested that that agency can assist employees with specific questions or concerns should they arise. As a result, the final notice contains a new introduction that better serves these goals, as follows

> The NLRA guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board, the federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below if you have any questions about specific rights that may apply in your particular workplace.

The coverage provision, associated with the asterisk in the introduction, states:

> The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

b. The Statement of Affirmative Rights in the Final Notice

The Department concluded that no change was necessary to three of the seven affirmative rights listed in the proposed notice. As previously noted, the first two rights listed—the right to organize a union to bargain collectively and the right to form, join and assist a union—attracted no specific comments, either positive or negative, and therefore these provisions are unmodified in the final notice. The third right that the Department has left unchanged—the right to refrain from union activity, including joining or remaining a member of a union—received several comments suggesting that this right was given diminished prominence in favor of rights that promote activity in support of unions. This contention is misguided. The list of rights included in

the notice is patterned after the list of rights in the NLRA, 29 U.S.C. 157, which includes the right to refrain last, after stating several other rights before it. *See, supra,* n. 5. Similarly, the NLRB's Web site page follows the same pattern, listing the right to refrain fifth on a list of five specified rights. *See http://www.nlrb.gov/Workplace_Rights/employee_rights.aspx*

In addition, the notice's examples of unlawful employer conduct include the concept that it is illegal for an employer taking adverse action against an employee " because [the employee] choose[s] not to engage in any such [union-related] activity[,]" further underscoring an employee's right to refrain. Accordingly, the Department concludes that the notice sufficiently addresses this right among the list of statutory rights.

The Department has amended the statement in the notice regarding the right to bargain collectively. Based on comments discussed above, this provision was modified to substitute the statutory phrase "representatives of [employees'] own choosing" for the phrase "duly selected union" to eliminate the ambiguity of the latter. The substituted phrase retains the intent of the original phrase, which was to reflect that bargaining representatives can be elected or can be voluntarily recognized by an employer based on a verifiable showing that the labor organization enjoys majority support among employees in the bargaining unit, but employs the words of the statute instead. Thus, the final notice states that employees have the right to "bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions."

Based on comments, the next two provisions—discuss terms and conditions of employment and take action—have been substantially modified to achieve several goals. First, the Department agrees that these two provisions as presented in the proposed notice could be simplified and clarified by separating employees' communication rights from their conduct rights. In addition, the Department agrees that inclusion of the right to leaflet was duplicative of the provision regarding employer interference with distribution of union literature, and so this reference has been deleted from the final notice. Next, the Department decided to delete the reference to the right to attend rallies on non-work time so as not to complicate a list of essential and fundamental rights under the NLRA. Finally, because the reference in the proposed notice to "seeking and receiving help from a union" was moved to the following provision and in an effort to retain the concept that employees can discuss union-related activity among themselves, the Department added to the employee discussion provision the right to talk about unions and union organizing. As a result, the two provisions in the final notice state that employees have the right to, "discuss your terms and conditions of employment or union organizing with your co-workers or a union" and "take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union."

As noted earlier, the provision in the proposed notice related to the rights to strike and picket received several comments. Labor organizations suggested the removal of the references to a contractual no-strike provision, permanent replacements, and the phrase "subject to certain other limitations." By contrast, comments from employers suggested the provision is flawed because of the absence of the many limitations, exceptions, and distinctions related to these rights. By necessity, the notice cannot contain an exhaustive list of limitations on and exceptions to the rights to strike and picket, as suggested by employers. Indeed, the various permutations of these rights comprehensively documented by such comments reflect that in highlighting just a few limitations, or referring to them ambiguously as "other limitations," the proposed notice fell short of the goal to clearly inform employees about their rights. However, because exercising the right to strike, in particular, can significantly affect the livelihood of employees, the Department considers it vital to reflect in one general phrase that there are caveats associated with it. The Department is satisfied that the addition of a general caveat, coupled with the admonition in the new introduction to contact the NLRB with specific questions about the application of rights in certain situations, provides sufficient guidance to employees about the exercise of these rights while still staying within the constraints set by a necessarily brief employee notice. Thus, this provision in the final notice states that employees have the right to "Strike and picket, depending on the purpose or means of the strike or the picketing."

As noted, the Department received several comments suggesting that the notice contain provisions related to *Beck* rights. The final notice will retain, as part of the right to refrain, the provision stating that an employee has the right to not join or remain a member of a union that represents the employee's bargaining unit. However, further explication of *Beck* rights will not be included because of space limitations and because of the policy choice, as expressed in Executive Order 13496, to revoke a more explicit notice to employees of *Beck* rights. *See* Sec. 13, E.O. 13496, 74 FR at 6110.

c. The Examples of Unlawful Conduct in the Final Notice

The Department has decided that three examples of unlawful employer conduct—regarding unlawful threats to close, promises or grants of benefits, and spying or videotaping—need no revision for the final notice. The comments related to these three provisions all shared a common theme, as discussed above, that the provisions are overgeneralizations that neither capture the legal standard associated with evaluating allegations of unlawful conduct nor indicate factual scenarios in which the highlighted conduct may be lawful. After review of these comments and the case law cited therein, the Department concludes that the provisions as proposed are accurate and informative, and, as with the notice as a whole, strike an appropriate balance between being simultaneously instructive and succinct.

The Department has decided to modify the remaining four examples of illegal employer conduct in order to clarify them. First, the Department has modified the provision related to employers' no-solicitation and no-distribution rules for the final notice. The Department agrees with those comments suggesting that the terms "non-work time" and "non-work areas," while used commonly in Board law, are not readily ascertainable, and the addition of common examples of each would assist employees in understanding their rights. Therefore, the provision was modified to clarify the meaning of "non-work time" and "non-work areas." The remaining comments suggesting the inclusion of the various circumstances in which no-solicitation and no-distribution rules may be lawful were rejected due to limitations imposed by a notice format. More specifically, the Department recognizes that under the NLRB's precedent, a hospital's prohibition of solicitation or distribution of literature in immediate patient care areas, even during employees' nonworking time, is presumptively lawful. *Brockton Hospital,* 333 NLRB 1367, 1368 (2001).

Once again, however, the limitations on the format preclude the inclusion of factual permutations in which a general right may not apply or may only apply with qualifications, and hospital employees, as well as other employees, can contact the NLRB with specific questions about the lawfulness of their employers' rules governing solicitation and literature distribution. Finally, the Department acknowledges, as one comment noted, that the NLRB distinguishes between "solicitation" for a union, which generally means encouraging a coworker to participate in supporting a union, and so-called "union talk," which generally refers to discussions about the advantages and disadvantages of unionization. *W.W. Grainger,* 229 NLRB 161, 166 (1977), *enforced,* 582 F.2d 1118, (7th Cir.1978); *Jensen Enterprises, Inc.,* 339 NLRB 877, 878 (2003). However, this provision is intended to expressly address the former; the right to engage in "union talk" is now encompassed more specifically by the revision, as noted above, to the "discussion" provision in the affirmative rights section of the final notice. Accordingly, this provision in the final notice indicates that it is illegal for employers to "prohibit you from soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms."

The comments about the next provision regarding employers' questions about union support or activity correctly note that the Board's test for determining the legality of such questions is whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed employees by the Act. *Rossmore House,* 269 NLRB 1176, 1177 (1984), *enforced,* 760 F.2d 1006 (9th Cir. 1985). Under this totality of circumstances approach, consideration is given to whether the interrogated employee is an open or active supporter of the union, the background surrounding the interrogation, the nature and purpose of the information sought, the identity of the questioner, the place and/or method of the interrogation, and the truthfulness of any reply by the questioned employee. *Id.* The Board has said that these factors are not to be mechanically applied but rather are useful indicia that serve as a starting point for assessing the totality of the circumstances. *Id.* The comments suggesting revisions of this provision, as with many of the prior suggestions, request inclusion of substantial detail, much of which is beyond the purview of this notice. However, the Department has concluded that the provision would be clarified by reference to the concepts that unlawful questioning interferes with employees' Section 7 rights and that the interference is judged under the circumstances of the questioning. Thus, this provision in the final notice states that it is unlawful for employers to "question you about your union support or activities in a manner that discourages you from engaging in that activity."

Comments about employers' taking, or threatening to take, adverse action against employees because of their union-related or other protected activity request the inclusion of complicated references to legal complexities, such as the application of a burden-shifting analysis to determine whether unlawful discrimination has occurred, *Wright Line, Inc.,* 251 NLRB 1083 (1980), or the consideration of the impact of right-to-work laws. This provision is intended to supply employees with notice of their fundamental right to be free from discrimination based on union activity, and its accuracy and instructiveness will be diminished by such complicated references. However, the Department agrees with one comment suggesting that the provision can be improved with the substitution of one word to underscore that the protections of the NLRA attach to activity that is concerted in nature. Thus, this provision in the final notice instructs employees that it is unlawful for employers to "fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in *concerted* activity for mutual aid and protection, or because you choose not to engage in any such activity."

The final provision regarding unlawful employer conduct that the Department decided to revise is related to union insignia in the workplace. Generally, an employer may not prohibit the wearing of union insignia, absent special circumstances. *Airport 2000 Concessions, LLC,* 346 NLRB 958, 960 (2006). For reasons of format, the notice cannot accommodate those comments suggesting that this provision specify those cases in which the Board has found "special circumstances" to exist, such as where insignia might interfere with production or safety; where it conveys a message that is obscene or disparages a company's product or service; where it interferes with an employer's attempts to have its employees project a specific image to customers; where it hinders production; where it causes disciplinary problems in the plant; or where it would have any other consequences that would constitute special circumstances under settled precedent. *Escanaba Paper Co.,* 314 NLRB 732 (1994), *enforced,* 73 F.3d 74 (6th Cir. 1996). In addition, as noted earlier, an employer's prohibition on wearing union insignia in immediate patient care areas is presumptively valid. *London Memorial Hospital,* 238 NLRB 704, 708 (1978). This lengthy list supplied by some comments highlights that the addition of only one example of "special circumstances"—the patient care example—may mislead or confuse employees. Thus, the general caveat that special circumstances may defeat the application of the general rule, coupled with the advice to employees to contact the NLRB with specific questions about particular issues, achieves the balance required for an employee notice of rights about union insignia in the workplace.

The proposed notice had only one very broad description of union conduct that is unlawful under the NLRA. Although this provision generally encompassed a wide range of illegal union activity, it was criticized in comments for lacking specificity, and thus resulting in imbalance as compared to the examples of unlawful employer activity.[13] After reviewing the comments, the Department has revised the notice in order to more thoroughly reflect the range of unlawful union conduct.

*Thus, the final notice contains the following five examples of unlawful union conduct:*

- Threaten you that you will lose your job unless you support the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.

[13] The Department notes that the NLRB reported that in fiscal year 2008, 22,497 unfair labor practice charges were filed. *Seventy-Third Annual Report of the National Labor Relations Board for the Fiscal Year Ended September 30, 2008,* at 5, *available at http://www.nlrb.gov/nlrb/shared_files/brochures/annual%20reports/NLRB2008.pdf.* Of these, 16,179 charges were against employers, and 6,210 charges were filed against unions. *Id.* Thirty-nine percent of all charges were found to have merit, and 1108 complaints were issued. *Id.* at 7. Of complaints issued, 86 percent were against employers and 14 percent were against unions. *Id.* at 8.

• Take other adverse action against you based on whether you have joined or support the union.

d. The Inclusion of the Duty to Bargain in Good Faith

The Department agrees with those comments that suggested that employees should be aware that their employer and their bargaining representative have a statutory duty to bargain in good faith. Thus, the final notice states that "if you and your coworkers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement." The latter sentence regarding the union's duty of fair representation is somewhat duplicative of provisions above exemplifying union misconduct, but the Department concluded that it was important to note a union's duty to fairly represent all bargaining unit members specifically in connection with its obligation to bargain in good faith.

e. The Contact Information

The proposed notice contained two paragraphs about the NLRB, its enforcement procedures, and its contact information, which have been streamlined into one paragraph for the final notice. In doing so, and after reviewing the comments, the Department has substituted the word "should" for the word "must" to indicate that it is not mandatory that the NLRB be notified of unlawful conduct; retained the admonition to employees to act promptly and within the six month statute of limitations; added a sentence that underscores the confidentiality associated with contacting the NLRB; added a sentence that indicates that anyone can file a charge with the NLRB; and retained the sentence relating to possible reinstatement, back pay and cease-and-desist remedies. The final notice, as modified on the basis of comments discussed above, is set forth in Appendix A to Subpart A of this rule.

*D. Incorporation of the Contract Clause in Government Contracts and Subcontracts*

As proposed in § 471.2(a), all nonexempt prime contractors and subcontractors are required to include the employee notice contract clause in each of their nonexempt contracts and subcontracts. In order to ensure that contractors are made aware of their contractual obligation to post the required notice, proposed § 471.2(b) provided that the employee notice contract clause must be set out verbatim in a contract, subcontract or purchase order, rather than being incorporated by reference in those documents. In the NPRM, the Department requested comment regarding the utility of setting out the employee notice clause verbatim, as opposed to incorporation of the clause by reference.

The Department received ten comments about this requirement, only one of which agreed with the Department that full inclusion of the employee notice clause in every contract and subcontract will ensure that contractors and subcontractors fully understand their obligations under the rule. The other nine comments suggested that the rule should permit the inclusion of the employee notice clause by reference for various reasons, including that full inclusion provides little utility, and is burdensome and unreasonable because many contractors would have to substantially revise their procurement and contract documents, many of which are purposefully brief, standard-form documents, in order to comply. One commenter noted that because the content of the notice itself may be subject to updating, the contract clause will also require modification, and contractors who are unaware of the necessary update may inadvertently rely on outdated contract documents or provisions. Another commenter suggested that the notice in the contract clause is very long and contains language that will confuse readers of contracts and purchase orders. Finally, several commenters also noted that the prohibition on incorporation by reference is inconsistent with various laws—some of which are implemented by the Department—that permit contract clause incorporation by reference, including Executive Order 11246, Vietnam Era Veterans Readjustment Assistance Act, and Section 503 of the Rehabilitation Act of 1973, among others.

Following full consideration of these comments, and in order to ease contractor compliance with the requirements of this rule, the Department has decided to permit inclusion of the employee notice clause by reference. Therefore, in place of proposed § 471.2(b) that disallowed incorporation by reference, the final rule contains a new § 471.2(b), that permits incorporation by reference. The Department has coordinated with the FAR Council to implement this provision.

*E. Application of the Rule to Contractors and Subcontractors; Exceptions and Exemptions; Other Limitations*

As proposed in § 471.2(a), all nonexempt prime contractors and subcontractors are required to include the employee notice contract clause in each of their nonexempt subcontracts so that the obligation to notify employees of their rights flows to subcontractors of a government contract as well. The Executive Order expressly excepts from its application two types of Government contracts: Collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and contracts involving purchases below the simplified acquisition threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403. Sec. 2, 74 FR at 6107. The simplified acquisition threshold is currently set at $100,000. 41 U.S.C. 403. Section 471.3(a)(1) and (2) of the proposed rule implemented these exceptions. 74 FR at 38498. In addition, the Executive Order's provision regarding its effective date excepts contracts resulting from solicitations issued prior to the effective date of the final rule promulgated pursuant to this rulemaking. Sec. 16, 74 FR 6111. Proposed § 471.3(a)(3) implemented this provision of the Executive Order. 74 FR at 38498.

The NPRM concluded that the obligations of the rule apply to government contractors and all subcontractors of the government contract, regardless of whether the subcontractor is a first-tier subcontractor or a more remote subcontractor. This conclusion was based on the Department's construction of the interrelated terms of the Executive Order. The NPRM noted that paragraph 4 of the contract clause in the Executive Order requires the contractor to incorporate only paragraphs 1 through 3 of the clause in its subcontracts. 74 FR at 38490. A narrow reading of the operation of this provision outside the full context of the Executive Order, the NPRM noted, might suggest that the obligation to include the contract clause is limited to contracts between the government agency and the prime contractor. *Id.* Under this reading, subcontractors would be required only to post the notice of employee rights, and their subcontractors (sometimes called second-tier contractors) would have no responsibilities under the Executive Order. However, the NPRM reasoned that provisions of the Executive Order establishing exemptions and exceptions for the application of the Executive Order's obligations do not expressly specify that

its obligations do not flow past the first-tier subcontractor, a significant limitation that would normally be made explicit in the text of the Executive Order rather than by operation of the contract clause's incorporation provision. In addition, the NPRM noted that in the Department's past regulatory treatment of a similar issue, it had adapted through regulation the application of an executive order's contract inclusion provisions so that the obligation to abide by the mandates of the orders flows to subcontractors below the first tier. *See, e.g.,* 69 FR 16378, Mar. 29, 2004 (final rule implementing E.O. 13201) (based on identical contract incorporation provision, "the intent of the Order was clearly that the clause be passed to subcontractors below the first tier"); 57 FR 49591, Nov. 2, 1992 (final rule implementing E.O. 12800) ("It is clear, however, that the intent of Executive Order 12800 was that the clause flow down below the first-tier level"). The NPRM concluded that the Department's experience with regulatory implementation of prior executive orders establishing that the obligations of those orders flow past the first-tier subcontractor supported the application of this rule to subcontractors below the first tier, and best achieves the purposes of this Executive Order. 74 FR at 38491. Accordingly, the Department concluded that in order to fully implement the intent of Executive Order 13496, proposed § 471.2(a) was adapted to require the inclusion of paragraphs 1 through 4, rather than 1 through 3, of the contract clause. The Department specifically sought comments on this proposal.

The NPRM also concluded that although the Executive Order clearly did not apply to government contracts for purchases below the simplified acquisition threshold, the Executive Order did not provide for the same exception for subcontracts involving purchases below the simplified acquisition threshold. However, the Department noted that inclusion of the express limitation in the definition of "subcontract" that "subcontracts" consist only of those instruments that are "necessary to the performance of the government contract," NPRM § 471.1(r), was intended as a control on the otherwise universal application of the rule to subcontracts. 74 FR at 38491, *citing OFCCP v. Monongahela R.R.,* 85–OFC–2, 1986 WL 802025 (Recommended Decision and Order, April 2, 1986), *aff'd,* (Deputy Under Secretary's Final Decision and Order, Mar. 11, 1987) (railroad transporting coal to power generation plant of energy company contracting with GSA was subcontractor because delivery of coal is necessary for the power company to perform under its contract with GSA). Thus, the NPRM noted that although the rule may result in coverage of subcontracts with relatively *de minimis* value in the overall scheme of government contracts, covered subcontractors include only those who are performing subcontracts that are necessary to the performance of the prime contract. The Department invited comment on whether a further limitation on the application of the rule to subcontracts is necessary, and if it is, whether such a limitation is best accomplished through the application of this or another standard, for instance, a threshold related to the monetary value of the subcontract.

The Department received numerous comments about the application of the rule to subcontractors below the first tier, the non-application of the simplified acquisition threshold to subcontractors, and the proposed "necessary to the performance" limitation on the application of the rule to subcontractors. Four comments supported the application of the rule to subcontractors below the first tier. These commenters noted various reasons for their support, including that application of the rule to more remote subcontractors would prevent circumvention of the rule through subcontracting, would further the Executive Order's goal of preventing labor unrest, and was similar to the Department's implementation of prior executive orders. One commenter noted that it is not unusual for a vast majority of laborers on a jobsite to be employed by subcontractors of the prime contractor or its subcontractors, and that the rule should apply equally to such jobsites regardless of the remoteness of the subcontract to the prime contract. Three commenters argued that the Department should not apply the rule to subcontractors below the first tier, and one commenter requested clarification on the application of the rule below the first tier. Those comments opposing lower-tier application suggested that the rule has gone too far in its application, and that coverage of the rule should be limited to first-tier subcontractors. One commenter in particular disagreed with the Department's modification of the contract inclusion provision discussed above, contending that the Department's reliance on its prior regulatory implementation of Executive Orders 13201 and 12800 was inapt. The commenter noted that each of those executive orders contained a provision, not present in Executive Order 13496, stating that the Secretary may exempt "subcontracts below an appropriate tier set by the Secretary," thus indicating that the application of the rule to any tier of subcontractors was contemplated by the executive order but subject to administrative limitation. *See* Sec. 3(b)(v), E.O. 13201, 66 FR 11221, Feb. 22, 2001 (revoked by Executive Order 13496); Sec. 3(b)(v), E.O. 12800, 57 FR 12985, April 13, 1992 (revoked by Executive Order 12836). By contrast, the commenter notes, Executive Order 13496 contains no such language permitting the Secretary to limit the application of the rule, thus indicating that flow-down below the first tier is not contemplated by the plain language of the Executive Order.

The Department received eleven comments regarding the proposal in the NPRM to apply the simplified acquisition threshold only to government contracts and not to subcontracts, and all universally stated that the simplified acquisition threshold should apply to subcontracts as well. Most comments noted the incongruity associated with the application of the threshold to prime contracts but not to subcontracts, asserting that it makes little sense to except prime contracts below a set monetary limit but then apply the rule to reach subcontracts below that same limit. Most negative comments similarly noted that the failure to apply the simplified acquisition threshold to subcontracts will result in coverage of very small contracts and contractors, which, they argue, the Executive Order clearly intended to avoid by requiring the application of the dollar limit to prime contracts. Coverage of small subcontractors is burdensome to those contractors, many commenters asserted, and will result in the application of the rule to very small procurement contracts and will discourage some contractors from bidding for work associated with a government contract. Some commenters said they failed to see the policy reason supporting the non-application of the threshold to subcontracts. One commenter contended that the application of the rule to small subcontractors violates a Congressional mandate in the Small Business Act, 15 U.S.C. 637(d), that requires Federal agencies to give preference to small and disadvantaged businesses. Another comment noted the apparent inconsistency in proposed § 471.3(a)(2)(ii), which applies the simplified acquisition threshold to "contracts and subcontracts" for an indefinite quantity, but not to contracts

for a defined quantity. As noted above in the discussion of comments about the rule's definition section, because the definitions of "contract" and "contractor" include "subcontract" and "subcontractor," commenters argued that the rule by its terms does in fact apply the simplified acquisition threshold to limit its application to subcontracts. Finally, one commenter suggested that if the Department is concerned that application of the simplified acquisition threshold to subcontractors will unnecessarily limit the reach of the rule to small contractors, it should nevertheless include some other limitation on the application of the rule to prevent its application to very small contractors.

The Department's proposed limitation on the application of the rule to only those subcontracts that are "necessary to the performance of the prime contract" received little support from commenters. By contrast, five commenters submitted that the term was so general and vague as to be completely ineffective as a significant limitation on the rule's application. Two commenters suggested that *all* subcontracts in some manner, no matter how attenuated, are necessary to the performance of the prime contract, or the subcontract would not have been executed in the first place. In this vein, one commenter noted that the Department's use of the phrase suggests pejoratively that some subcontracts are unnecessary to the performance of the government contract. Other commenters queried how a subcontractor at the time of the execution of the subcontract is to know whether the subcontract is necessary to the performance of the government contract, particularly when such a determination by the Department will only be made during subsequent enforcement proceedings that may have adverse consequences for the subcontractor. One commenter noted that when a subcontractor or vendor receives a purchase order from a firm, the subcontractor or vendor may have no way of knowing of the purchase order's connection to a government contract without conducting an investigation into the purchaser's connections, which may be considered intrusive. One commenter stated that the Department's reliance on *OFCCP* v. *Monongahela R.R.,* 85–OFC–2, 1986 WL 802025 (Recommended Decision and Order, April 2, 1986), *aff'd,* (Deputy Under Secretary's Final Decision and Order, Mar. 11, 1987) to support explication of the phrase raised concerns because the rule should not apply to subcontractors that only supply material to a job site but do not install it.

Four commenters suggested alternative standards that would serve to limit the application of the rule to subcontractors. Suggested limitations included establishing a value for *de minimis* subcontracts to which the rule would not apply, which was phrased by another commenter as establishing an exemption for small contractors based on the monetary value of the subcontract; creating an exception for application of the rule to firms with a small, defined number of employees; and application of the rule to only those contractors and subcontractors that provide services, as opposed to supplies, to the government. One commenter noted that the rule should include a "minimum size threshold [below] which a contractor is exempt," but the commenter did not indicate whether the limit should be connected to the size of the subcontract's value, the size of the subcontractor's workforce, or the size of the subcontractor's revenue. This same commenter submitted that the rule must also provide some means by which a subcontractor will be notified that the subcontract is covered by the rule and some clarification on compliance in those situations in which a subcontractor does not have control over the site where the prime contract is being performed.

After carefully considering all the comments related to the application of the rule to subcontractors, the Department has made the following decisions. The Department will retain the provision, as proposed in enumerated paragraph 4 of the contract clause set out in Appendix A ("paragraph 4"), requiring government contractors to incorporate paragraphs (1) through (4) in every subcontract. As noted in the proposal, the contract inclusion provision in paragraph 4 cannot be read in isolation, but rather it must be read in conjunction with other operative words and phrases of paragraph 4 and in the Executive Order as a whole in order to fully implement its purpose. Many aspects of the Executive Order demonstrate the President's intent to apply the obligations of the Order not just to government contracts, but also to subcontracts of the government contract at all levels. As the proposal noted, no other provision in the Executive Order, save for the mechanical operation of paragraph 4, suggests that the intent of the Executive Order was to except subcontracts below the first tier. The Department concludes that silence in failing to include lower tier subcontractors in the Executive Order's exemptions and exceptions provisions indicates that they were meant to be covered. In addition, the Department broadly interprets paragraph 4's directive that the contractor "*will include* the provisions of paragraphs 1 through 3 above in *every* subcontract entered into *in connection with this contract* * * * so that such provisions will be binding upon *each* subcontractor[.]" The Department reads the terms "will include" in "every subcontract" to mean that the initial contractor will ensure, to the extent possible, that the posting obligation will be included in *all* subcontracts in connection with the prime contract, whether at the first tier level or below. Read in this fashion, this directive can be implemented only by requiring, as does the final rule, that every subcontract pass through such an obligation to any lower tier subcontractors. In addition, the Department interprets broadly the reference to "contractor" in paragraph 4 ("The *contractor* will include paragraphs (1) through (3) above * * *") to encompass a "subcontractor," so that the provision is read to require each subcontractor on a government contract, regardless of tier, to include posting requirements in any of its subcontracts.

Other provisions in the Executive Order outside paragraph 4 evince an intent to apply the rule to subcontracts below the first tier. References to "contractors" (Sec. 1), "any Government contractor, subcontractor, or vendor" (Sec. 5), and "a Government contractor or subcontractor" (Sec. 5) are unqualified or modified, and the Department interprets the references to mean subcontractors at all tiers. This broad interpretation is most fitting in application to the statement of policy in Section 1 of the Executive Order, which provides that "[w]hen the Federal government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest" and "relying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government's contracts." 74 FR 6107. Given the frequency with which the performance of government contracts are subcontracted, the policy of the Executive Order is best understood as reaching contracts below the first tier. This is particularly true when the government contract is, for instance, a large, multi-million dollar transaction, and its performance is subcontracted in multiple tiers. The

economy and efficiency that is sought to be promoted by the Executive Order would not be realized if subcontractors below the first tier of a large government contract were not subject to this rule, and a labor dispute at a lower tier subcontractor interfered with the delivery of the large prime contract. In such a case, "the efficient and economical completion of the Federal Government's contracts" would not be realized. 74 FR 6107. As a result, the Department interprets the Executive Order as a whole as seeking to avoid just such a scenario.

In addition, as noted in the proposal, the interpretation of Executive Order 13496 has been informed by the interpretation of Executive Orders 12800 and 13201. In both those cases, the Department similarly interpreted the text of the orders, which had contract incorporation provisions that were virtually identical to paragraph 4 of Executive Order 13496, to provide for application of the obligations to subcontractors below the first tier. *See* 69 FR 16378, Mar. 29, 2004; 57 FR 49591, Nov. 2, 1992. The Department has concluded that Executive Order 13496 was drafted with awareness of these earlier Executive Orders, and that it was intended to be implemented in the same manner as its predecessors.

One commenter emphasized that the regulatory implementation of Executive Orders 12800 and 13201 was supportable because those orders granted authority to the Secretary to exempt subcontracts below an appropriate tier, suggesting application of the obligations of those orders to lower contract tiers. *See* Section 3(b)(v) of Executive Orders 12800 and 13201, 57 FR 12986, Apr. 13, 1991; 66 FR 11222, Jan. 17, 2001 ("subcontracts below an appropriate tier set by the Secretary" may be exempted). In this case, the comment notes, Executive Order 13496 does not grant the Secretary similar regulatory authority to exempt contracts below an appropriate tier, thus suggesting that the Executive Order does not contemplate reaching contracts other than first tier subcontracts. However, the Department views the absence of such regulatory authority to exempt contracts below a certain tier as supporting its interpretation that the Executive Order intends that its obligations are to apply to all subcontracts of the prime contract regardless of tier. The President omitted from Executive Order 13496 any administrative authority to exempt lower tier subcontractors because he did not intend to permit *any* tier-based exemption, and not because it was contemplated that lower tier subcontractors would, at some point, be outside the reach of the purposes of the Executive Order. Thus, the Department interprets silence as to tier coverage within the text of the Executive Order as reflecting an intent for all tiers to be covered.

The Department's grant of authority to promulgate regulations under the Executive Order is broad, and permits the Department to implement the Order in a manner that is "necessary and appropriate to achieve the purposes" of the Order. Sec. 3(a), 74 FR at 6108. In addition, the Secretary has the express authority under the Executive Order to "make modification of the contractual provisions * * * necessary to achieve purposes of this order[.]" Sec. 3(c), 74 FR at 6108. Accordingly, in order to implement the purpose, intent, and express provisions of the Executive Order, which the Department concludes applies to nonexempt government contracts and all subcontracts of the government contract, the Department will retain paragraph 4 of the contract clause as proposed.

The Department will also retain the interpretation set out in the proposal that the exception for contracts below the simplified acquisition threshold applies only to the prime contract. The Department views as plain and unambiguous the text of the Executive Order on this point. Section 2 of the Order states that "all *Government contracting departments and agencies* shall, to the extent consistent with law, include the [contract clause] in *every Government contract,* other than * * * purchases under the simplified acquisition threshold. * * *" 74 FR 6107 (emphasis added). Based on this provision, the exception for contracts below the simplified acquisition threshold applies only to the original government contract, and has no application to subsequent subcontracts. In response to comments, the Department does not consider the result—excepting prime contracts below the simplified acquisition threshold and covering subcontracts below that threshold—to be incongruous. The Department concludes that the Executive Order embodies a sound policy choice that when the Federal government enters into a large prime contract (defined as exceeding the simplified acquisition threshold), *all employees* working under the umbrella of that prime contract will be notified of their rights under federal labor law, including employees of lower tier subcontractors. Indeed, it *would* be incongruous to seek economical and efficiency improvements in government procurement through a well-informed contractor workforce and yet *not* apply those standards to all subcontracts flowing from the covered prime contract regardless of their size. The Department notes that the application of the rule to subcontracts below the simplified acquisition threshold presents no greater notice-posting obligation than many of those employers already have with other notice-posting obligations under various labor and employment laws. For instance, the notice-posting obligation of USERRA, the Uniformed Services Employment and Reemployment Rights Act, requires *all* employers regardless of size to post notices to their employees about their USERRA rights. 38 U.S.C. 4334; 20 CFR 1002 (implementing regulations). The reach of this rule is not incompatible or inconsistent with the reach of other labor and employment notice-posting obligations.

After full consideration of comments about the application of the rule to *de minimis* value subcontracts, the Department has concluded that it is "necessary and appropriate," Sec. 3 of the Executive Order, to establish a *de minimis* value standard for subcontracts below which the rule will not apply. Such a standard expressly employs the principle that certain activity is of such modest concern to the application of the legal standard that it can be set apart from its application. *Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co.,* 505 U.S. 214 (1992) (the maxim—"the law cares not for trifles"—is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept). A *de minimis* standard based on the dollar value of the subcontract also has the advantage of permitting subcontractors to ascertain at the time of entry into the subcontract that this rule will or will not apply to them. In implementing the equal opportunity contract clause requirements of Executive Order 11246, the Department has established a $10,000 threshold for contracts and subcontracts below which that rule will not apply. *See* 41 CFR 60–1.5(a). The Department considers suitable the application of a similar $10,000 threshold for subcontracts below which this rule will not apply, and this *de minimis* standard has been added to § 471.3(a)(4). In addition, as with the admonition in § 471.3(a)(2)(i) that agencies and contractors may not enter into contracts so as to avoid the application of the rule, contractors and subcontractors similarly may not enter into contracts so as to avoid application of the rule, and that constraint has also

been added to § 471.3(a)(4). In addition to the exception for *de minimis* contracts, the definition of subcontract, as proposed in the NPRM, will continue to be limited to those that are "necessary to the performance of" the government contract.

In addition to the exceptions for certain contracts, the Executive Order establishes two exemptions that the Secretary, in her discretion, may provide to contracting department or agencies that the Secretary finds appropriate for exemption. Sec. 4, 74 FR 6108. These provisions permit the Secretary to exempt a contracting department or agency or group of departments or agencies from the requirements of any or all of the provisions of the Order with respect to a particular contract or subcontract or any class of contracts or subcontracts if she finds either that the application of any of the requirements of the Order would not serve its purposes or would impair the ability of the government to procure goods or services on an economical and efficient basis, or that special circumstances require an exemption in order to serve the national interest. *Id.* Proposed § 471.3(b) implemented these exemptions, and provided for the submission of written requests for exemptions to the Director of OLMS. It also provided that the Director may withdraw an exemption if a determination is made that such action is necessary or appropriate to achieve the purposes of the rule. The Department invited comments on the standards and procedures for requesting an exemption and the Department's withdrawal of a granted exemption, but received no comments applicable to these proposed revisions. Therefore, the proposed provisions implementing the exemptions stated in the Executive Order have been carried over to the final rule unchanged. *See* §§ 471.3(b) and (c).

*F. Physical and Electronic Posting Requirements*

1. Physical Posting Requirements

The contract clause in the Executive Order requires a contractor to post the employee notice "in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including in all places where notices to employees are customarily posted both physically and electronically." Sec. 2, 74 FR 6107. This provision from the Executive Order establishes a number of criteria for posting, including "conspicuous" posting, posting in locations where NRLA-covered employees work, posting in locations where contract-related activity is performed, and posting where employee notices are customarily placed. The NPRM summarized the physical posting criteria by stating that the provision establishes that a contractor is required to post the notice physically at its place of operation where employees are likely to see it. 74 FR at 38491. In addition, proposed § 471.2(d) provided that the Department will print the required employee notice poster and supply it to Federal contractors through the Federal contracting agency. The NPRM also noted the poster may be obtained from OLMS, whose contact information was provided in this subsection of the proposed rule, or can be downloaded from OLMS's Web site, *http://www.olms.dol.gov.* The NPRM observed that the Department's printing of the poster and provision of it to Federal contractors will reduce the burden on those contractors to comply with the Executive Order and this regulation, and will ensure conformity and consistency with the Secretary's specifications for the notice. Proposed § 471.2(d) also permitted contractors to reproduce in exact duplicate the poster supplied by the Department to satisfy their obligations under the Executive Order and this rule. The Department invited comment on its proposal to make available print and electronic format posters containing the employee notice.

The Department received nine comments on issues related to the physical posting requirements. As a general matter, a few comments stated support for the requirements for physical posting, and a few complained that the posting would create workplace clutter. However, most comments requested clarification of the criteria for posting and the meaning of specific terms, including "customary" placement and "activities related to the performance of the contract."

The contract clause in the Executive Order requires covered contractors to post notices in "places where notices to employees are customarily posted." 74 FR 6107. One comment sought guidance on this provision, asking whether "customary" postings means placement where the employer posts routine notices to employees such as general personnel information, or whether it instead means placement where the employer posts other legally mandated notices, which may be different.

*One comment suggests that the contract clause establishes two independent requirements for posting:* First, a contractor must post the notice where NLRA-covered employees perform work related to the contract, and second, they must post it in all places where notices to employees are customarily posted. This comment suggests that the first requirement is separate from the second, so the notice must be posted where contract work is being performed, even if not where customary employee notices are posted, *and* a notice must also be posted where employee notices are customarily posted. Under this interpretation, a contractor must post, for example, on the work floor *and* where other notices are posted. In a similar vein, a second commenter suggests that DOL "mandate effective physical posting" because "employees working at diverse or remote locations may not always pay attention to electronic notices but do take note of physical postings *in their work areas*" (emphasis added).

Several commenters raised concerns about the application of the phrase "activities relating to the performance of the contract." One commenter submitted that the meaning of where employees "engage in activities relating to the performance of the contract" is vague and unclear. Must a contractor post the notice, the commenter asks, in a location in which employees *indirectly* engage in contract activities, such as where employees provide some but not all products and/or services related to the contract; where employees spent only 20% of their work time on products and/or services that would "eventually" be used at a second facility in performance of the contract; where the product or service was altered prior to fulfillment of the contract; or where human resources personnel work at a separate location by providing support to employees working on the contract? In short, the commenter posits, what "nexus" must exist between an employee and work related to the performance of the contract?

A second commenter suggests that posting should be required only where employees work *directly* on the contract. The comment argues that requiring employers to post where employees are not working directly on the government contract may cause compliance challenges and would give contractors "significant pause" before entering into future government contracts. This commenter requests guidance from the Department regarding employees that do not directly perform contract work but perform supportive work, such human resources and accounting employees. Similarly, a third comment requests clarification on posting where the contractor's employees perform "remote tasks," such as payroll employees at a separate

facility, or employees at a distribution center that sends parts to the assembly facility where the contract work is performed. This comment also proposes that the Department interpret the provision to mean work performed *directly* on the contract, thus eliminating "upstream" and "downstream" employees. To the extent the rule covers administrative functions, the comment requests more specific guidance on how such work is "related to the performance of the contract."

Finally, two commenters contended that the rule's posting requirements conflict with the Executive Order. Specifically, they observe that § 471.10(b)(1) requires that the notice be posted at "each of the contractor's establishments and/or construction work sites* * *[,]" which appears to be broader than the contract clause requirement to post where employees engage in activities related to contract performance. The comment recommends revision to regulatory text to state that posting is only required where employees engage in contract's performance.

The Department received several comments about the physical poster itself. Two comments suggested that the poster be printed in other languages, particularly Spanish. Two agree with the Department that in order to ensure that the notice is not reduced or otherwise modified, the poster as supplied by the Department cannot be altered in size or substance and that only exact duplicates of the Department-supplied poster can be utilized. By contrast, two commenters noted that this no-alteration requirement prevents contractors from purchasing the poster through a commercial source that consolidates Federally mandated posters into a single poster, provides updates to posters when the content is revised by the implementing agency, or both.

After carefully reviewing the comments related to the physical posting requirements, the Department has concluded the following. The Executive Order requires a contractor to post the employee notice "in conspicuous places in and about its plants and offices[,] including all places where notices to employees are customarily posted * * * physically." Sec. 2, para. 1, 74 FR 6107. Because the Department received no comments raising issues regarding the meaning of posting "in conspicuous places[,]" the Department concludes that contractors are accustomed to such a requirement and it has a well-accepted meaning. A notice is conspicuously posted if it is placed in a central location where employees are likely to see it. *Dunham v. McLaughlin Body Co.,* 812 F. Supp 867, 872 (DC Ill. 1992) (notice required under Age Discrimination in Employment Act). *See also* 29 CFR 825.300, which requires covered employers to "post and keep posted" the notice required by the Family and Medical Leave Act ("FMLA"), 29 U.S.C. 2601 *et seq.,* "on its premises, in conspicuous places where employees are employed," which means "prominently where it can be readily seen by employees and applicants for employment." Accordingly, for the purposes of this rule, a contractor meets the requirement to post the employee notice conspicuously if the notice is prominent and can be readily seen by employees. This standard has been incorporated into a new subsection of § 471.2(d), which establishes the regulatory standards for a contractor's physical posting of the employee notice.[14]

The requirement to post "in and about [a contractor's] plants and offices * * *, including in all places where notices to employees are customarily posted[,]" when read together with the "conspicuous" requirement, requires widespread posting that is prominent and readily observable throughout the contractor's plants and offices, and emphasizes that among these locations is placement where other employee notices are posted. "Other notices to employees" is not limited to Federally mandated legal notices, but includes notices to employees regarding the terms and conditions of their employment. *See* § 471.2(d)(1).

In response to comments, the Department has determined that it is necessary and appropriate to require a contractor that employs a significant number of employees who are not proficient in English to post the employee notice in languages other than English to achieve the purposes of the Order, and this requirement has been incorporated into § 471.2(d). In implementing a similar requirement under the FMLA, 29 CFR 825.300(a)(4), the Department stated that "when the employer employs a significant portion of employees who are not literate in English, the employer [must] provide the poster and general notice to employees in a language in which they are literate." 73 FR 67991, Nov. 17, 2008. The Department similarly adopts this standard for application in this rule, and will require a contractor to post the employee notice in a language or languages spoken by a significant portion of the contractor's workforce. *See* § 471.2(d). Employers with multiple locations may post notices in different languages at different locations, if the posted notices are provided in languages in which the employees are literate at each location. The Department will provide necessary translations of the poster. *See* § 471.2(e). With regard to the requirement in § 471.2(e) that the poster not be altered by the contractor, the Department clarifies that this prohibition is not intended to, and should not, impair the ability of contractors to utilize a commercial poster service that might provide the instant employee notice consolidated onto one poster with other Federally mandated labor and employment notices, so long as such consolidation does not alter the size, color, or content of the poster provided by the Department.

Finally, the Department agrees with the comments that additional guidance is needed to advise contractors and employees regarding the meaning of the requirement to post where employees "engage in activities relating to the performance of the contract." 74 FR 6107. The starting point for interpretation and implementation of this phrase is two prior executive orders that similarly obligated notice-posting through contract clause incorporation. Although neither Executive Order 11246 nor 13201 included the operative phrase as a provision setting the outside bounds of the posting requirement, they each employed the operative phrase inversely to establish the basis of a coverage exemption.[15] As a result, both Executive Orders 11246 and 13201 provided that the Department may grant exemptions to facilities of a contractor that are "in all respects separate and distinct from *activities of the contractor related to the performance of the contract.*" *See* E.O. 11246, Sec. 204(d), as amended (available at *http://www.dol.gov/ofccp/regs/statutes/eo11246.htm*); E.O. 13201, Sec. 3(c), 66 FR 11222–23 (emphasis added).

In implementing the "separate and distinct facilities" exemption for

[14] Subsequent subsections of § 471.2 have been re-lettered following the insertion of new subsection (d).

[15] The contract clause prescribed by Executive Order 13201 specified that "[d]uring the term of this contract, the contractor agrees to post a notice, of such size and in such form as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted." Sec. 2(a)(1), 66 FR 11221. Section 202 of Executive Order 11246 requires that "[t]he contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause." Sec. 202(1), E.O. 11246 (available at *http://www.dol.gov/ofccp/regs/statutes/eo11246.htm*).

Executive Order 11246, the Department has adopted a multi-factor analysis to determine whether activity at a certain facility is separate and distinct from activity related to the performance of the contract.[16] Although these exemption factors are facility-based, and are inherently intended to analyze whether entire facilities are contract-related, they are nevertheless instructive because they suggest that indirect support of or benefit from the government contract may cause the denial of an exemption or waiver request.

In addition to analyzing the implementation of the phrase as it operated in the two predecessor executive orders, the Department has also looked to the implementation of a similar phrase that affirmatively established the bounds of a contractor's obligations without regard to the possibility of waivers or exemptions. The Department's previous experience implementing Section 503 of the Rehabilitation Act, 29 U.S.C. 793, provides such an analog. Prior to a statutory amendment in 1992, the affirmative action requirements of Section 503 required government contracts in excess of $10,000 to "contain a provision requiring that, *in employing persons to carry out such contract,* the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities." 29 U.S.C. 793 (1991 compilation) (emphasis added). Accordingly, the affirmative action provision of Section 503 applied only insofar as the contractor was employing persons to "carry out" or, as with Executive Order 13496, "engage in activities related to the performance of," the government contract. The similar focus of these provisions is thus directed to the specific nature of the employees' work, and is not based on the conduct of the work at a facility.

To determine whether contractors were "employing persons to carry out" a government contract for the purposes of Section 503, the Department established a disjunctive test. 29 CFR 60–741.4(a)(2). Under that test, the Department considered a position to have been engaged in carrying out a contract if:

> (A) The duties of the position included work that fulfilled a contractual obligation, or work that was necessary to, or that facilitated, performance of the contract or a provision of the contract; or
>
> (B) The cost or a portion of the cost of the position was allowable as a cost of the contract under the principles set forth in the Federal Acquisition Regulation at 48 CFR Ch. 1, part 31: Provided, That a position shall not be considered to have been covered by this part by virtue of this provision if the cost of the position was not allocable in whole or in part as a direct cost to any Government contract, and only a de minimis (less than 2%) portion of the cost of the position was allocable as an indirect cost to Government contracts, considered as a group.

29 CFR 60–741.4(a)(2)(A)-(B). In proposing this regulatory test, the Department explained that subsection A includes "work that is necessary to or that facilitates contract performance, even if not directly required by an express contract term, [which] is intended to reflect the practical reality that performance of a contract generally requires the cooperation of a variety of individuals engaged in auxiliary and related functions beyond direct production of the goods or provision of the services that are the object of the contract." 57 FR 48092, Oct. 21, 1992.

The Department has uniformly concluded in each of these prototypes—Executive Orders 11246 and 13201, and Section 503—that contract-related work includes more than direct work that effectuates that product or service that is the subject of the contract. Under the Department's interpretations, included in contract-related activity is indirect or auxiliary work without which the contract could not be effectuated, such as maintenance, repair, personnel and payroll work.

Accordingly, the Department will adopt the disjunctive test previously used for implementing the affirmative action requirements of Section 503 of the Rehabilitation Act to determine whether, under Executive Order 13496, particular employees are "engage[d] in activities relating to the performance of the contract." *See* § 471.2(d)(2).[17] In determining whether employees are engaging in activities relating to the performance of the contract under § 471.2(d)(2)(i), the Department notes that a contract for production and sale of goods to the Government commonly requires the work not only of the production employees assembling the goods, but also of those engaged in functions such as repairing the machinery used in producing the goods; maintaining the plant; assuring quality control and security; storing the goods after production; delivering them to the Government; hiring, paying, and providing personnel services for the employees engaged in contract-related work; keeping financial and accounting records; performing related office and clerical tasks; and supervising or managing the employees engaged in such tasks. This list is not intended to be exhaustive, but only to illustrate that a variety of functions may commonly be involved in activities related to the performance of the contract. Whether a particular employee is engaged in activities related to the performance of the contract depends on the facts. In each case, the question is whether the duties of the employee's position include work that contributes to or furthers the performance of the contract, or work whose omission would impede the contract's performance.

2. Electronic Posting Requirements

The NPRM stated that those contractors that customarily post notices to employees electronically must also post the required notice electronically. In proposed § 471.2(e), the Department indicated that such contractors may satisfy the electronic posting requirement on any Web site that is maintained by the contractor or subcontractor and customarily used for employee notices, whether external or internal. The NPRM noted that a contractor must display prominently on its Web page or electronic site where other employee notices are customarily placed a link to the DOL's Web page that contains the full text of the employee notice. The contractor must also place the link in the prescribed text contained in § 471.2(e). The prescribed text is the introductory language of the notice. The Department sought comments on this proposal for electronic compliance, and particularly requested feedback regarding whether it should prescribe standards regarding the size, clarity, location, and brightness with regard to the link, including how to prescribe electronic postings that are at least as large, clear and conspicuous as the contractor's other posters.

The Department received numerous comments about the electronic posting requirements of the rule. About half of those comments sought additional

[16] These factors are found in Office of Federal Contractor Compliance Programs Directive, Separate Facility Waivers/Exemptions (Sept. 13, 2002) (available at *http://www.dol.gov/ofccp/regs/compliance/directives/dir260.pdf*). Other factors that may be considered include the number of facilities connected to the contractor's Government contracts and the nature of the contractor's contractual relationship with the Government. *Id.* at 4. The Department's implementation of now revoked Executive Order 13201 concluded that the identical factors would be used to consider requests for waivers for separate and distinct facilities under that rule. *See* 69 FR 16384.

[17] In addition, Proposed § 471.10(b)(1), which stated that compliance evaluations will determine whether the notice is posted "in an about each of the contractor's establishments and/or construction worksites," has been modified to reflect that compliance evaluations will assess conformity with the applicable physical and electronic posting standards contained in § 471.2(d) and (f).

guidance on the meaning of particular terms used in the rule that establish the electronic posting requirement, and the other half commented on the text prescribed to accompany the electronic link to the notice. In addition, the Department received one comment responding particularly to whether the Department should adopt standards regarding display of the link. Finally, one comment challenged the requirement to post electronically as unnecessary, redundant and ultimately burdensome because, the commenter submitted, most employees are accustomed to finding notices on employee bulletin boards. This comment also suggested that posting this notice electronically, when other Federally mandated notices are required to be posted only physically, heightens the impact of this notice and suggests that it may have priority over other required notices. The comment suggests that this outcome is not supported by the requirements of the Executive Order.

Two comments suggested additional limitations on the meaning of "customarily post[ing] notices to employees electronically," which is the threshold standard that triggers the obligation to post this notice electronically as well. The first comment applauds the use of electronic notification to employees, but suggests that the requirement to post electronically be limited to those cases in which the employer posts only other Federally mandated notices electronically. The comment suggests that employers may post a variety of notices to employees electronically, and the mere use of electronic communications would trigger the e-posting requirement for this notice. The second comment suggests that in those cases in which an employer posts notices to employees both physically and electronically, the rule should be modified to give employers the option to post only physically. The comment supports the optional requirement with the example of firms that engage in manufacturing that may post some notices electronically. The most effective way to reach the employees engaged in the manufacturing process, the comment contends, is to physically post notices on the shop floor. This comment suggests the electronic posting in such instances would be needless and burdensome, and defeat the intent of the Executive Order. The comment suggests that the requirement to post electronically be limited to those cases in which employees engaged in activities related to the contract have regular access to electronic postings and access to electronic postings may be limited to employees engaged in activities related to the contract.

Three comments sought clarification of the requirement to "display prominently" the link to the Department's Web site containing the full text of the notice. The first comment suggests that many employers have intranet sites that are devoted entirely to communication with employees, and absent further guidance on prominent display, such employers will be uncertain where on those sites to include the link to the required notice. One labor organization suggested that placement of the link be required "immediately" on any page referencing employee notices so that successive clicks are avoided. A second labor organization suggested that the rule require the link to be no less prominent than the employer's display of other comparable notices. Finally, in response to the Department's specific query regarding whether it should prescribe standards regarding the size, clarity, location and brightness of the link, one commenter responded negatively, arguing that such regulation would be "intrusive, overreaching and over-regulating." Instead of assuming that contractors may try to minimize the link, the comment suggested that the Department simply require that the link be displayed in the same size and clarity as other information on the employer's Web site.

The Department received six comments on the text required to be included with the link to the notice, and because the prescribed text is identical to the preamble of the notice, the comments were analogous to comments discussed earlier about the text of the preamble—some favored the statement regarding encouraging collective bargaining and some opposed it. In addition to comments about the content of the text, two commenters objected to the length of the prescribed text, one suggesting that it is cumbersome and impractical and the other suggesting that the prescribed text simply state, "Your Rights Under the National Labor Relations Act." Two labor organizations favored the inclusion of the prescribed text, and suggested that it include the heading, "Important notice of Your Federal Rights with Regard to Collective Bargaining."

After full consideration of the comments about the rule's electronic posting requirements, the Department has made the following decisions. The Executive Order requires posting in "*all* places where notices to employees are customarily posted *both* physically and electronically." Sec. 2, para. 1, 74 FR 6107 (emphasis added). Thus, the Order indicates that the physical and electronic posting requirements are simultaneous, and one cannot be used in lieu of, or as a substitute for, the other. Accordingly, if an employer customarily posts employee notices both physically and electronically, it must post this notice both physically and electronically. As with the physical posting requirements, the Department concludes that a contractor "customarily posts employee notices electronically" within the meaning of the rule when the contractor posts messages to employees electronically about the terms and conditions of their employment, and such messages are not limited to Federally mandated communications and employee rights. Thus, a contractor must post this notice electronically in those places that it customarily posts electronically other messages to employees about the terms and conditions of their employment. Further, inherent in the concept of a contractor's "customary" electronic posting is employee access to those communications. Presumably, a contractor would not electronically post notices to employees about the terms and conditions of their employment if its employees did not have regular access to those notices. Therefore, the Department need not at this time provide guidance or set standards regarding employee access to electronic postings.

The Executive Order's requirement to post "conspicuously" was interpreted in proposed § 471.2(e) of the NPRM as requiring the "prominent display" of the link to the Department's Web site, and comments reflected uncertainty regarding the meaning of this provision. In particular, as noted in the comments, large contractors may have entire intranets that are available for communication to employees. Other contractors may maintain a Web site on which notices to employees are not consolidated into one location. Until compliance experience is further developed, the Department will not adopt a standard for "prominent display" that precisely regulates the location of electronic notice by a set number of successive "clicks" away from a starting page, as suggested in some comments. Instead, the Department will consider that the electronic notice is displayed prominently if the link to the Department's Web site containing the notice is no less prominent than the contractor's other notices to employees. In addition, at this time the Department will not set regulatory standards

regarding the clarity or brightness of the link to the Department's Web site. Further, in response to comments and for a variety of reasons, including limitations on space available for electronic notices, the Department has eliminated the requirement to include text specified in proposed Appendix B with the link to the Department's Web site containing the employee notice. Instead, the link to the Department's Web site must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers," and this requirement has been included with the other requirements for electronic posting in § 471.2(f).

Finally, as with the requirement to post translations of the physical employee notice, where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the required electronic notice in the language the employees speak. This requirement will be satisfied by prominent display, as required in § 471.2(f), of a link to the Department of Labor's Web site that contains the full text of the poster in the language or languages the employees speak. In such cases, the Office of Labor-Management Standards will provide translations of the link to the Department's Web site that must be displayed on the contractor's or subcontractor's Web site.

*G. Application of the Rule to Employers of "Employees Covered by the NLRA"*

Proposed § 471.4 implemented the policy noted above that the Executive Order requires notice-posting in those workplaces in which employees covered by the NLRA perform work related to the Federal contract. Thus, § 471.4 of the proposed regulatory text established coverage of the rule that is coterminous with NLRA coverage, and stated that the rule did not apply to employers excluded from the definition of "employer" in the NLRA, 29 U.S.C. 152(2), and employers of employees excluded from the definition of "employee" under the NLRA, 29 U.S.C. 152(3).[18]

One commenter agreed with proposed § 471.4 as a starting point, but suggested that the rule must clarify several points with respect to NLRA coverage. First, the comment suggests that the rule should state that it does not apply to contractors without employees. Second, the comment suggests that the rule should exempt employers that do not fall within the NLRB's discretionary jurisdictional standards related to the volume and character of the business done by the employer. Third, the comment states that the rule should indicate that the Board's jurisdiction does not extend to some employers, such as religious school and tribal enterprises. A second comment agrees that the Department should state that employers who are not covered by the Board's discretionary jurisdictional standards, or are exempted from coverage for other reasons, such as certain religious educational institutions or the horse-racing industry, should be expressly excluded from the rule's application. Two comments raised the issue of application of the rule to foreign operations. The first comment urges the exemption of posting requirements for [presumably U.S. firms with] "employees performing work outside of the United States" because "the nations in which our companies operate overseas have labor management requirements of their own." The second comment raises the concern that requiring notice-posting "in foreign contracts and subcontracts would be confusing to employees working abroad who would not be subject to the statute." This comment notes that OFCCP has incorporated a similar exclusion in its regulations at 41 CFR 60–1.5(a)(3), and suggests a similar exemption for work performed on contracts and subcontracts outside the U.S.

As noted, Section 2 of the Executive Order requires contractors to post the required notice "where employees covered by the National Labor Relations Act" perform contract-related activities. The NLRA applies to employers and employees that are not excluded from coverage under the definitions of those terms in the Act. 29 U.S.C. 152(2)–(3). Section 10(a) of the Act empowers the Board "to prevent any person from engaging in any unfair labor practice affecting commerce," and § 9 of the Act extends the jurisdiction to representation cases where commerce would be affected. 29 U.S.C. 160(a), 159. Sections 2(6) and 2(7) provide statutory definitions of "commerce" and "affecting commerce." 29 U.S.C. 152(6), (7).

The Supreme Court has determined that Congress granted the Board with "the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause." *NLRB v. Reliance Fuel Corp.,* 371 U.S. 224, 226 (1963). Although the NLRA's statutory jurisdiction is coextensive with congressional power to legislate under the Commerce Clause, the Board has established discretionary standards that limit the assertion of its broad statutory authority to those cases which, in its opinion, have a substantial effect on commerce. These discretionary standards are based on the volume and character of the business done by the employer. *See* "An Outline of Law and Procedure in Representation Cases," Chapter 1, Jurisdiction (August 2008) (available at *http://www.nlrb.gov/nlrb/legal/manuals/outline_chap1.html*). However, even where an employer fails to meet the appropriate discretionary monetary standard, the Board will assert its jurisdiction to the extent necessary to address alleged violations of Section 8(a)(4), which prohibits retaliation against employees who give testimony or file charges under the Act, if it can be established that the Board has statutory jurisdiction, *i.e.,* a greater than de minimis flow of goods or services across State lines. *Pickle Bill's, Inc.,* 224 NLRB 413 (1976).

After due consideration, the Department declines to limit the application of the notice-posting requirements based on the Board's discretionary jurisdictional standards for the following reasons. First, had the President wanted the application of the rule to be limited in such a fashion, the words of the Executive Order would create such a limitation, but no such text appears in the Order. Second, the Board's discretionary jurisdictional standards were established to better effectuate the purposes of the Act to "promote the prompt handling of major cases" by limiting the exercise of its jurisdiction "to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce." *Hollow Tree Lumber Company,* 91 NLRB 635, 636 (1950). The application of the notice-posting

[18] Under the NLRA, the term "employer" excludes the United States, any wholly owned Government corporation, any Federal Reserve Bank, any State or political subdivision thereof, any person subject to the Railway Labor Act [45 U.S.C. 151 *et seq.*], any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization. 29 U.S.C. 152(2). Section 471.4(a)(3) of the NPRM contained an inadvertent drafting error, which combined two employer exclusions into one subparagraph. The two exclusions—any State or political subdivision of a State and any person subject to the Railway Labor Act—have been listed in separate subparagraphs in the final rule, thus increasing by one the number of employer exclusions listed in § 471.4(a).

The NLRA's definition of "employee" also excludes those employed as agricultural laborers, in the domestic service of any person or family in a home, by a parent or spouse, as an independent contractor, as a supervisor, or by an employer subject to the Railway Labor Act, such as railroads and airlines. 29 U.S.C. 152(3). Section 471.4(b) has been modified to include the NLRA's catchall definition of excluded employees, *i.e.,* someone who is employed "by any other person who is not an employer as defined" in the NLRA. 29 USC 152(3).

rule to employers outside the Board's discretionary jurisdictional limits raise no similar concerns related to the prompt handling of major unfair labor practice or representation cases, and thus no similar rationale demands the inclusion of such a limitation. Third, the Board's discretionary jurisdictional standards are numerous and unwieldy for the purposes of this rule. The jurisdictional standards that have the broadest application are those for retail and non-retail operations, but the Board has established numerous separate individual standards to address certain industries and types of enterprises, including health care organizations, newspapers, and educational institutions, among others. *See* "An Outline of Law and Procedure in Representation Cases," *supra,* Chapter 1, Jurisdiction (discussing jurisdictional standards applicable by industry). Finally, as illustrated in *Pickle Bill's, Inc., supra,* 224 NLRB at 413, certain public policies, such as remedying an employer's unlawful interference with the statutory right of all employees freely to resort to and participate in the Board's processes, demand that the Board's discretionary jurisdictional standards not apply. The Department likewise concludes that the public policy underlying this rule favoring notification to employees of their rights similarly demands that the Board's discretionary jurisdictional standards not apply. Therefore, the Department has determined that the rule applies to employers of "employees covered by the National Labor Relations Act," Sec. 2, 74 FR at 6107, without regard to the Board's discretionary jurisdictional limitations.[19]

These comments also raise the issue of the application of the rule to certain contractors that might implicate the First Amendment, such as religiously affiliated employers. *See NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490 (1979) (reading the NLRA in light of the Religion Clauses of the First Amendment, NLRB lacks jurisdiction over church-operated schools). Because such limits to the NLRA's jurisdiction are constitutional in nature and similarly implicate the Department's action under the Executive Order with respect to such contractors, the rule will not apply to contractors that hold themselves out to the public as a religious institution, that are nonprofit, and are religiously affiliated. *See University of Great Falls v. NLRB,* 278 F.3d 1335 (DC Cir. 2002) (employing three-part test for implementing *Catholic Bishop); Universidad Central de Bayamon v. NLRB,* 793 F.2d 383 (1st Cir. 1985) (en banc) (Breyer, Circuit Judge) (same).

As noted, the comments also raise the issue of the application of the rule to U.S. firms doing business abroad. The Supreme Court has stated that the statutory jurisdiction of the NLRA extends only to employees "of our own country and its possessions." *Benz v. Compania Naviera Hidalgo, S.A.,* 353 U.S. 138, 144 (1957). More precisely, the Act only applies to employees in the territorial United States, and not to American employees located abroad. *See, e.g., RCA Oms,* 202 NLRB 228 (1973); *Range Sys's. Eng'g Support,* 326 NLRB 1047 (1998); *Computer Sci.'s Raytheon,* 318 NLRB 966 (1995); *GTE Automatic Elec. Inc.,* 226 NLRB 1222 (1976). Similarly, the regulations implementing Executive Order 11246 exempt from coverage "work performed outside the United States by employees who were not recruited within the United States." 41 CFR. 60–1.5(a)(3). For these reasons, the Department has determined that this rule will not apply to government contracts for work performed exclusively by employees of U.S. firms operating outside the territorial United States, and § 471.3(a)(5) has been added to reflect this determination.

Finally, the comments raise the issue regarding the application of the rule to tribal governments. The NLRA is a statute of general applicability, and therefore may be applicable to the activities of Indian tribes. *NLRB v. Chapa-De Indian Health Program Inc.,* 316 F.3d 995 (9th Cir. 2003). The Board's standard for determining the circumstances under which it will exercise jurisdiction over Indian-owned and -operated enterprises is based on the nature of the enterprise and not its location. *San Manuel Indian Bingo & Casino,* 341 NLRB 1055 (2004). In *San Manuel,* the Board overruled prior precedent and applied the statute to the conduct of Indian tribes, unless the law touches the exclusive rights of self-government in purely intramural matters, the application of the law would abrogate treaty rights, or there is evidence in the statute or legislative history that Congress did not intend the law to apply to Indian tribes. *Id.* The Department will utilize the same standard, and apply this rule to Federal contractors that are Indian-owned or -operated enterprises, unless one of the exceptions articulated by the Board in *San Manuel* applies.

**Subpart B—General Enforcement; Compliance Review and Complaint Procedures**

Subpart B of the proposed rule established standards and procedures the Department will use to determine compliance with obligations of the rule, take complaints regarding noncompliance, address findings of violations, provide hearings for certain matters, impose sanctions, including debarment, and provide for reinstatement in the case of debarment. The standards and procedures proposed in the NPRM were taken largely from the Department's prior rule administering and enforcing Executive Order 13201, 66 FR 11221. *See* 29 CFR Part 470 (2008), rescinded under authority of E.O. 13496, 74 FR 14045, March 30, 2009. The Department invited comment on the administrative and enforcement procedures proposed in Subpart B.

The NPRM noted that OFCCP administers and enforces several laws that ban discrimination and require Federal contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment. Therefore, OFCCP already has responsibility for monitoring, evaluating and ensuring that contractors doing business with the Federal government conduct themselves in a manner that complies with certain Federal laws. Proposed § 471.10 built on this practice and expertise, and established authority in the Director of OFCCP to conduct evaluations to determine whether a contractor is in compliance with the requirements of this rule. Under proposed § 471.10(a), such evaluations may be done solely for the purpose of assessing compliance with this rule, or may be undertaken in conjunction with an assessment of a Federal contractors' compliance with other laws under OFCCP's jurisdiction. This proposed section also established standards regarding location of the posted notice that will be used by OFCCP to assess compliance and indicates that an evaluation record will reflect efforts made toward conciliation, corrective action and/or recommendations regarding enforcement actions.

The Department received three comments that each raised concerns about OFCCP evaluations to determine

[19] As one comment notes, the Board has declined completely to exercise jurisdiction over the horseracing and dogracing industries because they are peculiarly related to, and regulated by, local governments, and because further regulation of them would not contribute to stability in labor relations in those industries. *See* 29 CFR 103.3. Because the Board has expressly found that its jurisdiction would not enhance labor-management stability in those industries, and because the purpose of this rule is to promote labor peace and reduce labor unrest, the Department will follow this jurisdictional standard and not apply the rule to the horseracing or dogracing industries.

whether a contractor is in compliance with the contract clause-inclusion and notice-posting requirements of the rule. The thrust of these comments is that OFFCP compliance evaluators do not have substantive expertise about the rights and obligations contained in the NLRA, and therefore should not be permitted to dispense advice to employees regarding those rights and obligations during compliance reviews. One comment noted that employees are likely to be confused by OFCCP's role in implementing the rule, because the NLRB has enforcement authority regarding the rights stated in the notice. A second commenter noted that the Department should delegate authority for compliance to the NLRB, since it has the proper enforcement authority. Two commenters noted that the Department must ensure that OFCCP compliance evaluators refer any questions regarding substantive rights and obligations under the NLRA to the NLRB. In response to these concerns, the Department notes that the purpose of an OFCCP compliance evaluation is to determine whether a contractor is in compliance with the requirements of this rule, in particular, whether the contractor has satisfied the notice-posting and contract clause-inclusion requirements applicable to that contractor. To the extent that questions are raised regarding the substantive provisions of the notice during a compliance evaluation, the OFCCP reviewer will refer such questions to the NLRB. Therefore, no change to the proposed § 471.10 is required.

Proposed § 471.11 provided for the Department's acceptance of written complaints alleging that a contractor doing business with the Federal government has failed to post the notice required by this rule. The proposed section established that no special complaint form is required, but that complaints must be in writing. In addition, as proposed in § 471.11, written complaints must contain certain information, including the name, address and telephone number of the person submitting the complaint, and the name and address of the Federal contractor alleged to have violated this rule. This proposed section established that written complaints may be submitted either to OFCCP or OLMS, and the contact information for each agency was contained in this subsection. Finally, proposed § 471.11 established that OFCCP will conduct investigations of complaints submitted under this section, make compliance findings based on such investigations, and include in the investigation record any efforts made toward conciliation, corrective action, and recommended enforcement action.

The Department received one comment regarding the "informality" of the complaint submission process. The comment suggests that because the complaint is not required to be submitted under penalty of perjury or similar standard, the process permits the filing of false complaints for harassment or other wrongful purposes. Unlike most other complaints alleging an employer's violation of a legal obligation, however, a complaint filed under § 471.11 requires only a straightforward allegation that an employer has not posted the required notice physically and/or electronically, or has not included the contract clause in its covered contracts or subcontracts. Once notified that such a complaint has been received, the alleged violation is either easily remedied or easily disproved, providing virtually no opportunity for harassment or other misuse of the complaint process. In addition, because the factual basis underlying a complaint is easily corrected, an employee who files a true complaint may be vulnerable to retaliation by an employer who quickly corrects the violation and then subjects the complaining employee to repercussions that may result from a penalty-of-perjury standard. Finally, the complaint process for the Department's former and now-revoked employee notice rule, 29 CFR 470.11 (2008) was identical to this process. For these reasons, the Department has decided to retain the complaint process as proposed in the NPRM. *See* § 471.11.

Proposed § 471.12 set out the initial steps that the Department will take in the event that a contractor is found to be in violation of this rule, including making reasonable efforts to secure compliance through conciliation. Under this proposed section, a noncompliant contractor must take action to correct the violation and commit in writing to maintain compliance in the future. If the contractor fails to come into compliance, OLMS may proceed with enforcement efforts proposed in § 471.13.

One comment regarding the conciliation process requested that the Department clarify the extent of a contractor's liability for penalties if the contractor has fully cooperated with reasonable conciliation effort and complies with the requirements of the rule. The same comment suggests that a contractor be given notice of the conciliation process and an opportunity to appear at that stage before the Director for Federal Contract Compliance, and that if compliance results, a written decision be issued to that effect.

The comment misconstrues the conciliation and enforcement processes of the rule. Enforcement proceedings against a contractor, discussed further below, will result when a violation has not been corrected through conciliation. § 471.13(a)(2). If, during the conciliation process, a contractor comes into full compliance with the requirements of the rule and commits in writing not to repeat the violation, § 471.12(b), there is no need to refer the matter for enforcement, and no attendant penalties can result. Similarly, because of the informality of the conciliation process and the absence of any penalties associated with it, there is no basis to provide a contractor with formal notice, an opportunity to be heard, or a decision on the record at that stage of the process.

Proposed § 471.13 implemented Section 6 of the Executive Order, 74 FR 6108–09, and established steps that the Department will take in the event that conciliation efforts fail to bring a contractor into compliance with this rule. Under this proposed section, enforcement proceedings may be initiated if violations are found as a result of either a compliance evaluation or a complaint investigation, or in those cases in which a contractor refuses to allow a compliance evaluation or complaint investigation or refuses to cooperate with the compliance evaluation or complaint investigation, including failing to provide information sought during those procedures. The enforcement procedures proposed in § 471.13 relied primarily on the Department's regulations at 29 CFR part 18, which govern administrative hearings before an Administrative Law Judge ("ALJ"), and on the provisions for expedited hearings at 29 CFR 18.42. The procedures in this proposed section established that an ALJ will make recommended findings and conclusions regarding any alleged violation to the Assistant Secretary for Employment Standards ("Assistant Secretary"), who would issue a final administrative order. The final administrative order may include a cease-and-desist order or other appropriate remedies in the event that a violation is found. The procedures in this proposed section also established timetables for submitting exceptions to the ALJ's recommended order to the Assistant Secretary, and also provided for the use of expedited proceedings. Other than the substitution of the Administrative Review Board for the Assistant Secretary, as noted earlier, no changes were made to proposed

§ 471.13, and it is unchanged in the final rule.

Proposed § 471.14 addressed the imposition of sanctions and penalties in cases in which violations are found, and established post-hearing procedures related to such sanctions or penalties. Section 7 of the Executive Order provides the framework for the scope and nature of remedies the Department may order in the event of a violation. 74 FR 6109.

Section 7(a) of the Executive Order provides that the Secretary may issue a directive that the contracting department or agency cancel, terminate, suspend, or cause to be cancelled, terminated or suspended any contract or portion of a contract for noncompliance. *Id.* In addition, the Executive Order indicates that contracts may be cancelled, terminated or suspended absolutely, or their continuance may be conditioned on a requirement for future compliance. *Id.* Prior to issuing such a directive, the Secretary must offer the head of the contracting department or agency an opportunity to object in writing to the remedy contemplated, and the objections must contain reasons why the contract is essential to the agency's mission. *Id.* Finally, Section 7 of the Executive Order prevents the imposition of such a remedy if the head of the contracting department or agency, or his or her designee, continues to object to the issuance of the directive. *Id.* Proposed § 471.14(a), (b), (c), and (d)(1) fully implemented the standards and procedures established in Section 7(a) of the Executive Order.

Section 7(b) of the Executive Order provides that the Secretary may issue an order debarring noncompliant contractors "until such contractor has satisfied the Secretary that such contractor has complied with and will carry out the provisions of the order." 74 FR 6109. As with the remedies discussed above, prior to the imposition of debarment, the Secretary must offer the head of the contracting department or agency an opportunity to object in writing to debarment, and the objections must contain reasons why the contract is essential to the agency's mission. *Id.* Finally, Section 7(b) of the Executive Order prevents the imposition of debarment if the head of the contracting department or agency, or his or her designee, continues to object to it. *Id.* Proposed § 471.14(d)(3) of the rule established the availability of the debarment remedy. Section 471.14(f) of the proposed rule indicated that the Assistant Secretary will periodically publish and distribute the names of contractors or subcontractors that have been debarred for noncompliance. Other than the substitution of the Director of OLMS for the Assistant Secretary, as noted earlier, no changes were made to proposed § 471.14, and it is unchanged in the final rule.

Proposed § 471.15 permitted a contractor or subcontractor to *seek* a hearing before the Assistant Secretary before the imposition of any of the remedies outlined above. Other than the substitution of the Director of OLMS for the Assistant Secretary, as noted earlier, no changes were made to proposed § 471.15, and it is unchanged in the final rule. Proposed § 471.16 provides contractors or subcontractors that have been debarred under this rule an opportunity to *seek* reinstatement by requesting such in a letter to the Assistant Secretary. Under this proposed provision, the Assistant Secretary may reinstate the debarred contractor or subcontractor if he or she finds that the contractor or subcontractor has come into compliance with this rule and has shown that it will fully comply in the future.

As noted above, § 471.2(a) required all nonexempt prime contractors and subcontractors to include the employee notice contract clause in each of its nonexempt subcontracts so that the obligation to notify employees of their rights is binding upon each successive subcontractor. Regarding enforcement of the requirements of the rule as to subcontractors, the Executive Order requires the contractor to "take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance." Sec. 2, para. 4, 74 FR 6108. Accordingly, in the event that the Department determines that a subcontractor is out of compliance with the requirements of this rule regarding employee notice or inclusion of the contract clause in the subcontractor's own subcontracts, the Secretary may direct the contractor to require the noncompliant subcontractor to come into compliance. As indicated in the Executive Order, if such a directive causes the contractor to become involved in litigation with the subcontractor, the contractor may request the United States to enter the litigation in order to protect the interests of the United States. Sec. 2, para. 4, 74 FR 6108. If the contractor is unable to compel subcontractor compliance on its own accord, the compliance review, complaint, investigation, conciliation, hearing and decision procedures established in §§ 471.10 through 471.16 to assess and resolve contractor compliance with the requirements of this rule are also applicable to subcontractors. In those instances in which a contractor fails to take the action directed by the Secretary regarding a subcontractor's noncompliance, the contractor may be subject to the same enforcement and remedial procedures that apply to noncompliance with requirements to provide employee notice or include the contract clause in its contracts. *See* § 471.13(a)(1).

The Department received a number of comments regarding the enforcement procedures of the rule, the vast majority of which raised concerns regarding the Department's purported enforcement of the substantive provisions of the notice. Eight comments raised the issue with respect to the second paragraph of the contract clause, which states that the "contractor will comply with all provisions of the Secretary's notice, and related rules, regulations, and orders of the Secretary of Labor." 74 FR 6107. These comments note that this provision, when taken together with the rule's enforcement procedures, suggest that the Department will be adjudicating violations of the substantive provisions of the notice, which they correctly indicate is solely within the purview of the National Labor Relations Board. Other commenters raise the same issue more generically, and suggest that the Department's enforcement against contractors that violate the Department's rule interferes with the NLRB's exclusive jurisdiction. Overall, the comments indicate that the Department's interference with the NLRB's adjudicatory role would violate principles of preemption and primary jurisdiction, and incorrectly impose sanctions precluded by the NLRA.

In response to these comments, the Department assures the contractor community that it cannot, nor will it, attempt to enforce the substantive provisions of the notice against contractors or subcontractors. As the comments correctly note, such enforcement authority is within the exclusive jurisdiction of the National Labor Relations Board. The primary purpose of the Executive Order is to reduce the government's contracting costs by ensuring that employees are well-informed of their rights under the NLRA. 74 FR 6107. The mechanism by which the Executive Order achieves this goal is through requiring that a contractor agree in the government contract to post a notice, developed by the Department, to its employees about those rights. The grant of enforcement authority to the Department in Sections 6 and 7 of the Executive Order is limited, and the Order sanctions the Department's enforcement activity only

as to a contractor's compliance with the contract clause-inclusion requirements and the notice-posting requirements of this final rule. The Department does not construe the second paragraph of the contract clause as establishing an independent basis of authority for the enforcement of the substantive provisions of the notice. Of course, the substantive provisions of the notice are an accurate reflection of NLRA law. As a result, if a contractor is failing or refusing to comply with those provisions, the contractor may be in violation of the NLRA, and in that case charges may be lodged solely with and adjudicated solely by the NLRB.

Beyond questions related to alleged overlapping jurisdiction, comments regarding enforcement of the rule made general observations and consisted of some requests for clarification. Two commenters submitted general support for the administrative and enforcement procedures of the rule. One comment indicated that these same enforcement procedures worked well in implementing the now-revoked Executive Order 13201, and urged the Department to similarly emphasize compliance assistance rather than "heavy-handed enforcement." One commenter described the available sanctions, particularly debarment, as "unduly extreme," and is concerned that a contractor might face such sanctions in the event of an unintentional or inadvertent violation, such as when a notice has fallen off the wall. Another comment requested more guidance on reinstatement from debarment under § 471.16, including the steps a contractor must take to *seek* reinstatement and the requirement of a written decision on the request. This comment offers as an example the reinstatement procedures established in 41 CFR 60–1.31. Another comment requests that the Department clarify that a contractor has no affirmative obligation to compel a subcontractor's compliance with the rule, and that a contractor can only be compelled to itself comply. This comment suggests that it is unrealistic of the Department to require that contractors police their subcontractors for compliance, and that the Department should take enforcement action directly against a subcontractor in the event of the subcontractor's noncompliance. The final comment regarding enforcement suggests that the rule must be revised to reflect the Department's elimination of the Employment Standards Administration and the abolition of the position of Assistant Secretary for Employment Standards, which, as previously noted, has been done.

In response to these comments, the Department notes that contractors will not receive harsh sanctions for inadvertent or unintentional violations of the rule. Indeed, the primary purpose of the conciliation procedures is to seek a contractor's cooperation and compliance with the rule, so inadvertent and unintentional noncompliance will be addressed long before any sanctions may be imposed. Further, the Department has decided to clarify the standards for reinstatement of a debarred contractor, and, as suggested, those standards are modeled on the regulation governing reinstatement of contractors debarred under Executive Order 11246, 41 CFR 60–1.31. Thus, under amended § 471.16, in connection with a reinstatement request to the Director of OLMS, debarred contractors are required to show that they have established and will carry out policies and practices in compliance with the Executive Order and implementing regulations. Before reaching a decision, the Director of OLMS may request that a compliance evaluation of the contractor be conducted, and may require the contractor to supply additional information regarding the request for reinstatement. If the Director of OLMS finds that the contractor or subcontractor has come into compliance with and will carry out the Executive Order and the regulation, the contractor or subcontractor may be reinstated. In addition, under the revised provision, the Director of OLMS shall issue a written decision on the request. *See* § 471.16.

Finally, in response to the comment suggesting that contractors not be compelled to police their subcontractors to determine compliance, the Department concludes that the operative provision in paragraph 4 of the contract clause of the Executive Order does not support the position suggested in the comment. This provision requires a contractor to "take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance." 74 FR 6108. The provision thus indicates that a prime contractor cannot turn a blind eye toward noncompliance of its subcontractors, and should the Department become aware that a prime contractor has a significant number of subcontractors that are out of compliance with this rule, the Department may order that prime contractor to require its subcontractors to come into compliance. In the event that the contractor disregards such an order to *seek* compliance among its subcontractors, such disregard may make the prime contractor liable for penalties and sanctions in the same manner as if the contractor had failed to incorporate the contract clause or post the employee notice. In this regard, however, the prime contractor is liable for penalties and sanctions only insofar as it fails or refuses to *seek* compliance among subcontractors following an order by the Department to do so. If a prime contractor diligently *seek*s subcontractor compliance following such an order, but a subcontractor's compliance is not forthcoming, the prime contractor will not be liable for the subcontractor's noncompliance. As noted above, only § 471.16 of this subpart was modified in response to comments.

**Subpart C—Ancillary Matters**

A number of discrete issues unrelated to the issues *addressed* in the two previous subparts merit attention in this rule, and they are set out in this subpart. Consequently, this subpart addresses delegations of authority within and outside the Department to administer and enforce this rule, rulings under or interpretations of the Executive Order, standards prohibiting intimidation, threats, coercion or other interference with rights protected under this rule, and other provisions of the Executive Order that are included in this rule. The Department invited comment on these provisions and received none, save the suggestion discussed earlier in the context of enforcement that the Department delegate its enforcement role to the NLRB. Therefore, the provisions as proposed in this subpart will be retained, except that, as noted earlier, the roles and responsibilities given to the Assistant Secretary for ESA have been reassigned.

Section 471.20 implements Section 11 of the Executive Order, 74 FR 6110, which permits the delegation of the Secretary's authority under the Order to Federal agencies within or outside the Department. Revised § 471.21 of the rule indicates that the Directors of OLMS and OFCCP will share the authority to make rulings under or interpretations of this rule, as appropriate and in accordance with their respective responsibilities under the rule. In this connection, requests for such rulings or interpretations must be submitted to the Director of OLMS, who will consult with the Director of OFCCP to the extent necessary and appropriate to issue the requested ruling or interpretation. Section 471.22 *seeks* to prevent intimidation or interference with rights

protected under this rule, so it indicates that the sanctions and penalties available for noncompliance set out in § 471.14 will be available should a contractor or subcontractor fail to take all steps necessary to prevent such intimidation or interference. Activities protected by this section include filing a complaint, furnishing information, or assisting or participating in any manner in a compliance evaluation, a complaint investigation, hearing or any other activity related to the administration and enforcement of this rule. Finally, § 471.23 implements Section 9 of the Executive Order, 74 FR 6109, which requires that contracting departments and agencies cooperate with the Secretary in carrying out her functions under the Order, and implements Section 15 of the Executive Order, 74 FR 6110, which establishes general guidelines for the Order's implementation.

## IV. Regulatory Procedures

*Executive Order 12866*

This final rule has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. 58 FR 51735–36, Oct. 4, 1993. The Department has determined that this rule is not an "economically significant" regulatory action under Section 3(f)(1) of Executive Order 12866. 58 FR 51738. Based on the Department's analysis, including a cost impact analysis set forth more fully below with regard to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* this rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues. 58 FR 51738. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3)(B) of the Executive Order. 58 FR 51741. However, because of its importance to the public, the rule was reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 ("RFA") requires agencies promulgating final rules to prepare a final regulatory flexibility analysis and to develop alternatives wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. 5 U.S.C. 601 *et seq.* The focus of the RFA is to ensure that agencies "review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA]." E.O. 13272, Sec. 1, 67 FR 53461 ("Proper Consideration of Small Entities in Agency Rulemaking"). However, an agency is relieved of the obligation to prepare a final regulatory flexibility for a final rule if the Agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Based on the analysis below, in which the Department has estimated the financial burdens to covered small contractors and subcontractors associated with complying with the requirements contained in this final rule, the Department has certified to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") that this rule will not have a significant economic impact on a substantial number of small entities.

The primary goal of Executive Order 13496 and these implementing regulations is the notification to employees of their rights with respect to collective bargaining and other protected, concerted activity. This goal is achieved through the incorporation of a contract clause in all covered Government contracts. The Executive Order and this rule impose the obligation to ensure that the contract clause is included in all Government contracts not on private contractors, but on Government contracting departments and agencies, which are not "small entities" that come within the focus of the RFA. Therefore, the costs attendant to learning of the obligation to include the contract clause in Government contracts and modifying those contracts in order to comply with that obligation is a cost borne by the Federal government, and is not incorporated into this analysis.

Once the required contract clause is included in the Government contract, contractors then begin to assume the burdens associated with compliance. Those obligations include posting the required notice and incorporating the contract clause into all covered subcontracts, thus making the same obligations binding on covered subcontractors. For the purposes of the RFA analysis, the Department estimates that, on average, each prime contractor will subcontract some portion of its prime contract three times, and the prime contractor therefore will expend time ensuring that the contract clause is included in its subcontracts and notifying those subcontractors of their attendant obligations. To the extent that subcontractors subcontract any part of their contract with the prime contractor, they, in turn, will be required to expend time ensuring that the contract clause is included in the next tier of subcontracts and notifying the next-tier subcontractors of their attendant obligations. Therefore, for the purpose of determining time spent on compliance, the Department will not differentiate between the obligations of prime contractors and subsequent tiers of subcontractors in assessing time spent on compliance; the Department assumes that all contractors, whether prime contractor or subcontractor, will spend equivalent amounts of time engaging in compliance activity.

The Department estimates that each contractor will spend a total of 3.5 hours per year in order to comply with this rule, which includes 90 minutes for the contractor to learn about the contract and notice requirements, train staff, and maintain records; 30 minutes for contractors to incorporate the contract clause into each subcontract and explain its contents to subcontractors; 30 minutes acquiring the notice from a government agency or Web site; and 60 minutes posting them physically and electronically, depending on where and how the contractor customarily posts notices to employees. The Department assumes that these activities will be performed by a professional or business worker, who, according to Bureau of Labor statistics data, earned a total hourly wage of $31.02 in January 2009, including accounting for fringe benefits. The Department then multiplied this figure by 3.5 hours to estimate the average annual costs for contractors and subcontractors to comply with this rule. Accordingly, this rule is estimated to impose average annual costs of $108.57 per contractor (3.5 hours × $31.02). These costs will decrease in subsequent years based on a contractor's increasing familiarity with the rule's requirements and having already satisfied its posting requirements in earlier years.[20] Based

[20] The Department received two comments suggesting that the annual compliance costs were underestimated in the proposed rule. The first comment indicated that contractors will spend time each year reviewing the notice to assess whether it is consistent with legislation, or Board or court decisions. This comment also suggested that contractors would be "working under contract terms which would not only be out-of-sync which [sic]

upon figures obtained from USASpending.gov, which compiles information on federal spending and contractors across government agencies, the Department concludes that there were 186,536 unique Federal contractors holding Federal contracts in FY 2008.[21] Although this rule does not apply to Federal contracts below the simplified acquisition threshold, the Department does not have a means by which to calculate what portion of all Federal contractors hold *only* contracts with the government below the simplified acquisition threshold. Therefore, in order to determine the number of entities affected by this rule, the Department counted all Federal contractors, regardless of the size of the government contract held. Based on data analyzed in the Federal Procurement Data System (fpds.gov), which compiles data about types of contractors, of all 186,536 unique Federal prime contractors, approximately 35% are "small entities" as defined by the Small Business Administration (SBA) size standards.[22] Therefore, for the purposes of the RFA analysis, the Department estimates that this rule will affect 65,288 small Federal prime contractors.

As noted above, for the purposes of this analysis, the Department estimates that each prime contractor subcontracts a portion of the prime contract three times, on average. However, the community of prime contractors does not utilize a unique subcontractor for each subcontract; the Department assumes that subcontractors may be working under several prime contracts for either a single prime contractor or multiple prime contractors, or both. In addition, some subcontractors may also be holding prime contracts with the government, so they may already be counted as affected entities. Therefore, in order to determine the unique number of subcontractors affected by this rule, the Department estimates there are the same number of unique subcontractors as prime contractors, resulting in the estimate that 186,536 subcontractors are affected by this rule. Further, for the purposes of this analysis, the Department assumes that all subcontractors are "small entities" as defined by SBA size standards. Therefore, in order to estimate the total number of "small" contractors affected by this rule, the Department has added together the estimates for the number of small prime contractors calculated above (65,288) with the estimate of all subcontractors (186,536), all of which we assume are small. Accordingly, the Department estimates that 251,824 small prime and subcontractors are affected by this rule.

Based on this analysis, the Department concludes that this final rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not define either "significant economic impact" or "substantial" as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, "what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact." *See A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* Office of Advocacy, U.S. Small Business Administration at 17 (available at *http://www.sba.gov*) ("SBA Guide"). As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity or the percentage of profits affected. *Id.* In this case, the Department has determined that the average cost of compliance with this rule in the first year for all Federal contractors and subcontractors will be $108.57. The Department concludes that this economic impact is not significant. Furthermore, the Department has determined that of the entire regulated community of all 186,536 prime contractors and all 186,536 subcontractors, 67% percent of that regulated community constitute small entities (251,824 small contractors divided by all 373,072 contractors). Although this figure represents a substantial number of federal contractors and subcontractors, because Federal contractors are derived from virtually all segments of the economy and across industries, this figure is a small portion of the national economy overall. *Id.* at 20 ("the substantiality of the number of businesses affected should be determined on an industry-specific basis and/or the number of small businesses overall").[23]

the updated law, but also potentially in conflict with the updated law, thereby needlessly exposing them to potential liabilities or penalties." The second comment indicated that the time allocated for incorporation in full of the contract clause was too low, but the comment did not suggest an alternate figure for that allocation.

The Department concludes that neither of these comments provides an adequate basis to reassess the annual compliance cost estimates in the proposed rule. First, a contractor will not need to review legislation and Board or court decisions to ensure that the notice in the contract clause is accurate; this is the job of the Department. Second, the time allotment for the incorporation of the contract clause, whether by reference or in full, is essentially the same—the contractor must ensure that its subcontracts are revised to include a standard-form provision that establishes the duty to post the notice. After the first time the contractor ensures the accuracy of the provision that must be incorporated, the time a contractor devotes to ensuring the proper inclusion of the provision on an ongoing basis should not increase as a result of the length of the provision. In any event, as noted above, the Department has revised the prohibition against incorporation of the contract clause by reference proposed in the NPRM, and the final rule now permits incorporation of the contract clause by reference. Finally, the Department rejects the premise that the notice or the contract clause containing it will be "out-of-sync" with the state of the law, thereby exposing a contractor to liabilities or penalties.

[21] The Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109–282 (Sept. 26, 2006), requires that the Office of Management and Budget establish a single searchable Web site, accessible by the public for free, that includes for each Federal award: (1) The name of the entity receiving the award; (2) the amount of the award; (3) information on the award including transaction type, funding agency, etc.; (4) the location of the entity receiving the award; and (5) a unique identifier of the entity receiving the award. *See* 31 U.S.C.A. § 6101 note. In compliance with this requirement, USASpending.gov was established.

[22] The Federal Procurement Data System ("FPDS") compiles data regarding small business "actions" and small business "dollars" using the criteria employed by SBA to define "small entities." In FY 2008, small business actions accounted for 50% of all Federal procurement action. However, deriving a percentage of contractors that are small using the "action" data would overstate the number of small contractors because contract actions reflect more than just contracts; they include modifications, blanket purchase agreement calls, task orders, and federal supply schedule orders. As a result, there are many more contract actions than there are contracts or contractors. Accordingly, a single small contractor might have hundreds of actions, e.g., delivery or task orders, placed against its contract. These contract actions would be counted individually in the FPDS, but in fact represent only one small business.

Also reflected in FPDS, in FY 2008, small business "dollars" accounted for 19% of all Federal dollars spent. However, deriving a percentage of contractors that are small using the "dollars" data would understate the number of small contractors. Major acquisitions account for a disproportionate share of the dollar amounts and are almost exclusively awarded to large businesses. For instance, Lockheed Martin was awarded $34 billion in contracts in FY 2008, which accounted for 6% of all Federal spending in that year. The top five federal contractors, all large businesses, accounted for over 20% of contract dollars in FY 2008. As a result, because the largest Federal contractors disproportionately represent "dollars" spent by the Federal government, the FPDB's data on small "dollars" spent understates the number of small entities with which the Federal government does business.

The Department concludes that the percentage of all Federal contractors that are "small" is probably somewhere between 19% and 50%, the two percentages derived from the FPDS figures on small "actions" and small "dollars." The mean of these two percentages is approximately 35%, and the Department will use this figure above to estimate how many of all Federal contractors are "small entities" in SBA's terms.

[23] The Department received one comment asserting that the Department erroneously concluded in the proposed rule that an effect on an estimated 67% of the federal contractor community was insubstantial. To the contrary, the Department noted in the proposed rule, as here, that the rule was likely to affect a "substantial number of federal

Continued

Accordingly, the Department concludes that the rule does not impact a substantial number of small entities in a particular industry or segment of the economy. Therefore, under 5 U.S.C. 605, the Department concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, this rule would not include any Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

*Paperwork Reduction Act*

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a public consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Certain sections of this rule, including § 471.11(a) and (b), contain information collection requirements for purposes of the PRA. In accordance with the PRA, the August 3, 2009 NPRM solicited comments on the information collections as they were proposed. Additionally, the Department separately requested comments on the information collections in a 60 day notice published in the Federal Register on September 8, 2009 (74 FR 46236), and submitted a contemporaneous request for OMB review of the proposed collection of information. The Department did not receive any comments in response to either the NPRM PRA analysis or the September 8, 2009 notice. OMB did not approve the collections of information contained in the NPRM stage of this rulemaking, and directed the Department to resubmit the relevant PRA documentation to OMB at the final rulemaking stage.

The rule requires contractors to post notices and cooperate with any investigation in response to a complaint or as part of a compliance evaluation. It also permits employees to file complaints with the Department alleging that a contractor has failed to comply with those requirements. The application of the PRA to those requirements is discussed below.

The final rule imposes certain minimal burdens associated with the posting of the employee notice poster required by the Executive Order and § 471.2(a). As noted in § 471.2(e), the Department will supply the notice, and contractors will be permitted to post exact duplicate copies of the notice. Under the regulations implementing the PRA, "[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public" is not considered a "collection of information" under the Act. *See* 5 CFR 1320.3(c)(2). Therefore, the posting requirement is not subject to the PRA.

The final rule will also impose certain burdens on the contractor associated with cooperating with an investigation into failure to comply with Part 471. The regulations implementing the PRA exempt any information collection requirements imposed by an administrative agency during the conduct of an administrative action against specific individuals or entities. *See* 5 CFR 1320.4. Once the agency opens a case file or equivalent about a particular party, this exception applies during the entire course of the investigation, before or after formal charges or complaints are filed or formal administrative action is initiated. *Id.* Therefore, this exemption would apply to the Department's investigation of complaints alleging violations of the Order or this rule as well as compliance evaluations.

As for the burden hour estimate for employees filing complaints, the Department estimates, based on the experience of OFCCP administering other laws applicable to Federal contractors, that it will take an average of 1.28 hours for such a complainant to compose a complaint containing the necessary information and to send that complaint to the Department. This number is also consistent with the burden estimate for filing a complaint under E.O. 13201 and the now-revoked Part 470 regulations.

The Department has estimated it would receive a total of 50 employee complaints in any given year, which is significantly larger than the estimate contained its most recent PRA submission for Executive Order 13201. In that submission, the Department estimated it would receive 20 employee complaints. This number itself had been revised downwards because the Department never received any employee complaints pursuant to the now-revoked Part 470 regulations. Because the applicability of the final rule and Executive Order 13496 is greater in scope than the now-revoked Part 470 and Executive Order 13201 in terms of geography (the now-revoked Part 470 regulations only applied to states without right-to-work laws, whereas this rule applies nationwide), the Department has revised upwards its estimate of employee complaints under this rule from 20 to 50.

Section 471.3(b) permits contracting departments to submit written requests for an exemption from the obligations of the Executive Order (waiver request) as to particular contracts or classes of contracts under specified circumstance. The PRA does not cover the costs to the Federal government for the submission of waiver requests by contracting agencies or departments or for the processing of waiver requests by the Department of Labor. The regulations implementing the PRA define the term "burden," in pertinent part, as "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." 5 CFR 1320.3(b)(1). The definition of the term "person" in the same regulations includes "an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision." 5 CFR 1320.3(k). It does not include the Federal government or any branch, political subdivision, or employee thereof. Therefore, the cost to the Federal

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contractors and subcontractors." 74 FR at 38495. However, the purpose of the RFA, and it focus, is to minimize the impact of agency regulations on particular industries or sectors of the economy. *See* SBA Guide at 15–20. As stated in the proposed rule and above, federal contractors and subcontractors represent all industries and sectors of the economy, thus the effect of the rule is dissipated across the economy. As an alternative approach, the comment urged the Department to recognize federal contractors and subcontractors as a discrete "industry," which the Department declines to do because the adoption of such a standard would defeat the focus of the analysis. Finally, in assuming both here and in the proposed rule that 100% of subcontractors were small within SBA's terms, the Department employed an expansive estimate that undoubtedly inflated of the overall number of affected entities. The use of the broad assumption serves to illustrate the point that even if a substantial number of federal contractors and subcontractors are affected by the final rule, the effect of the rule on the economy as a whole is not substantial.

government for the submission of waiver requests by contracting agencies and departments need not be taken into consideration.

*The Department invited the public to comment on whether each of the proposed collections of information:* (1) Ensures that the collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) estimates the projected burden, including the validity of the methodology and assumptions used, accurately; (3) enhances the quality, utility, and clarity of the information to be collected; and (4) minimizes 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). As noted above, the Department received no comments on the PRA analysis.

The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

As instructed by OMB and in accordance with the PRA (5 CFR 1320.11 (h)), in connection with this final rule, the Department submitted an ICR to OMB for its request of the new information collection requirements contained in this rule. OMB approved the ICR on May 5, 2010, under OMB Control Number 1215–0209, which will expire on May 31, 2013.

*Executive Order 13132 (Federalism)*

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that the rule does not have "federalism implications." The employee notice required by the Executive Order and part 471 must be posted only by employers covered under the NLRA. Therefore, the rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

*Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)*

The Department certifies that this final rule does not impose substantial direct compliance costs on Indian tribal governments.

*Small Business Regulatory Enforcement Fairness Act of 1996*

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

**List of Subjects in 29 CFR Part 471**

Administrative practice and procedure, Government contracts, Employee rights, Labor unions.

**Text of Final Rule**

■ Accordingly, a new Subchapter D, consisting of Part 471, is added to 29 CFR Chapter IV to read as follows:

**Subchapter D—Notification of Employee Rights Under Federal Labor Laws**

## PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

### Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

Sec.
471.1 What definitions apply to this part?
471.2 What employee notice clause must be included in Government contracts?
471.3 What exceptions apply and what exemptions are available?
471.4 What employers are not covered under the rule?

**Appendix A to Subpart A of Part 471—Text of Employee Notice Clause**

Sec.

**Subpart B—General Enforcement; Compliance Review and Complaint Procedures**

471.10 How will the Department determine whether a contractor is in compliance with Executive Order 13496 and this part?
471.11 What are the procedures for filing and processing a complaint?
471.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?
471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?
471.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?
471.15 Under what circumstances must a contractor be provided the opportunity for a hearing?
471.16 Under what circumstances may a contractor be reinstated?

**Subpart C—Ancillary Matters**

471.20 What authority under this part or Executive Order 13496 may the Secretary delegate, and under what circumstances?
471.21 Who will make rulings and interpretations under Executive Order 13496 and this part?
471.22 What actions may the Director of OLMS take in the case of intimidation and interference?
471.23 What other provisions apply to this part?

**Authority:** 40 U.S.C. 101 *et seq.;* Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order 7–2009, 74 FR 58834, Nov. 13, 2009; Secretary's Order 8–2009, 74 FR 58835, Nov. 13, 2009.

### Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

#### § 471.1 What definitions apply to this part?

*Construction* means the construction, rehabilitation, alteration, conversion, extension, demolition, weatherization, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term construction also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

*Construction work site* means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, weatherization or repair, and any temporary location or facility at which a contractor or subcontractor meets a demand or performs a function relating to the contract or subcontract.

*Contract* means, unless otherwise indicated, any Government contract or subcontract.

*Contracting agency* means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, that enters into contracts.

*Contractor* means, unless otherwise indicated, a prime contractor or subcontractor.

*Department* means the U.S. Department of Labor.

*Director of OFCCP* means the Director of the Office of Federal Contract Compliance Programs in the Department of Labor.

*Director of OLMS* means the Director of the Office of Labor-Management Standards in the Department of Labor.

*Employee notice clause* means the contract clause set forth in Appendix A that Government contracting departments and agencies must include in all Government contracts and subcontracts pursuant to Executive Order 13496 and this part.

*Government* means the Government of the United States of America.

*Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term "personal property," as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "non-personal services" as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

*Labor organization* means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

*Modification of a contract* means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

*Order* or *Executive Order* means Executive Order 13496 (74 FR 6107, Feb. 4, 2009).

*Person* means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

*Prime contractor* means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of this part, includes any person who has held a contract subject to the Executive Order and this part.

*Related rules, regulations, and orders of the Secretary of Labor,* as used in § 471.2 of this part, means rules, regulations, and relevant orders issued pursuant to the Executive Order or this part.

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

*Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

*Subcontractor* means any person holding a subcontract and, for the purposes of subparts B and C of this part, any person who has held a subcontract subject to the Executive Order and this part.

*Union* means a labor organization as defined above.

*United States* means the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

### § 471.2 What employee notice clause must be included in Government contracts?

(a) *Government contracts.* With respect to all contracts covered by this part, Government contracting departments and agencies must, to the extent consistent with law, include the language set forth in Appendix A to Subpart A of Part 471 in every Government contract, other than those contracts to which exceptions are applicable as stated in § 471.3.

(b) *Inclusion by reference.* The employee notice clause need not be quoted verbatim in a contract, subcontract, or purchase order. The clause may be made part of the contract, subcontract, or purchase order by citation to 29 CFR Part 471, Appendix A to Subpart A.

(c) *Adaptation of language.* The Director of OLMS may find that an Act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions necessary to achieve the purposes of the Executive Order and this part. In such circumstances, the Director of OLMS will promptly issue rules, regulations, or orders as are needed to ensure that all future government contracts contain appropriate provisions to achieve the purposes of the Executive Order and this part.

(d) *Physical Posting of Employee Notice.* A contractor or subcontractor that posts notices to employees physically must also post the required notice physically. Where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the notice in the language employees speak. The employee notice must be placed:

(1) In conspicuous places in and about the contractor's plants and offices so that the notice is prominent and readily *See*n by employees. Such conspicuous placement includes, but is not limited to, areas in which the contractor posts notices to employees about the employees' terms and conditions of employment; and

(2) Where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract. An employee shall be considered to be so engaged if:

(i) The duties of the employee's position include work that fulfills a contractual obligation, or work that is necessary to, or that facilitates, performance of the contract or a provision of the contract; or

(ii) The cost or a portion of the cost of the employee's position is allowable as a cost of the contract under the principles set forth in the Federal Acquisition Regulation at 48 CFR Ch. 1, part 31: Provided, That a position shall not be considered covered by this part by virtue of this provision if the cost of the position was not allocable in whole or in part as a direct cost to any Government contract, and only a de minimis (less than 2%) portion of the cost of the position was allocable as an indirect cost to Government contracts, considered as a group.

(e) *Obtaining a poster with the employee notice.* A poster with the required employee notice, including a poster with the employee notice translated into languages other than English, will be printed by the Department, and will be provided by the Federal contracting agency or may be obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, or from any

field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs. A copy of the poster in English and in languages other than English may also be downloaded from the Office of Labor-Management Standards Web site at *http://www.olms.dol.gov*. Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster.

(f) *Electronic postings of employee notice.* A contractor or subcontractor that customarily posts notices to employees electronically must also post the required notice electronically. Such contractors or subcontractors satisfy the electronic posting requirement by displaying prominently on any Web site that is maintained by the contractor or subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." Where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the notice required in this subsection in the language the employees speak. This requirement will be satisfied by displaying prominently on any Web site that is maintained by the contractor or subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster in the language the employees speak. In such cases, the Office of Labor-Management Standards will provide translations of the link to the Department's Web site that must be displayed on the contractor's or subcontractor's Web site.

### § 471.3 What exceptions apply and what exemptions are available?

(a) *Exceptions for specific types of contracts.* The requirements of this part do not apply to any of the following:

(1) Collective bargaining agreements as defined in the Federal Service Labor-Management Relations Statute, entered into by an agency and the exclusive representative of employees in an appropriate unit to set terms and conditions of employment of those employees.

(2) Government contracts that involve purchases below the simplified acquisition threshold set by Congress under the Office of Federal Procurement Policy Act. Therefore, the employee notice clause need not be included in government contracts for purchases below that threshold, provided that

(i) No agency or contractor is permitted to procure supplies or services in a manner designed to avoid the applicability of the Order and this part; and

(ii) The employee notice clause must be included in government contracts for indefinite quantities, unless the contracting agency or contractor has reason to believe that the amount to be ordered in any year under such a contract will be less than the simplified acquisition threshold set in the Office of Federal Procurement Policy Act.

(3) Government contracts resulting from solicitations issued before the effective date of this rule.

(4) Subcontracts of $10,000 or less in value, except that contractors and subcontractors are not permitted to procure supplies or services in a manner designed to avoid the applicability of the Order and this part.

(5) Contracts and subcontracts for work performed exclusively outside the territorial United States.

(b) *Exemptions for certain contracts.* The Director of OLMS may exempt a contracting department or agency or groups of departments or agencies from the requirements of this part with respect to a particular contract or subcontract or any class of contracts or subcontracts when the Director finds that either:

(1) The application of any of the requirements of this part would not serve its purposes or would impair the ability of the Government to procure goods or services on an economical and efficient basis; or

(2) Special circumstances require an exemption in order to serve the national interest.

(c) *Procedures for requesting an exemption and withdrawals of exemptions.* Requests for exemptions under this subsection from a contracting department or agency must be in writing, and must be directed to the Director of OLMS, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5603, Washington, DC, 20210. The Director of OLMS may withdraw an exemption granted when, in the Director's judgment, such action is necessary or appropriate to achieve the purposes of this part.

### § 471.4 What employers are not covered under this part?

(a) The following employers are excluded from the definition of "employer" in the National Labor Relations Act (NLRA), and are not covered by the requirements of this part:

(1) The United States or any wholly owned Government corporation;

(2) Any Federal Reserve Bank;

(3) Any State or political subdivision thereof;

(4) Any person subject to the Railway Labor Act;

(5) Any labor organization (other than when acting as an employer); or

(6) Anyone acting in the capacity of officer or agent of such labor organization.

(b) Additionally, employers exclusively employing workers who are excluded from the definition of "employee" under the NLRA are not covered by the requirements of this part. Those excluded employees are employed:

(1) As agricultural laborers;

(2) In the domestic service of any family or person at his home;

(3) By his or her parent or spouse;

(4) As an independent contractor;

(5) As a supervisor as defined under the NLRA;

(6) By an employer subject to the Railway Labor Act; or

(7) By any other person who is not an employer as defined in the NLRA

## Appendix A to Subpart A of Part 471—Text of Employee Notice Clause

"1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The "Secretary's notice" shall consist of the following:

"**Employee Rights Under The National Labor Relations Act**"

"The NLRA guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board, the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

"Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.

• Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.

• Discuss your terms and conditions of employment or union organizing with your co-workers or a union.

• Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and *seeking* help from a union.

• Strike and picket, depending on the purpose or means of the strike or the picketing.

• Choose not to do any of these activities, including joining or remaining a member of a union.

"Under the NLRA, it is illegal for your employer to:

• Prohibit you from soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

• Question you about your union support or activities in a manner that discourages you from engaging in that activity.

• Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.

• Threaten to close your workplace if workers choose a union to represent them.

• Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

• Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.

• Spy on or videotape peaceful union activities and gatherings or pretend to do so.

"Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

• Threaten you that you will lose your job unless you support the union.

• Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.

• Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.

• Cause or attempt to cause an employer to discriminate against you because of your union-related activity.

• Take other adverse action against you based on whether you have joined or support the union.

"If you and your coworkers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

"Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should *seek* assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: *http://www.nlrb.gov.* "Click on the NLRB's page titled "About Us," which contains a link, "Locating Our Offices." You can also contact the NLRB by calling toll-free: 1–866–667–NLRB (6572) or (TTY) 1–866–315–NLRB (6572) for hearing impaired.

"* The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

"This is an official Government Notice and must not be defaced by anyone.

"2. The contractor will comply with all provisions of the Secretary's notice, and related rules, regulations, and orders of the Secretary of Labor.

"3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 13496 of January 30, 2009. Such other sanctions or remedies may be imposed as are provided in Executive Order 13496 of January 30, 2009, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

"4. The contractor will include the provisions of paragraphs (1) through (4) herein in every subcontract or purchase order entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 3 of Executive Order 13496 of January 30, 2009), so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

## Subpart B—General Enforcement; Compliance Review and Complaint Procedures

### § 471.10 How will the Department determine whether a contractor is in compliance with Executive Order 13496 and this part?

(a) The Director of OFCCP may conduct a compliance evaluation to determine whether a contractor holding a covered contract is in compliance with the requirements of this part. Such an evaluation may be limited to compliance with this part or may be included in a compliance evaluation conducted under other laws, Executive Orders, and/or regulations enforced by the Department.

(b) During such an evaluation, a determination will be made whether:

(1) The employee notice required by § 471.2(a) is posted in conformity with the applicable physical and electronic posting requirements contained in § 471.2(d) and (f); and

(2) The provisions of the employee notice clause are included in government contracts, subcontracts or purchase orders entered into on or after June 21, 2010, or that the government contracts, subcontracts or purchase orders have been exempted under § 471.3(b).

(c) The results of the evaluation will be documented in the evaluation record, which will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part and, as applicable, conciliation efforts made, corrective action taken and/or enforcement recommended under § 471.13.

### § 471.11 What are the procedures for filing and processing a complaint?

(a) *Filing complaints.* An employee of a covered contractor may file a complaint alleging that the contractor has failed to post the employee notice as required by the Executive Order and this part; and/or has failed to include the employee notice clause in subcontracts or purchase orders. Complaints may be filed with the Office of Labor-Management Standards (OLMS) or the Office of Federal Contract Compliance Programs (OFCCP) at 200 Constitution Avenue, NW., Washington, DC 20210, or with any OLMS or OFCCP field office.

(b) *Contents of complaints.* The complaint must be in writing and must include:

(1) The employee's name, address, and telephone number;

(2) The name and address of the contractor alleged to have violated the Executive Order and this part;

(3) An identification of the alleged violation and the establishment or construction work site where it is alleged to have occurred;

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint; and

(5) The signature of the employee filing the complaint.

(c) *Complaint investigations.* In investigating complaints filed with the Department under this section, the Director of OFCCP will evaluate the allegations of the complaint and develop a case record. The record will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part, and, as applicable, a description of conciliation efforts made, corrective action taken, and/or enforcement recommended.

**§ 471.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?**

(a) If any complaint investigation or compliance evaluation indicates a violation of the Executive Order or this part, the Director of OFCCP will make reasonable efforts to secure compliance through conciliation.

(b) Before the contractor may be found to be in compliance with the Executive Order or this part, the contractor must correct the violation found by the Department (for example, by posting the required employee notice, and/or by amending its subcontracts or purchase orders with subcontractors to include the employee notice clause), and must commit, in writing, not to repeat the violation.

(c) If a violation cannot be resolved through conciliation efforts, the Director of OFCCP will refer the matter to the Director of OLMS, who may take action under § 471.13.

(d) For reasonable cause shown, the Director of OLMS may reconsider, or cause to be reconsidered, any matter on his or her own motion or in response to a request.

**§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?**

(a) *General.* (1) Violations of the Executive Order or this part may result in administrative enforcement proceedings. The bases for a finding of a violation may include, but are not limited to:

(i) The results of a compliance evaluation;

(ii) The results of a complaint investigation;

(iii) A contractor's refusal to allow a compliance evaluation or complaint investigation to be conducted; or

(iv) A contractor's refusal to cooperate with the compliance evaluation or complaint investigation, including failure to provide information sought during those procedures.

(v) A contractor's refusal to take such action with respect to a subcontract as directed by the Director of OFCCP or the Director of OLMS as a means of enforcing compliance with the provisions of this part.

(vi) A subcontractor's refusal to adhere to requirements of this part regarding employee notice or inclusion of the contract clause in its subcontracts.

(2) If a determination is made by the Director of OFCCP that the Executive Order or the regulations in this part have been violated, and the violation has not been corrected through conciliation, he or she will refer the matter to the Director of OLMS for enforcement consideration. The Director of OLMS may refer the matter to the Solicitor of Labor to begin administrative enforcement proceedings.

(b) *Administrative enforcement proceedings.* (1) Administrative enforcement proceedings will be conducted under the control and supervision of the Solicitor of Labor, under the hearing procedures in 29 CFR part 18, Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

(2) The administrative law judge will certify his or her recommended decision issued under 29 CFR 18.57 to the Administrative Review Board. The decision will be served on all parties and amicus curiae.

(3) Within 25 days (10 days if the proceeding is expedited) after receipt of the administrative law judge's recommended decision, either party may file exceptions to the decision. Exceptions may be responded to by the other parties within 25 days (7 days if the proceeding is expedited) after receipt. All exceptions and responses must be filed with the Administrative Review Board.

(4) After the expiration of time for filing exceptions, the Administrative Review Board may issue a final administrative order, or may otherwise appropriately dispose of the matter. In an expedited proceeding, unless the Administrative Review Board issues a final administrative order within 30 days after the expiration of time for filing exceptions, the administrative law judge's recommended decision will become the final administrative order. If the Administrative Review Board determines that the contractor has violated the Executive Order or the regulations in this part, the final administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

**§ 471.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?**

(a) After a final decision on the merits has issued and before imposing the sanctions and penalties described in paragraph (d) of this section, the Director of OLMS will consult with the affected contracting agencies, and provide the heads of those agencies the opportunity to respond and provide written objections.

(b) If the contracting agency provides written objections, those objections must include a complete statement of reasons for the objections, which must include a finding that, as applicable, the completion of the contract, or further contracts or extensions or modifications of existing contracts, is essential to the agency's mission.

(c) The sanctions and penalties described in this section will not be imposed if:

(1) The head of the contracting agency, or his or her designee, continues to object to the imposition of such sanctions and penalties, or

(2) The contractor has not been given an opportunity for a hearing.

(d) In enforcing the Executive Order and this part, the Director of OLMS may take any of the following actions:

(1) Direct a contracting agency to cancel, terminate, suspend, or cause to be canceled, terminated or suspended, any contract or any portions thereof, for failure to comply with its contractual provisions required by Section 7(a) of the Executive Order and the regulations in this part. Contracts may be canceled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon compliance.

(2) Issue an order of debarment under Section 7(b) of the Executive Order providing that one or more contracting agencies must refrain from entering into further contracts, or extensions or other modification of existing contracts, with any non-complying contractor.

(3) Issue an order of debarment under Section 7(b) of the Executive Order providing that no contracting agency may enter into a contract with any non-complying subcontractor.

(e) Whenever the Director of OLMS exercises the authority in this section, the contracting agency must report the actions it has taken to the Director of OLMS within such time as the Director of OLMS will specify.

(f) Periodically, the Director of OLMS will publish and distribute to all executive agencies a list of the names of contractors and subcontractors that have, in the judgment of the Director of OLMS, failed to comply with the provisions of the Executive Order and this part, or of related rules, regulations, and orders of the Secretary of Labor, and as a result have been declared ineligible for future contracts under the Executive Order and the regulations in this part.

### § 471.15 Under what circumstances must a contractor be provided the opportunity for a hearing?

Before the Director of OLMS takes either of the following actions, a contractor or subcontractor must be given the opportunity for a hearing:

(a) Issues an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under Sections 7(a) or (b) of the Executive Order and § 471.14(d)(1) or (2) of this part; or

(b) Includes the contractor on a published list of non-complying contractors under Section 7(c) of the Executive Order and § 471.14(f) of this part.

### § 471.16 Under what circumstances may a contractor be reinstated?

Any contractor or subcontractor debarred from or declared ineligible for further contracts under the Executive Order and this part may request reinstatement in a letter to the Director of OLMS. In connection with a request for reinstatement, debarred contractors and subcontractors shall be required to show that they have established and will carry out policies and practices in compliance with the Executive Order and implementing regulations. Before reaching a decision, the Director of OLMS may request that a compliance evaluation of the contractor or subcontractor be conducted, and may require the contractor or subcontractor to supply additional information regarding the request for reinstatement. If the Director of OLMS finds that the contractor or subcontractor has come into compliance with the Executive Order and this part and has shown that it will carry out the Executive Order and this part, the contractor or subcontractor may be reinstated. The Director of OLMS shall issue a written decision on the request.

## Subpart C—Ancillary Matters

### § 471.20 What authority under this part or Executive Order 13496 may the Secretary delegate, and under what circumstances?

Section 11 of the Executive Order grants the Secretary the right to delegate any functions or duties under the Order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

### § 471.21 Who will make rulings and interpretations under Executive Order 13496 and this part?

The Director of OLMS and the Director of OFCCP will make rulings under or interpretations of the Executive Order or the regulations contained in this part in accordance with their respective responsibilities under the regulations. Requests for a ruling or interpretation must be submitted to the Director of OLMS, who will consult with the Director of OFCCP to the extent necessary and appropriate to issue such ruling or interpretation.

### § 471.22 What actions may the Director of OLMS take in the case of intimidation and interference?

The Director of OLMS may impose the sanctions and penalties contained in § 471.14 of this part against any contractor or subcontractor who does not take all necessary steps to ensure that no person intimidates, threatens, or coerces any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in a compliance evaluation, complaint investigation, hearing, or any other activity related to the administration or enforcement of the Executive Order or this part.

### § 471.23 What other provisions apply to this part?

(a) The regulations in this part implement only the Executive Order, and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Each contracting department and agency must cooperate with the Director of OLMS and the Director of the OFCCP, and must provide any information and assistance that they may require, in the performance of their functions under the Executive Order and the regulations in this part.

(c)(1) This subpart does not impair or otherwise affect:

(i) Authority granted by law to a department, agency, or the head thereof; or

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

(2) This subpart must be implemented consistent with applicable law and subject to the availability of appropriations.

(d) Neither the Executive Order nor this part creates any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Signed in Washington, DC, May 7, 2010.

**John Lund,**

*Director, Office of Labor-Management Standards.*

**Patricia A. Shiu,**

*Director, Office of Federal Contract Compliance Programs.*

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# Part IV

# Department of Labor

## Wage and Hour Division

**29 CFR Parts 570 and 579**
**Child Labor Regulations, Orders and Statements of Interpretation; Final Rule**

**DEPARTMENT OF LABOR**

**Wage and Hour Division**

**29 CFR Parts 570 and 579**

**RIN 1215–AB57**
**RIN 1235–AA01**

## Child Labor Regulations, Orders and Statements of Interpretation

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Final Rule.

**SUMMARY:** This Final Rule revises the child labor regulations to incorporate statutory amendments to the Fair Labor Standards Act and to update and clarify the regulations that establish protections for youth employed in nonagricultural occupations. These revisions also implement specific recommendations made by the National Institute for Occupational Safety and Health in its 2002 report to the Department of Labor. The Department of Labor is revising the regulations to incorporate the 2008 amendment to section 16(e) of the Fair Labor Standards Act that substantially increased the maximum permissible civil money penalty an employer may be assessed for child labor violations that cause the death or serious injury of a young worker.

**DATES:** *Effective Dates:* This rule is effective July 19, 2010. The incorporation by reference of American National Standards Institute standards in the regulations is approved by the Director of the Federal Register as of July 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Arthur M. Kerschner, Jr., Division of Enforcement Policy, Branch of Child Labor and Special Employment Enforcement, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0072 (this is not a toll free number). Copies of this Final Rule may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023. TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this Final Rule may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/whd/america2.htm.*

**SUPPLEMENTARY INFORMATION:** The revisions in this Final Rule continue the Department of Labor's tradition of fostering permissible and appropriate job opportunities for working youth that are healthy, safe, and not detrimental to their education.

The Regulatory Information Number (RIN) identified for this rulemaking changed with the publication of the 2010 Spring Regulatory Agenda due to an organizational restructuring. The old RIN was assigned to the Employment Standards Administration, which no longer exists. A new RIN has been assigned to the Wage and Hour Division.

### I. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. The child labor provisions of the FLSA permit 16- and 17-year-olds to work in the nonagricultural sector without hours or time limitations, except in certain occupations found and declared by the Secretary to be particularly hazardous or detrimental to the health or well-being of such workers.

The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of part 570 (29 CFR 570.31–.37). Reg. 3 limits the hours and times of day that such minors may work and identifies occupations that are either permitted or prohibited for such minors. Under Reg. 3, 14- and 15-year-olds may work in certain occupations in retail, food service, and gasoline service establishments, but are not permitted to work in certain other occupations (including all occupations found by the Secretary to be particularly hazardous for 16- and 17-year-olds). Reg. 3, originally promulgated in 1939, was revised to reflect the 1961 amendments to the FLSA, which extended the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce and thereby brought more working youth employed in retail, food service, and gasoline service establishments within the protections of the Act.

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50–.68). These Hazardous Occupations Orders (HOs) apply on either an industry basis, specifying the occupations in a particular industry that are prohibited, or an occupational basis, irrespective of the industry in which the work is performed. The seventeen HOs were adopted individually during the period of 1939 through 1963. Some of the HOs, specifically HOs 5, 8, 10, 12, 14, 16, and 17, contain limited exemptions that permit the employment of 16- and 17-year-old apprentices and student-learners under particular conditions to perform work otherwise prohibited to that age group. The terms and conditions for employing such apprentices and student-learners are detailed in § 570.50(b) and (c).

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses where young workers may find employment opportunities, the existence of differing federal and state standards, and divergent views on how best to balance scholastic requirements and work experiences, the Department has long been reviewing the criteria for permissible child labor employment. A detailed discussion of the Department's review was included in the Notice of Proposed Rulemaking published in the **Federal Register** on April 17, 2007 (*see* 72 FR 19339).

Congress twice amended the child labor provisions of the FLSA in the 1990s. The Compactors and Balers Safety Standards Modernization Act, Public Law 104–174 (Compactor and Baler Act), was signed into law on August 6, 1996. This legislation added section 13(c)(5) to the FLSA, permitting minors 16 and 17 years of age to load, but not operate or unload, certain scrap paper balers and paper box compactors when certain requirements are met. The Drive for Teen Employment Act, Public Law 105–334, was signed into law on October 31, 1998. This legislation added section 13(c)(6) to the FLSA which prohibits minors under 17 years of age from driving automobiles and trucks on public roadways on the job and establishes the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on the job.

The Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 30, 1999 (64 FR 67130), inviting comments on revisions of regulations to implement

the 1996 and 1998 amendments and to update certain regulatory standards.

In 1998, the Department provided funds to the National Institute for Occupational Safety and Health (NIOSH) to conduct a comprehensive review of scientific literature and available data in order to assess current workplace hazards and the adequacy of the current child labor HOs to address them. This study was commissioned to provide the Secretary with another tool to use in her ongoing review of the child labor provisions, and of the hazardous occupations orders in particular. The report, entitled *National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* (hereinafter referred to as the NIOSH Report or the Report), was issued in July of 2002. The Report, which makes 35 recommendations concerning the existing nonagricultural HOs and recommends the creation of 17 new HOs, also incorporated the comments NIOSH submitted in response to the 1999 NPRM. The Report is available for review on the Department's *YouthRules!* Web site at *http://www.youthrules.dol.gov/resources.htm.*

The Department recognizes NIOSH's extensive research efforts in compiling and reviewing this data. However, it has cautioned readers about reaching conclusions and expecting revisions to the existing HOs based solely on the information in the Report. In the Report, NIOSH itself recognized the confines of its methodology and included appropriate caveats about the limitations of the available data and gaps in research. Of those limitations, the following are worth noting. The NIOSH Report recommendations are driven by information on high-risk activities for all workers, not just patterns of fatalities and serious injuries among young workers. There is little occupational injury, illness, and fatality data available regarding minors less than 16 years of age. In addition, such data for youth 16 and 17 years of age tend to be mixed with that of older workers whose employment is not subject to the child labor provisions of the FLSA. Also, available occupational injury, illness, fatality, and employment data on the specific operations in the specific industries covered by the NIOSH Report recommendations tend to be combined with data on other operations and/or industries. In some cases, this may result in a diminution of the risk by including less risky operations and industries in the employment estimates. In other cases, the risk may be exaggerated by including more dangerous operations/industries in the injury, illness, or fatality estimates.

In addition, as NIOSH was tasked with examining issues within the framework of the current HOs only, the Report did not consider the extent to which fatalities occur despite existing HOs, Occupational Safety and Health Administration (OSHA) standards, or state laws prohibiting the activity. If fatalities result from recognized illegal activities, such as working with fireworks or a power-driven circular saw, the best strategy for preventing future injuries may not be to revise the regulations but to increase compliance with existing laws through public awareness initiatives, targeted compliance assistance efforts, and stepped-up enforcement activities. The Report also did not consider potential approaches for decreasing workplace injuries and fatalities that provide an alternative to a complete ban on employment, such as safety training, increased supervision, the use of effective personal protective equipment, and strict adherence to recognized safe working practices.

Though cognizant of the limitations of the Report, the Department places great value on the information and analysis provided by NIOSH. Since receiving the Report, the Department has conducted a detailed review and has met with various stakeholders to evaluate and prioritize each recommendation for possible regulatory action consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and appropriate safety protections. The Department's 2004 Final Rule addressed six of the recommendations.

The Consolidated Appropriations Act, 2004, Public Law 108–199, § 108, which was signed into law on January 23, 2004, amended the FLSA by creating a limited exemption from the child labor provisions for minors 14 to 18 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained in section 13(c)(7) of the FLSA, allows eligible youth, under specific conditions, to be employed inside and outside of places of business that use machinery to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines. This exemption overrides the FLSA's formerly complete prohibition on the employment of 14- and 15-year-olds in manufacturing occupations contained in section 3(l).

The Department proposed revisions of the child labor regulations to implement the 2004 legislation, address 25 of the remaining 29 NIOSH Report recommendations dealing with existing nonagricultural hazardous occupations orders, and revise and/or clarify the permitted and prohibited occupations and industries and conditions and periods of employment established for 14- and 15-year-olds by Reg. 3, in an NPRM published in the **Federal Register** on April 17, 2007 (72 FR 19337). The NPRM also proposed to incorporate into the regulations three long-standing enforcement positions regarding the cleaning of power-driven meat processing equipment, the operation of certain power-driven pizza-dough rollers, and the definition of high-lift trucks. In addition, the Department proposed to expand the HO that prohibits youth from operating power-driven circular saws, band saws, and guillotine shears to also prohibit the operation of power-driven chain saws, wood chippers, and reciprocating saws. Finally, the Department proposed to revise subpart G of the child labor regulations, entitled *General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended,* to incorporate all the changes adopted by the agency since this subpart was last revised in 1971.

The Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110–233) was enacted into law on May 21, 2008, after the publication of the 2007 NPRM. GINA, among other things, amended FLSA section 16(e) to provide that any person who violates the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil money penalty not to exceed $11,000 for each employee who was the subject of such a violation. In addition, GINA also permits the assessment of a civil money penalty up to $50,000 with regard to each violation that caused the death or serious injury of any employee under the age of 18 years. That penalty may be doubled, up to $100,000, when such violation is determined by the Department to be a repeated or willful violation. These changes in the law became effective May 21, 2008.

As mentioned, the NIOSH Report made 35 recommendations concerning the existing nonagricultural HOs. The Department addressed six of those recommendations in the 2004 Final Rule published December 16, 2004 (*see* 69 FR 75382). The Department, in the April 17, 2007 NPRM, based on its determination that there was sufficient

data available, addressed 25 of the remaining 29 NIOSH Report recommendations dealing with the existing nonagricultural hazardous occupations orders. In an attempt to acquire additional data needed to address the remaining nonagricultural NIOSH recommendations and to pursue certain other issues not explored in the NIOSH Report, the Department also published an Advance Notice of Proposed Rulemaking (ANPRM) concurrently with the 2007 NPRM (*see* 72 FR 19328). Because very little substantive information was received, the Department withdrew the ANPRM on February 24, 2010. No proposed rule will result directly from that information collection effort, however, the topics discussed in the ANPRM may be the subject of a future rulemaking. The comments submitted in response to the ANPRM may be reviewed at the Federal eRulemaking Portal at *http://www.regulations.gov,* docket identification number WHD–2007–0001.

The NIOSH Report also made 14 recommendations that impact the current agricultural HOs and recommended the creation of 17 new HOs. The Department, in the ANPRM published on April 17, 2007, requested public comment on the feasibility of one of those recommendations regarding the creation of a new HO that would prohibit the employment of youth in construction occupations.

The Department is continuing to review all of the remaining NIOSH Report recommendations, but excluded them from immediate consideration in order to keep the size and scope of the 2007 ANPRM and NPRM manageable. Their absence from this current round of rulemaking is not an indication that the Department believes them to be of less importance or that they are not being given the same level of consideration as the recommendations addressing the current nonagricultural HOs. In that regard, the Department is nearing completion of its thorough review of the NIOSH recommendations that address the agricultural hazardous occupations orders.

## II. Summary of Comments

A total of 28 comments were received and are available for review at the Federal eRulemaking Portal at *http://www.regulations.gov.* The Docket ID for the NPRM that generated these comments is WHD–2007–0002. Comments were received from trade and professional associations; advocacy and occupational health and safety organizations; employers; federal, state, and local government agencies; representatives of schools and organizations that provide vocational training to youth; and one private citizen. The one private citizen comment, which concerned the issue of door-to-door sales, was incorrectly submitted to the ANPRM docket by the commenter and was assigned a Document ID of WHD–2007–0001–0004. One commenter, the International Association of Amusement Parks and Attractions, included comments from three of its member organizations along with its submission. Four of the comments do not address any of the issues raised by the April 17, 2007 NPRM and focus solely on topics raised by the ANPRM that was published by the Department on that same day. One commenter, the National Children's Center for Rural and Agricultural Health and Safety, did not address any specific proposal but expressed concerns that the Department has not yet implemented the NIOSH Report recommendations for agricultural HOs. In regards to the nonagricultural youth provisions, it stated that "it does not appear that protection of youth workers is at the heart of some of the proposed changes, but rather the needs of industry and special interest groups."

Many of the comments concerned a single issue or a cluster of issues impacting a single industry, but two comments were quite extensive and addressed almost every proposal raised by the NPRM. These comprehensive comments were submitted by the Young Workers Health and Safety Network (YWN) and the Child Labor Coalition (CLC). The Department appreciates the time and effort all of these commenters devoted to their submissions.

The YWN is a subcommittee of the Occupational Health and Safety Section of the American Public Health Association. It described itself as an informal network of public health professionals, advocates, and government agency staff that includes individuals from academia, public health, labor law enforcement, health and safety consultation and/or enforcement, labor organizations, and educators. The YWN reported that, in formulating its comments, it tried to use the following principles: The regulations should protect youth from significant hazards; where possible, the regulations should be kept clear and consistent, limiting the number of exceptions or exemptions, thus fostering better compliance and more effective enforcement; and, the regulations should allow youth to do a broad variety of different types of potentially rewarding work.

The CLC, which has more than 30 member organizations, described itself as the largest grouping in the United States of advocates for the protection of the safety, health, and education of working children. The CLC reported that its comments are also endorsed by the following organizations: A Better World Foundation, A Minor Consideration, American Federation of Teachers, American Federation of School Administrators, Americans for Democratic Action, Association of Farmworker Opportunity Programs, Farmworker Justice, International Initiative to End Child Labor, Migrant Legal Action Program, National Association of State Directors of Migrant Education, National Consumers League, Ramsay Merriam Fund, and the United Food and Commercial Workers International Union. The CLC stated that its comments are in line with its stated mission and objectives, which include creating a network for the exchange of information about child labor, providing a forum and a unified voice on protecting working minors and ending child labor exploitation, and developing informational and educational outreach to the public and private sectors to combat child labor abuses and to promote progressive initiatives and legislation. The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), while submitting its own comments, also endorsed those submitted by the CLC.

## III. Regulatory Revisions

Many of the revisions being made by this Final Rule will result in the redesignation of several sections and subsections of the regulations. In order to prevent confusion when providing citations in this discussion, the Department will provide, when appropriate, both the current citation (the citation prior to the effective date of this Final Rule) and the new citation (the citation that will apply on and after the effective date of this Final Rule). For example, the section of Reg. 3 that prohibits 14- and 15-year-olds from employment in occupations in connection with warehousing and storage would be cited as § 570.33(f)(2)(old) or § 570.33(n)(2)(new).

### *A. Occupations That Are Prohibited for the Employment of Minors Between the Ages of 14 and 16 Years of Age (29 CFR 570.31–.34)*

Section 3(l) of the FLSA defines *oppressive child labor* to expressly prohibit children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, upon

finding that it does not interfere with their schooling or health and well-being (*see* 29 U.S.C. 203(l), *see also* 29 CFR 570.117–.119). Before 14- and 15-year-olds may legally perform work covered by the FLSA, the Act requires that the work itself be exempt, or that the Secretary determines that the work to be performed does not constitute oppressive child labor. The Secretary's declarations of what work is not deemed oppressive for children between the ages of 14 and 16 appear in Reg. 3 (29 CFR 570.31–.37).

Reg. 3 identifies a number of occupations and activities that are specifically prohibited for these minors without regard to the industry or the type of business in which their employer is engaged (*e.g.,* operating or tending any power-driven machinery other than office machines, *see* § 570.33(b) (old) and § 570.33(e) (new)). Reg. 3 also incorporates by reference all of the prohibitions contained in the Hazardous Occupations Orders (29 CFR 570.50–.68), which identify occupations that are "particularly hazardous" and, therefore, prohibited for 16- and 17-year-olds (*e.g.,* occupations involved in the operation of power-driven metal forming, punching, and shearing machines, *see* § 570.33(e) (old) and § 570.33(b) (new)).

As previously mentioned, Reg. 3 was revised to reflect the 1961 amendments to the FLSA which extended the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce and thereby brought more working youth employed in retail, food service, and gasoline service establishments within the protections of the Act. The current § 570.34(a) expressly authorizes the performance of certain activities by 14- and 15-year-olds in retail, food service, and gasoline service establishments, while § 570.34(b) details those activities that 14- and 15-year-olds are expressly prohibited from performing in such establishments. For example, clerical work, cashiering, and clean-up work are authorized, whereas "all work requiring the use of ladders, scaffolds, or their substitutes" is prohibited. These special rules currently apply only in the designated types of business.

Since 1961, new, positive, and safe employment opportunities have opened up for youth in industries other than retail, food service, and gasoline service that the existing Reg. 3 does not specifically address. Jobs in such areas as state and local governments, banks, insurance companies, advertising agencies, and information technology firms all normally fall outside of the permitted establishments declared in Reg. 3. Because these jobs are not specifically permitted by § 570.33 (old), they are prohibited. There has been some confusion about this over the years. Some employers believe that 14- and 15-year-olds are permitted to be employed in any industry or occupations not expressly prohibited by Reg. 3, or that any employer in any industry is permitted to employ such youth in the occupations permitted by § 570.34(a) (old). However, when those jobs are not located in retail, food service, or gasoline service establishments, the provisions of § 570.34 (old) (both authorizations and prohibitions) do not apply to the employment of 14- and 15-year-olds. The exception to this rule is where there is some discrete operation or division that could legitimately be characterized as such an establishment and therefore would be subject to these rules (*e.g.,* minors employed in a food service operation at a city park or a publicly owned sports stadium). The existing Reg. 3 prohibits employers such as state and local governments, banks, insurance companies, advertising agencies, and information technology firms from employing 14- and 15-year-old workers in any jobs other than those that occur in those discrete operations or divisions that could be characterized as retail, food service, or gasoline service establishments.

In 2004, in recognition of the importance of youth employment programs operated by public sector employers that provide safe and meaningful developmental opportunities for young people, and in response to specific requests received from two municipalities, the Department adopted an enforcement position that permits state and local governments to employ 14- and 15-year-old minors under certain conditions. Consistent with its enforcement position, the Department exercised its prosecutorial discretion, as authorized by 29 U.S.C. 216(e), and declined to cite Reg. 3 occupations violations for the employment of 14- and 15-year-olds by state and local governments as long as that employment fell within the occupations authorized by Reg. 3 (§ 570.34(a) (old)) and did not involve any of the tasks or occupations prohibited by Reg. 3 (§§ 570.33 and 570.34(b) (old)). The Department enforced all the other provisions of Reg. 3, including the restrictions on hours of work, with respect to the employment of such minors.

The Department's administration of this enforcement position permitting the employment of 14- and 15-year-olds by state and local governments has had extremely positive results. There are indications, as reported by state and local governments and reflected in WHD enforcement findings, that when such youth are employed under the guidelines established by the enforcement position, that employment does not interfere with their schooling or with their health and well-being, and thus is in accordance with the directive of the FLSA.

Based upon the success of the above enforcement position, the Department, in the April 17, 2007 NPRM, proposed to revise and reorganize §§ 570.33 and 570.34 to clarify and to expand the list of jobs that are either permitted or prohibited for minors who are 14 and 15 years of age. The Department also proposed to remove the language that limited the application of § 570.34 to only retail, food service, and gasoline service establishments. As proposed, the revised § 570.33 detailed certain specific occupations prohibited for 14- and 15-year-olds. This revision also necessitates a change to § 570.35a(c)(3) (old) because it references §§ 570.33 and 570.34 as they pertain to Work Experience and Career Exploration Programs (WECEPs). The Department proposed to retain all the current prohibitions contained in § 570.33 but would modify the prohibition regarding the employment of 14- and 15-year-olds in manufacturing occupations to comport with the provisions of the Consolidated Appropriations Act, 2004, which enacted section 13(c)(7) of the FLSA. The NPRM proposed to continue to allow the employment of 14- and 15-year-olds in all those retail, food service, and gasoline service establishment occupations in which they are currently permitted to be employed.

The Department also proposed to apply to FLSA-covered nonagricultural employers of minors, with certain modifications, all the permitted occupations contained in § 570.34(a) (old) and all the prohibited occupations contained in § 570.34(b) (old) that currently apply only to retail, food service, and gasoline service establishments. This proposal would be accomplished by revising § 570.34 to identify permitted occupations. The Department also proposed to continue to permit youth 14- and 15-years of age to perform those occupations involving processing, operating of machines, and working in rooms where processing and manufacturing take place, that are currently permitted under § 570.34(a) (old), as referenced in § 570.34(b)(1) (old).

As mentioned, certain modifications to the existing lists of permissible and prohibited occupations were also

proposed. The traditionally prohibited occupations and industries would, after adoption of the proposal, be contained in a revised § 570.33, and all the permitted occupations and industries would be contained in a revised § 570.34. The Department is aware that, given the FLSA's mandate that before 14- or 15-year-olds may legally be employed to perform any covered work, the Secretary of Labor must first determine that the work to be performed does not constitute oppressive child labor, it could choose to publish only a list of permissible occupations and industries, and not provide a list of certain commonly arising prohibited occupations and industries. However, the Department believes that by continuing the long-standing Reg. 3 tradition of publishing lists of those occupations and industries in which such youth may be employed as well as detailed examples of those industries and occupations in which the employment of such youth is prohibited, it can greatly enhance the public's understanding of these important provisions. The list of prohibited industries and occupations helps to define and to provide clarity to the list of permitted industries and occupations. However, the list of prohibited occupations is not intended to identify every prohibited occupation, but rather only to provide examples of those prohibited occupations that have historically been the most common sources of violations or concern. As previously explained, any job not specifically permitted is prohibited.

The Department also understands that, given the constant development and changes occurring in the modern workplace, in continuing to provide a definitive list of permitted occupations and industries, it may unintentionally discourage the creation of positive and safe employment opportunities for young workers. But the Department believes that, by continuing its past practice of carefully reviewing inquiries regarding individual occupations or industries not currently addressed by Reg. 3 and then exercising its prosecutorial discretion and issuing enforcement positions that may eventually lead to rulemaking—as evidenced by certain revisions contained in this Final Rule—it has developed an efficient and effective mechanism which overcomes the limitations of a definitive list. The Department firmly believes that the limited and public exercise of its prosecutorial discretion is an efficient and legal tool available to the Secretary in the administration of the child labor provisions of the FLSA.

The modifications to the list of prohibited occupations are as follows:

1. Prohibited Machinery (§§ 570.33–.34)

Section 570.33(b) (old) prohibits youth 14 and 15 years of age from employment in occupations involving the operation or tending of any power-driven machinery other than office equipment. The Department has always interpreted the term *power-driven machinery* very broadly to include machines driven by electrical, mechanical, water, or other power such as steam or hydraulic. The term also includes battery-operated machines and tools, but does not apply to machines or tools driven exclusively by human hand or foot power.

Even though this prohibition is clear and quite broad, other sections of Reg. 3 have traditionally named certain pieces of power-driven machinery so as to eliminate any doubt or confusion as to their prohibited status. For example, § 570.34(a)(6) (old) prohibits the employment of 14- and 15-year-olds in the operation of power-driven mowers or cutters and § 570.34(b)(6) (old) prohibits the employment of such minors in occupations that involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, choppers, and cutters, and bakery-type mixers.

The Department proposed to combine §§ 570.33(b), 570.34(a)(6), and 570.34(b)(6)—all of which address power-driven machinery—into a single paragraph located at § 570.33(e) and expand the list of examples of prohibited equipment to include power-driven trimmers, weed-eaters, edgers, golf carts, food processors, and food mixers. Even though Reg. 3 for many years has prohibited the employment of 14- and 15-year-olds to operate any power-driven equipment other than office machines, the Department routinely receives inquiries as to the status of these individual pieces of equipment under Reg. 3. The Department believes that by continuing to reference certain common prohibited machinery by name, both clarity and compliance will be increased.

The Department received six comments on this proposal. The YWN, CLC, and AFL–CIO supported the proposal to consolidate those subsections of Reg. 3 dealing with power-driven machinery into a single, new subsection located at § 570.33(e) and to expand the list of prohibited machinery, with certain caveats. The YWN and the AFL–CIO recommended that 14- and 15-year-olds also be prohibited from using espresso makers because, as the YWN reported, these machines involve a potential for serious burns. They create steam at a temperature that "clearly exceeds the temperature limits established for prohibiting use of other equipment such as anything related to hot oil that exceeds a temperature of 100 degrees F." A representative of the Billings, Montana Job Service also questioned how the Department's proposal addresses the employment of youth who operate espresso machines.

The AFL–CIO and the CLC recommended that all-terrain vehicles (ATVs) be added to the list of prohibited machinery because, as the CLC reported "The serious hazards of operating ATVs have been extensively documented." Neither commenter provided any data or insight regarding how extensively ATVs are used by youth in nonagricultural employment or whether the documented hazards resulted in occupational injuries. The CLC also recommended that the proposed § 570.33 include an introductory statement reinforcing the principle detailed in § 570.32 (new) that all work that is not specifically permitted is prohibited.

The YWN also recommended that the Department specifically list "bladed blenders used to chop food items such as cookies or candy with ice cream to make ice cream desserts" as a prohibited machine in the revised § 570.33(e) as that subsection already prohibits the operating or tending of food grinders, food choppers, and cutters (*see* § 570.34(b)(6) (old)).

The National Council of Chain Restaurants (the Council), which described itself as a national trade industry group representing the interests of the nation's largest multi-unit, multi-state chain restaurant companies, requested that the proposed § 570.33(e) include additional language which would emphasize that 14- and 15-year-olds would continue to be permitted to operate all those pieces of kitchen equipment listed in § 570.34(a)(7) (old) once the Final Rule becomes effective.

The Council commented that it believes table top food processors and food mixers pose little risk of harm to the safety and well-being of 14- and 15-year-olds and questions why the Department continues to prohibit such youth from operating them (*see* § 570.34(b)(6) (old) and § 570.33(e) (new)). The Council submitted no data to substantiate this comment.

The Director of the Labor Standards and Safety Division of the Alaska State Department of Labor and Workforce

Development (DOLWD) also supported the consolidation and listing of prohibited equipment with some exceptions. The DOLWD recommended that 14- and 15-year-olds should be permitted to operate weed eaters that use monofilament line (but not weed eaters that use metal blades) provided adequate eye and hearing protection are in place. That same office recommended that such youth be permitted to operate certain small, residential-sized washing machines and dryers when all safety equipment is properly installed.

The Department has carefully reviewed the comments and has decided to adopt the proposal, as presented, with one modification. The Department will add ATVs to the list of prohibited equipment presented in the revised § 570.33(e) (new) as recommended by the AFL–CIO and CLC. As power-driven equipment, ATVs were, and continue to be, included in the broad prohibitions of this subsection. In addition, because ATVs are *motor vehicles* as defined by § 570.52(c) (old and new), 14- and 15-year-olds would be prohibited from operating such equipment under § 570.33(c) (old) and § 570.33(f) (new). But because greater clarity and protections can be realized, the Department will add ATVs to the list of named equipment.

With regard to cooking and the use of kitchen equipment, the Department notes that it implemented new rules concerning the types of cooking that may be performed by 14- and 15-year-olds in its Final Rule published in the **Federal Register** on December 16, 2004 (69 FR 75382). That Final Rule limited permitted cooking duties to cooking (1) with electric or gas grills which does not involve an open flame (*see* § 570.34(b)(5)(i) (old) and § 570.34(c) (new)), and (2) cooking with deep fryers that are equipped with and utilize a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease (*see* § 570.34(b)(5)(ii) (old) and § 570.34(c) (new)). The 2004 Final Rule, however, did not change the types of equipment and devices that 14- and 15-year-olds were permitted to, and continue to be permitted to, operate in accordance with § 570.34(a)(7) (old) and § 570.34(i) (new). The list of permitted equipment includes, but is not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee machines, devices used to maintain the temperature of prepared foods, and microwave ovens that do not have the capacity to warm above 140 °F.

Although there may have been some confusion among employers, the Department has long interpreted the term *toaster* to mean that type of equipment that was generally found in snack bars and lunch counters when Reg. 3 was issued and used to toast such items as slices of bread and English muffins. This includes such equipment as the two- or four-slice "pop-up" toasters similar to those manufactured for home use and the conveyor-type bread toaster now often found at self-service breakfast buffets. Broilers, automatic broiler systems, high speed ovens, and rapid toaster machines used at both quick service and full-service restaurants to toast such items as buns, bagels, sandwiches, and muffins—all of which operate at high temperatures, often in excess of 500 °F—are not *toasters* under § 570.34(a)(7) (old) and § 570.34(i) (new) and minors generally must be at least 16 years of age to operate them.

There has also been some confusion among employers as to what constitutes a *milk shake blender* under Reg. 3. The Department has long interpreted this term to mean that type of equipment that was generally found in snack bars and lunch counters when Reg. 3 was issued and used to prepare a "to-order" milk shake for an individual customer. Such equipment required that the worker place the ice cream, milk, and flavorings in a stainless steel mixing cup that generally has a maximum capacity of 20 ounces. The cup was then positioned on the machine so that the single spindle—with an aeration disk or disks mounted at the bottom—could blend the milk shake. Some permitted milk shake blenders had more than one spindle so multiple products could be processed simultaneously. Most of these blenders were free standing counter-top models while others were incorporated into other equipment such as milk dispensers. These are the types of milk shake blenders that 14- and 15-year-olds may operate under Reg. 3.

Except as described below, other types of blenders, mixers, and "blixers"—used for a variety of food preparation operations including the blending of milk shakes—continue to be prohibited to that age group. Such prohibited equipment often have containers or mixing chambers that exceed a 20-ounce capacity—some can accommodate up to 60 quarts. In addition, some of this prohibited equipment, when used to process meat or mix batter—with or without the use of special "attachments"—may not be operated by employees under the age of 18 because of the prohibitions of HO 10 or HO 11, respectively.

The Department has also included certain countertop blenders used to make beverages such as milk shakes, fresh fruit drinks, and smoothies within the term *milk shake blender* as used in Reg. 3. Such machines generally consist of a base motor that supports a glass jar. The blending blades are attached, often permanently, to the bottom of the glass jar. Operators place the glass jar on top of the base, place the ingredients in the jar, affix the lid to the jar, press the appropriate button or switch, and blend the product. The permitted blenders are identical to models used in private homes, generally do not operate at more than 600 watts, and have jar capacities that do not exceed 8 cups (64 ounces). As with the blenders discussed above, their operation by minors under the age of 18 is prohibited under HO 10 when used to process meat.

For these reasons, the Department does not agree with the YWN's understanding that the existing regulation prohibits 14- and 15-year-olds from operating blenders that create ice cream desserts as the Department has previously opined that this equipment is a type of "milk shake blender" which has long been permitted by § 570.34(a)(7) (old) and will continue to be permitted by § 570.34(i) (new).

The Department also notes that Reg. 3 has for many years prohibited young workers from operating compact power mixers or blenders, also know as "immersible wands" and "immersion blenders," used for such tasks as liquefying soups and sauces and pureeing fruits, meats, and vegetables. Such equipment is often used in kitchens and by dietary aides at hospitals and nursing homes. The use of such equipment would also be prohibited by HO 10 when the mixer or wand is equipped with knives, blades, or cutting tools designed for use on meat and poultry.

The Department did not propose to prohibit, and the Final Rule does not prohibit, 14- and 15-year-olds from operating espresso machines as recommend by the YWN, the AFL–CIO, and the representative of the Billings, Montana Job Service. Section 570.34(a)(7) (old) specifically includes automatic coffee machines on the list of equipment that 14- and 15-year-olds may operate (*see* § 570.34(i) (new)). The Department has previously opined that espresso makers and cappuccino makers are types of automatic coffee machines and therefore 14- and 15-year-olds are permitted to operate them under the provisions of Reg. 3. The Department notes that the YWN's comment that the temperature reached by espresso makers "exceeds the temperature limits

established for prohibiting use of other equipment such as anything related to hot oil that exceeds a temperature of 100 degrees F" does not comport with either the previous or revised provisions of Reg. 3. The temperature of 100° F, when presented in § 570.34(a)(7) (old) and § 570.34(i) (new), does not apply to the operation of kitchen equipment or to such permitted activities as cooking with certain grills or deep fryers. Instead, these subsections state that the minors are permitted to "clean kitchen equipment (not otherwise prohibited), remove oil or grease, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment surfaces, containers, and liquids do not exceed a temperature of 100 °F."

The Department has decided not to adopt the Council's recommendation to revise Reg. 3 to permit 14- and 15-year-olds to operate table top food processors and food mixers as no such proposal was contemplated by the NPRM and no data has been received that demonstrates that 14- and 15-year-olds can safely operate such equipment. The Department does, however, address the issue of older youth operating certain counter-top mixers later in this Final Rule with regard to HO 11.

The Department does not accept the DOLWD's recommendation that Reg. 3 be revised to permit 14- and 15-year-olds to operate certain weed-eaters because of the potential for injury associated with the operation of such equipment. In fact, as discussed earlier, weed-eaters are among the equipment the Department is adding as an example of power-driven machinery such youth are prohibited from operating (*see* § 570.33(e) (new)). The Department continues to be concerned about issues involving injuries to workers resulting from flying objects, burns, fuel safety, and improper ergonomics. In its Document #5108, *Weed Trimmers Can Throw Objects and Injure Eyes,* the U.S. Consumer Product Safety Commission estimated that, in 1989, there were approximately 4,600 injuries associated with power lawn trimmers or edgers that required emergency room treatment. It reported that about one-third of those injuries were to the eye. Nor does the Department accept DOLWD's recommendation to allow 14- and 15-year-olds to operate certain residential-style clothes washers and dryers. Not only is the operation of such power-driven machinery prohibited by § 570.33(b) (old) and § 570.33(e) (new), the laundering of clothes and other materials generally constitutes a "processing occupation" which is prohibited under § 570.33(a) (old and new).

Finally, the Department has determined that the Final Rule provides sufficient clarity that it is not necessary to adopt the CLC's recommended revision to the opening sentence of § 570.33 to repeat the statement contained in § 570.32 ("Employment that is not specifically permitted is prohibited."). For the same reason, the Department has decided not to accept the Council's recommendation that § 570.33(e) be revised to emphasize that youth will continue to be permitted to operate all kitchen equipment they were permitted to operate prior to the adoption of this Final Rule, as the list of permissible kitchen equipment is set forth in § 570.34(i)(new).

2. Loading of Personal Hand Tools Onto Motor Vehicles and Riding on Motor Vehicles (§§ 570.33(f) and 570.34(b)(8))

Section 570.33(c) (old) prohibits the employment of 14- and 15-year-olds in the operation of motor vehicles or service as helpers on such vehicles. The term motor vehicle is defined in § 570.52(c)(1). The Department has interpreted the Reg. 3 prohibition regarding service as helpers on a motor vehicle to preclude youth under the age of 16 from riding anywhere outside the passenger compartment of the motor vehicle. Such youth may not ride in the bed of a pick-up truck, on the running board of a van, or on the bumper of a refuse truck. This interpretation dates back to at least the 1940 enactment of HO 2, which prohibits 16- and 17-year-olds from serving as outside helpers on motor vehicles.

The Department does not interpret the helper prohibition as applying to 14- and 15-year-olds who simply ride inside a motor vehicle as passengers and, thus, Reg. 3 permits a 14- or 15-year-old, under certain circumstances, to ride inside the enclosed passenger compartment of a motor vehicle operated by a driver whose employment complies with the conditions specified in HO 2. For example, a minor may ride in a motor vehicle to reach another work site where he or she will perform work, to receive special training or instructions while riding, or to meet other employees or customers of the employer. While a 14- or 15-year old may be a passive passenger in a vehicle, that same minor is not permitted to ride in a motor vehicle when a significant reason for the minor being a passenger is for the purpose of performing work in connection with the transporting—or assisting in the transporting—of other persons or property. Such work would include, for example, delivering items to a customer or assisting passengers with the loading and unloading of their luggage in conjunction with the operation of an airport shuttle van. This interpretation comports with the provision of § 570.33(f)(1) (old), which prohibits the employment of 14- and 15-year-olds in occupations in connection with the transportation of persons or property by highway. Performing work in connection with the transportation of other persons or property does not have to be the primary reason for the trip for this prohibition to apply.

The Department proposed to include its long-standing interpretation that prohibits 14- and 15-year-olds riding outside of motor vehicles in Reg. 3 at § 570.33(f) (new). The Department also proposed to revise Reg. 3 at § 570.34(o) (new) to permit 14- and 15-year-olds to ride in the enclosed passenger compartments of motor vehicles, except when a significant reason for the minors being passengers in the vehicle is for the purpose of performing work in connection with the transporting—or assisting in the transporting—of other persons or property. The proposal required that each minor must have his or her own seat in the passenger compartment, each seat must be equipped with a seat belt or similar restraining device, and the employer must instruct the minors that such belts or other devices must be used. These provisions mirror the requirements of the Drive for Teen Employment Act as contained in HO 2.

In addition, the Department's interpretation of prohibited helper services under § 570.33(c) (old), since at least the mid-1950s, has included the loading and unloading of materials from motor vehicles when the purpose of the operation of the vehicle is the transportation of such materials. Section 570.33(f)(1) (old) furthers this prohibition by banning the employment of minors in occupations in connection with the transportation of property by highway. Section 570.34(b)(8) (old) prohibits the employment of such youth by retail, food service, and gasoline service establishments to load or unload goods to and from trucks, railroad cars, or conveyors. These prohibitions are designed to protect young workers from the hazards associated with loading docks, motor vehicles, and receiving departments; strains from lifting and moving heavy items; and falls and falling items. Accordingly, 14- and 15-year-olds generally have been prohibited from loading and unloading any property (not just "goods") onto and from motor vehicles, including the light personal hand tools they use in performing their duties.

In 2000, the Department was requested by a municipality (the City) to review certain aspects of the prohibitions against employing 14- and 15-year-olds to load onto and unload items from motor vehicles. The City advised the Department that, even with the adoption of the enforcement position that permits state and local governments to employ minors under certain conditions, it was being forced to abandon a youth-employment program that provided 14- and 15-year-olds with certain jobs because of the prohibition against loading materials into vehicles. The City specifically requested permission to allow such minors to load and unload, onto and from motor vehicles, the light, non-power-driven tools each youth would personally use as part of his or her employment. The Department carefully considered this request and, again using its prosecutorial discretion, decided that it would not assert a violation of the child labor provisions when 14- and 15-year-old employees of state and local governments loaded and unloaded the light non-power-driven hand tools—such as rakes, hand-held clippers, and spades—that they personally use as part of their employment. The City was advised that this enforcement policy did not extend to other prohibited transportation-related work such as the loading or unloading of materials other than the light hand tools the minors may use on-the-job, such as trash or garbage, or power-driven equipment such as lawn mowers, edgers, and weed trimmers—the use of which by this age group is prohibited under Reg. 3.

The Department proposed to revise Reg. 3 at new §§ 570.33(f) and (k) and 570.34(k) to incorporate the enforcement position that allows 14- and 15-year-olds to be employed to load onto and unload from motor vehicles the light non-power-driven personal hand tools they use as part of their employment and to make it available to all covered employers, not just state and local governments. Such light non-power-driven hand tools would include, but are not limited to, rakes, hand-held clippers, shovels, and brooms, but would not include items like lawn mowers or other power-driven lawn maintenance equipment. In addition, such minors would be permitted to load onto and unload from motor vehicles any personal protective equipment they themselves will use at the work site and any personal items such as backpacks, lunch boxes, and coats their employers allow them to take to the work site. Such minors would not be permitted to load or unload such jobsite-related equipment as barriers, cones, or signage.

The Department received four comments addressing the proposal regarding riding on motor vehicles. The AFL–CIO and the DOLWD supported this proposal as written. The YWN supported the proposal with additional requirements. The YWN recommended that the proposed requirements that each seat occupied by a minor be equipped with a seat belt or similar restraining device and that the employer instruct the minors that such belts or other device must be used so that the employer is required to ensure that the seat belt or other device is actually used. In addition, the YWN would require that the driver of the vehicle transporting the minors have a valid driver's license. The CLC objected to the Department's proposal, stating that it did not have sufficient information on the underlying rationale for the proposed change to adequately comment on it. The CLC did, however, recommend that the seat restraining devices should "be required to be manufacturer-issued and not homemade, and the employer should be required to 'ensure,' and not just 'instruct' that the restraining devices be used by the children."

The Department received four comments concerning the loading of personal hand tools onto motor vehicles at § 570.34(k) (new). The AFL–CIO supported the proposal as written. The CLC again stated that it did not have enough information to adequately comment on the proposal. The YWN agreed with this proposal with the added requirements that "[w]ritten permission from parent or legal guardian is required to permit employer to transport 14- and 15-year-olds and a copy of written permission must be maintained by employer" and "[a] minor cannot be abandoned at worksite without adult supervision." The DOLWD supported the proposal provided adequate safety provisions were in place. The DOLWD stated that "[t]hese provisions would include that the vehicle shall not be running and must be properly secured with the wheels blocked during any loading and unloading operations."

After carefully considering all the comments, the Department has decided to adopt the proposal as originally written, with one modification and minor editorial changes. The Department noted in its 2007 NPRM that it did not interpret the Reg. 3 helper prohibitions as applying to 14- and 15-year-olds who ride inside the enclosed passenger compartment of a motor vehicle when driven by a driver whose employment complies with HO 2 under specified conditions (*see* 72 FR 19343). The Department believes this long-standing important safety-affecting interpretation requiring compliance with HO 2 should be included in the regulatory language. In addition, the Department believes that the drivers of the vehicles transporting the young workers should, as recommended by the YWN, hold valid state drivers' licenses. Accordingly, the Department has added the following sentence at the end of § 570.34(o): *In addition, each driver transporting the young workers must hold a State driver's license valid for the type of driving involved and, if the driver is under the age of 18, his or her employment must comply with the provisions of § 570.52.*

While the Department appreciates the remaining safety-affecting recommendations made by the YWN, CLC, and DOLWD, it believes the provisions of the original proposal, when coupled with other existing state and federal provisions dealing with the safe operation of motor vehicles, will provide ample protections to young workers. In addition, when drafting the proposal regarding youth riding as passive passengers in motor vehicles, the Department looked for guidance for establishing the criteria regarding the use of seat belts or other safety restraining devices. The most recent guidance came from Congress with the enactment of The Drive for Teen Employment Act, Public Law 105–334, in 1998. This legislation added section 13(c)(6) to the FLSA, which permits 17-year-olds to perform certain limited on-the-job driving under very specific conditions. One such condition is that the vehicle be equipped with a seat belt for the driver and any passengers and that the young driver's employer has instructed the youth that the seat belts must be used when driving the vehicle. The Department believes by adopting in Reg. 3 the identical language contained in HO 2 (*see* § 570.52(b)), it not only provides a high degree of protection to young workers but also avoids potential confusion.

3. Work in Meat Coolers and Freezers (§ 570.34(b)(7))

Section 570.34(b)(7) (old) prohibits 14- and 15-year-olds from working in freezers and meat coolers. Since this section's inception, the Department has interpreted it to mean that such youth are prohibited from working as dairy stock clerks, meat clerks, deli clerks, produce clerks, or frozen-food stock clerks where their duties would require them to enter and remain in the freezer or meat cooler for prolonged periods.

Inventory and cleanup work, involving prolonged stays in freezers or meat coolers, are also prohibited. On the other hand, the Department has adopted an enforcement position since at least 1981 that counter workers in quick service establishments or cashiers in grocery stores whose duties require them to occasionally enter freezers only momentarily to retrieve items are not considered to be working in the freezers. In order to provide clarification, the Department proposed to incorporate this long-standing interpretation into the regulations at § 570.33(i) (new).

The Department received four comments on this proposal. The Council supported the proposal as written. The YWN not only disagreed with the proposal but suggested that the current prohibitions detailed at § 570.34(b)(7) (old) be expanded to include "any freezer or cooler regardless of product, including but not limited to meat, seafood, poultry or other produce." The AFL–CIO supported the proposal but suggested that employers be required to keep the door open while the minor was inside the freezer, that the freezer door be equipped with an emergency release mechanism to ensure the youth can escape if the door is mistakenly shut, and that the employer provide unobstructed entry to and egress from the freezer. The CLC also made the same three recommendations as the AFL–CIO and stated that "[e]ven if DOL's Occupational Safety and Health Administration (OSHA) has similar rules, these should be incorporated into the child labor regulations so that a DOL Wage and Hour Division inspector could assert a child labor violation rather than having the employer face two inspections, one by the Wage and Hour Division and another by OSHA."

The Department has carefully reviewed the comments and has decided to adopt the proposal as originally written with a conforming clarification in § 570.34(i). Even though, under this rule, 14- and 15-year-olds may only occasionally enter freezers momentarily to retrieve items (*see* § 570.33(i) (new) and § 570.34(i) (new)), requiring that the door be kept open while they are inside the freezer could be unnecessarily burdensome in that, for energy efficiency and food sanitation, most freezers are equipped with self-closing doors. We note, as reported by the CLC, that OSHA, which is the recognized expert in occupational safety and health issues, already has in place important safety standards addressing emergency release mechanisms, panic bars, and unobstructed paths in the workplace—and that these standards protect all workers, not just those under the age of 16. The Department believes that all these additional safety requirements, when coupled with the provisions of the revised § 570.33(i), adequately protect young workers who momentarily enter freezers. WHD and OSHA, as recommended by the CLC, will continue their partnership to leverage the education and outreach efforts and enforcement actions of each agency. Finally, the YWN's recommendation that the proposal be expanded to include specific items being stored in the freezer or cooler, such as seafood and poultry, is unnecessary because, as discussed above, § 570.33 is a non-exhaustive list that only sets forth common examples of prohibited occupations.

4. Youth Peddling

The Department proposed to amend Reg. 3 and create § 570.33(j) to ban the employment of 14- and 15-year-old minors in occupations involving youth peddling, also referred to as "door-to-door sales" and "street sales." Controversies regarding young children conducting commercial sales of items, often on a "door-to-door" basis, are not new. The Department has over the years documented reports of minors, many as young as 10 or 11 years of age, working as part of mobile sales crews, selling such items as candy, calendars, and greeting cards for profit-making companies. Injuries, and even deaths, have occurred as the result of young children engaging in youth peddling activities. The door-to-door sales industry employing these minors generally is composed of a number of crew leaders who, during the course of a year, operate in many different states. The crew leaders, who often have ties to regional or national businesses, mistakenly claim that they and their young sales crews are independent contractors. Typically, a crew leader attempts to saturate a particular area with sales crews, make as many sales as possible, and then quickly move to a new location. Crews often work from late afternoon to late at night as that is when most of the potential customers are likely to be at home. Because youth peddlers typically qualify as outside sales employees under FLSA section 13(a)(1), they are usually exempt from the minimum wage and overtime requirements of the FLSA (*see* 29 CFR 541.500).

Congressional hearings and the Department's enforcement experience have shown that the problems associated with children performing door-to-door sales and street sales are numerous. These youth are often transported by crew leaders in vans, which fail to meet proper safety and insurance requirements, to areas quite distant from their home neighborhoods. They are often required to work many hours on school nights and late into the evening. These minors are frequently placed by employers, without adult supervision, at subway entrances, outside large office buildings, at high-traffic street corners, and on median strips at busy intersections where they can attract potential customers. Reports of children being abandoned, suffering injuries from violence and motor vehicle crashes, and being exposed to the elements have been substantiated. Youth have been injured and have died as a result of these activities. Intimidation by crew leaders is commonly reported.

In 1987, the permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the United States Senate held hearings on the Exploitation of Young Adults in Door-to-Door Sales. The hearings included a staff study that documented many abuses that had occurred in this industry, including indentured servitude, physical and sexual abuse, and criminal activity. In 1998, the Interstate Labor Standards Association created a subcommittee to work towards ending door-to-door sales by children and recommended that the Department of Labor act as a national clearinghouse regarding information concerning door-to-door sales operations. In response to the 1994 ANPRM issued by the Department, calls for banning door-to-door sales by those under 18 years of age were received from the National Consumers League, the Defense for Children International, USA, and the Food and Allied Service Trades Department, AFL–CIO. At least 17 states have rules prohibiting or regulating door-to-door sales by minors.

The Department's proposal to prohibit youth peddling was not limited to just the attempt to make a sale or the actual consummation of a sale, but includes such activities normally associated with and conducted as part of the individual youth peddler's sales activities, such as the loading and unloading of vans or other motor vehicles, the stocking and restocking of sales kits and trays, the exchanging of cash and checks, and the transportation of minors to and from the various sales areas by the employer.

As used here, the terms youth peddling, door-to-door-sales, and street sales do not include legitimate fund-raising activities by eleemosynary organizations such as cookie sales conducted by the Girl Scouts of America or school fund-raising events where the

students are truly volunteers and are not promised compensation for the sales they make. The term compensation would not include the small prizes, trophies, or other awards of minimal value that the eleemosynary organization may give a volunteer in recognition of his or her fund raising efforts. In administering the FLSA, the Department does not consider such individuals, who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, without contemplation of pay, to be employees of the religious, charitable, or similar nonprofit corporations that receive their services. In addition, FLSA section 3(e)(4)(A) excludes from the definition of "employee" individuals who volunteer to perform services for public agencies. These provisions apply equally whether the volunteer is an adult or a minor.

The Department received five comments on this proposal. One private citizen, who submitted his comment to the electronic docket for the ANPRM published on April 17, 2007, was the only commenter to oppose the proposal. This commenter stated that through door-to-door sales "many kids learn how to be confident and build communication skills with adults."

The DOLWD supported this proposal and noted that Alaska State regulations restrict any worker under the age of 18 from working in door-to-door sales. The YWN, the AFL–CIO, and the CLC also supported this proposal and recommended that the prohibitions against youth peddling be extended to the employment of 16- and 17-year-olds.

In addition, the YWN recommended that the Department amend the first sentence of proposed § 570.33(j) to prohibit sales by youth "in front or around the outside of retail establishments" as "many youth peddle wares outside grocery stores, large chain or box stores, etc." The YWN also recommended that the Department not use the term "eleemosynary" in the regulations but replace it with "plain English words, such as 'non-profit, religious or charitable organizations' to assure understanding by all parties."

The YWN assumed that the Department's proposal would also ban the employment of 14- and 15-year-olds to perform sign waving, "including holding or carrying of any type, posing or acting as a sign not directly in front of a retail establishment, or where no direct supervision exists" (emphasis in original). The YWN recommended that such sign waving activities also be prohibited along public roads and grassy areas or median areas next to public streets or traffic. The CLC stated that it is not clear whether such sign waving activities would be prohibited under the Department's proposal.

The CLC recommended that the proposal clarify where young employees of retail establishments may legally make sales. The CLC assumed that the youth-employer's establishment "means inside or directly outside the establishment, but not away from the establishment, such as on a street corner or parking lot. This should be made more explicit by barring youth peddling 'in front or around the outside of the establishment.'" Finally, the CLC noted the Department's statement that youth peddlers performing outside sales are usually exempt from the minimum wage and overtime provisions of the FLSA and took issue with the Department's failure to ban peddling by 16- and 17-year-olds as well. The CLC commented that "DOL's approach here hardly comports with its stated desire to balance 'the benefits of employment opportunities with the necessary and appropriate safety protections' (72 FR 19337). The benefits of an employment opportunity in which the children experiencing it are 'usually' not entitled to minimum wage or overtime pay are difficult to understand."

The Department has carefully reviewed the comments and has decided to adopt the proposal with certain clarifying modifications. The Department appreciates the concerns raised by the YWN, the AFL–CIO, and the CLC regarding the scope of the term *youth-employer's establishment.* Under § 570.33(j) as originally proposed, a retail establishment that sets up an outside sales center to sell such things as garden supplies, plants, outdoor furniture, portable grills, Christmas trees, etc., that participates in a retailer association neighborhood "sidewalk sale" event, or that routinely displays its wares outside its building may question whether it could use its young sales staff in such endeavors. In order to eliminate confusion and provide clarity, the Department has added a statement to § 570.33(j) noting that the ban on youth peddling does not prohibit a young salesperson from conducting sales for his or her employer on property controlled by the employer that is out of doors but may still properly be considered part of the employer's establishment. Fourteen- and 15-year-olds may conduct sales in such employer's exterior facilities, whether temporary or permanent, as garden centers, sidewalk sales, and parking lot sales, when they are employed by that establishment.

The Department agrees with the recommendations of both the YWN and CLC that the regulatory text be revised to specifically state that 14- and 15-year-olds may not be employed as sign-wavers, promoting particular products, services, or events, except when performing the sign waving activities directly in front of an establishment providing the product, service or event. Because sign wavers and those hired to wave or hold up other products, or wear placards, sandwich boards, or costumes to attract potential customers are exposed to many of the same dangers associated with youth peddling, the following sentence has been added to § 570.33(j): Prohibited youth peddling also includes such promotion activities as the holding, wearing, or waving of signs, costumes, sandwich boards, or placards in order to attract potential customers, except when performed inside of, or directly in front of, the employer's establishment providing the product, service, or event being advertised.

The Department appreciates the concerns of those commenters who recommended that the ban on youth peddling should be extended to all youth under the age of 18 years, but considers such a change too substantive to adopt without additional rulemaking. The Department notes that the NIOSH Report, after carefully reviewing the available data, did not include youth peddling as one of the 17 occupations warranting the creation of a new Hazardous Occupations Order (HO). However, the Department appreciates the AFL–CIO's recommendation that "DOL begin gathering the necessary data to substantiate and justify the need for extension of this coverage for future proposed regulations as quickly as possible."

Finally, with regard to the CLC's comment regarding wages, the fact that youth who conduct door-to-door sales usually are exempt from the minimum wage and overtime provisions of the FLSA in no way detracts from the Department's stated objective to develop updated, realistic health and safety standards for today's young workers that are consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and appropriate safety protections. When Congress enacted the FLSA in 1938, it created section 13(a)(1), which provides a complete exemption from the minimum wage and overtime provisions for employees employed in the capacity of outside salesman. The definition of that term, contained in 29 CFR 541.500, applies regardless of the age of the

employee and clearly includes youth peddlers as described in § 570.33(j) (new). The FLSA, as amended, includes other exemptions from the minimum wage and overtime provisions that impact jobs often performed by young workers, such as those contained in section 13(a)(3) (involving employees employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center); section 13(a)(15) (involving any employee employed on a casual basis in domestic service employment to provide babysitting services); and section 13(d) (involving any employee engaged in the delivery of newspapers to the consumer). The Department cannot enforce a minimum wage requirement for employees whom the Congress has statutorily exempted from the minimum wage and overtime provisions of the FLSA. Nor can it ban certain employment for young workers solely because the employees engaged in such employment are exempt from the FLSA's minimum wage and/or overtime requirements. The Department notes that the exemption from minimum wage and overtime contained in section 13(a)(1) for outside salespeople does not apply to individuals employed solely to wave signs or wear placards, sandwich boards, or costumes to attract potential customers as such promotion work is not performed in conjunction with sales actually made by those individuals (*see* § 541.503).

5. Poultry Catching and Cooping

The Department has long taken the position that 14- and 15-year-olds may not be employed to catch and coop poultry in preparation for transportation or for market because it is a "processing" occupation prohibited by § 570.33(a) (old and new). Such employees are often referred to as "chicken catchers" or "poultry catchers." In addition, the prohibitions against operating or tending power-driven equipment contained in § 570.33(b) (old) and § 570.33(e) (new) and the prohibition against employment in occupations in connection with the transportation of property contained in § 570.33(f)(1) (old) and § 570.33(n)(1) (new) generally preclude the employment of such youth as poultry catchers. These activities are normally performed in environments and under conditions that present risks of injury and illness to young workers. Working in the dark, with the only illumination provided by "red lights" which the fowl cannot see, and in poorly ventilated rooms, is not uncommon. The risks associated with poultry catching also occur in the catching and cooping of poultry other than chickens—for example, processors of turkeys and Cornish game hens employ similar methods of moving their products to slaughter.

Despite the Department's consistent interpretation that 14- and 15-year-olds may not be employed as poultry catchers, employers still have questions concerning how the regulations address such work, and violations still occur. For example, the Department investigated the death of a 15-year-old male in 1999 who was employed as a poultry catcher, working in the dark and under red lighting, in Arkansas. The youth was electrocuted shortly after midnight when he bumped into a fan while performing his "catching" duties. In order to remove any confusion and increase employer compliance, the Department proposed to amend Reg. 3 and create § 570.33(l) to specifically prohibit the employment of 14- and 15-year-old minors in occupations involving the catching and cooping of poultry for preparation for transport or for market. The prohibition would include the catching and cooping of all poultry, not just chickens.

It is important to note that in those rare instances when the catching activities would be agricultural in nature, such as where poultry catchers are employed solely by a farmer on a farm to catch poultry raised by that farmer, the catchers would be subject to the agricultural child labor provisions contained in FLSA sections 13(c)(1) and (2).

The Department received three comments on this proposal. The YWN, AFL–CIO, and CLC all supported the proposal as written. The CLC stated that it welcomes the change as this work is plainly too hazardous for 14- and 15-year-olds to perform. The Department is adopting this proposal as written with one grammatical change.

*B. Occupations That Are Permitted for Minors Between 14 and 16 Years of Age (29 CFR 570.33–.34)*

As mentioned, section 3(l) of the FLSA expressly prohibits children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, upon finding that it does not interfere with their schooling or health and well-being (*see* 29 U.S.C. 203(l)). Before a 14- or 15-year-old may legally perform work covered by the FLSA, the Act requires that the work itself be exempt, or that the Secretary of Labor has determined that the work to be performed does not constitute oppressive child labor. The Secretary's declarations of what forms of labor are not deemed oppressive for children between the ages of 14 and 16 appear in Reg. 3 (29 CFR 570.31–.37) (old).

Reg. 3 identifies a number of occupations or activities that are specifically permitted for the employment of youth 14 and 15 years of age in retail, food service, and gasoline service establishments. As mentioned, the Department proposed to revise this list of permitted occupations by clarifying it, adding to it, and extending its application to all employment covered by the FLSA, except those employers engaged in mining or manufacturing, or any industry or occupation prohibited by the proposed § 570.33. This revised list will be contained in § 570.34 in the Final Rule.

The Department received six comments concerning the revision of the list of permitted occupations and/or the expansion of the list to include establishments other than retail, food service, and gasoline service. Two of the commenters made recommendations that are beyond the purview of the Department as they would require changes to the statute. The DOLWD recommended that the Department focus on identifying the specific areas and occupations where work is prohibited and eliminate the specific provisions concerning where work is permitted. A representative of an educational management company called White Hat Management, LLC (White Hat) recommended that the FLSA's blanket prohibition against 14- and 15-year-old being employed in manufacturing occupations should be relaxed, stating that "in today's day and age when so many manufacturing jobs are automated and operated by computers or buttons, that a blanket prohibition for manufacturing employment hardly seems appropriate." Such recommendations do not comport with the FLSA's statutory directive that 14- and 15-year-olds may not be employed in manufacturing or mining occupations and may only hold such employment that the Secretary has determined, by regulation or order, does not constitute oppressive child labor (*see* 29 U.S.C. 203(l)).

The AFL–CIO, YWN, and CLC all expressed concern about this proposal, stating that such sweeping changes would allow 14- and 15-year-olds to work in many more industries, and they recommended that the Department conduct further analysis. They specifically mentioned and questioned the efficacy of permitting youth employment in particular industries and employment situations.

The AFL–CIO, YWN, and CLC also noted that this proposal would allow

youth to perform janitorial and clean-up work, work already permitted within retail, food service, and gasoline service establishments by § 570.34(a)(6) (old), in additional types of establishments. They stated that such employment includes the potential for exposure to hazardous and toxic chemicals or to bloodborne pathogens, particularly in medical and dental offices, hospitals and nursing homes, and when youth accept employment with professional janitorial services. There were also concerns that 14- and 15-year-olds could now become full-time janitors and spend an entire shift performing cleaning duties.

In addition, the CLC interpreted this proposal as having a major impact on messenger services. It stated that because § 570.33(d) (old) and § 570.33(m) (new) prohibit the employment of 14- and 15-year-olds by a public messenger service, adoption of this proposal implies that employment of such youth by a private messenger service would be permitted. The CLC described *private messenger services* as those that "have standing contracts with law firms, accounting firms, and other types of businesses" to deliver documents or packages. The CLC stated "[a]ny reasonable person who has seen such couriers rushing through city streets, dodging cars, pedestrians, and other cyclists to deliver important documents, would shudder to think that 14- and 15-year-olds would be able to do this work, if DOL's proposal becomes the final regulation."

The CLC stated that adoption of this proposal would allow 14- and 15-year-olds to perform office work for such employers as accounting firms, advertising agencies, mass mailing businesses, insurance companies, and many similar businesses. It expressed concerns that office equipment, such as large paper shredders and data processing machines with exposed moving parts, may present hazards to young workers. In addition, the CLC noted that such minors would be permitted to work up to eight hours a day and up to forty hours a week at computers, typing or inputting data, during non-school weeks.

Finally, a representative of the Coosa Valley Regional Development Center requested that 14- and 15-year-olds be permitted to be employed in painting activities because the "paint products in use today do not contain lead or other hazardous materials." She stated that prohibiting this age group from painting activities restricts their employment activities. She recommended that the prohibitions involving the use of ladders and scaffolds by this age group be retained.

The Department has carefully reviewed all the comments and has decided to adopt the proposal as written. The concerns of the AFL–CIO, YWN, and CLC about increased youth employment in several industries, such as dry cleaning and laundry services, treating and disposing of waste, mass mailing enterprises, and the painting of houses and automobiles, are unfounded. This is because § 570.33(a) (old and new) prohibits the employment of 14- and 15-year-olds in almost all occupations involving processing operations—which the Department has interpreted to include dry cleaning and laundering, the treating and disposing of waste, the conducting of mass mailings, and the painting of houses and automobiles. The Department does not believe it is appropriate to overturn the long-standing prohibitions against 14- and 15-year-olds being employed in construction or processing occupations by accepting the recommendation of the Coosa Valley Regional Development Center to allow such youth to perform painting activities.

In addition, § 570.33(a) (old and new) provides additional protections as it prevents the employment of such youth in work places where goods are manufactured, mined, or otherwise processed. Fourteen- and 15-year-olds could not be employed to clean such work places, even after hours, because of WHD's long-standing interpretation that a work place retains its character—and child labor continues to be prohibited—even at times when nothing is being mined, processed, or manufactured. It is also important to note that all the prohibited occupations detailed in § 570.33 (new) would be applicable to the employment of 14- and 15-year-olds, regardless of the industries in which they are employed.

The Department appreciates and understands the commenters' concerns about the potential occupational exposure of young workers to hazardous and toxic chemicals or to bloodborne pathogens. The Department believes that the standards established by OSHA to address such potential exposures, which are continually under agency review, provide vigorous protections to all workers. The WHD is also reviewing prohibitions regarding the potential exposure of young workers to ionizing radiation, as reflected in the publication of the 2007 ANPRM.

The Department would also note that, as mentioned by the CLC, 14- and 15-year-olds have been permitted to be employed by hospitals and nursing homes for many years. This is because historically such facilities, when open to the general public, have been considered to have a retail concept. The Department continues to issue full-time student subminimum wage certificates to such employers under FLSA section 14(b) because of their retail character. In addition, such youth have been permitted to be employed, and have been safely employed, as janitors at many retail and food service establishments over the years, including department stores, hotels, amusement parks, restaurants, and large discount stores.

It is important to note that the CLC is incorrect in its assumption that this proposal would permit the employment of 14- and 15-year-olds by messenger service firms that "have standing contracts with law firms, accounting firms, and other types of businesses" to deliver documents or small packages. The Department has opined, as early as 1989, that the term *public messenger service* involves that delivery service rendered to a company which takes messages, small parcels, etc. from one party for delivery to another party. The public messenger goes between two parties, neither of whom is necessarily known to the messenger. The term *public* in this context refers to the customers being served and not the nature of the ownership of the firm. Accordingly, a 16-year minimum age is required for employment in such messenger services. The CLC is correct in its interpretation that 14- and 15-year-olds are permitted under § 570.34(a)(4) (old) and § 570.34(g) (new) to perform errand and delivery work by foot, bicycle, and public transportation for their employers when their employers are not engaged in the business of providing messenger services to others.

The Department agrees with the CLC that the adoption of this proposal will allow 14- and 15-year-olds to be employed to perform office work for such employers as accounting firms, advertising agencies, and insurance companies; and that such youth could, under the proper circumstances, work as many as eight hours in a day and forty hours in a week when school is not in session. The Department, however, does not agree that such an expansion of positive youth opportunities is improper or in any way fails to comport with the requirements and spirit of FLSA section 3(l). Office work continues to be one of the safest occupations available to young workers. Moreover, this rule does not change the limitations on the number of hours per day or per week that 14- and 15-year-olds may work when school is not in session.

The Department also proposed to revise § 570.34(a)(8) (old) by clarifying that 14- and 15-year-olds may perform car cleaning, washing, and polishing, but only by hand (*see* § 570.34(n) (new)). Such youth are prohibited from operating or tending any power-driven machinery, other than office equipment, and this prohibition has always included automatic car washers, power-washers, and power-driven scrubbers and buffers. The Department believes this clarification will provide guidance to employers.

The Department received three comments on this proposal. The YWN supported the proposal as written. The CLC supported this proposal but again expressed concern based on its erroneous assumption that such youth could be employed to paint automobiles. The National Automobile Dealers Association (NADA) took "*strong exception to this 'clarification'*" (emphasis in original). NADA stated that vehicle washing "anecdotally is known as *the* classic entry-level dealership employment activity * * * Vehicle cleaning, washing, and polishing activities commonly involve small portable power-washers and hand-tool buffers" (emphasis in the original). NADA stated that nowhere in the regulatory history of § 570.34(a)(8) or in the NIOSH Report has any suggestion been made that power-equipment-assisted motor vehicle cleaning, washing, and polishing activities pose "significant safety or health risks to 14- and 15-year-olds." NADA also recommended that the word car in § 570.34(a)(8) (old) be replaced with the words motor vehicles so such youth may be permitted to wash additional types of motor vehicles such as SUVs, station wagons, and vans.

The Department has considered the comments and has decided to adopt the proposal as written. The Department believes this revision to be nothing more than a clarification of its long-standing interpretation of the regulations. Contrary to NADA's statement, Reg. 3, of which § 570.34(a)(8) is a part, has clearly stated in § 570.33(b) for many years that 14- and 15-year-olds may not be employed in "occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines" (emphasis added). If employers have allowed FLSA covered and nonexempt 14- and 15-year-olds to wash or polish cars and trucks using power-driven washers or hand-tool buffers, they have done so in violation of the federal child labor provisions. The NIOSH Report did not mention the provisions of § 570.34(a)(8) because the Report dealt exclusively with HOs, which address work that is particularly hazardous or detrimental to the health and well-being of 16- and 17-year-old minors. Even if NADA had presented data supporting its statement that power-equipment-assisted motor vehicle washing and polishing poses "no significant safety or health risks to 14- and 15-year-olds," the Department notes that such a standard is considerably more lax than the FLSA section 3(l) standard the Secretary must apply when determining permissible employment opportunities for such youth. Finally, the Department does not accept NADA's recommendation to expand § 570.34(a)(8) (old) to include all motor vehicles. The Department has long interpreted the term *cars and trucks* as used in § 570.34(a)(8) to include station wagons, SUVs, and passenger vans. The term does not include larger vehicles such as buses, tractor-trailers, and heavy-construction equipment—all of which would generally be considered motor vehicles under Reg. 3 and HO 2.

*The additional occupations the Department proposed to permit 14- and 15-year-olds to perform are discussed below:*

1. Work of a Mental or Artistically Creative Nature

The Department has routinely received inquiries asking whether 14- and 15-year-old youth may be employed to perform certain mental or artistically creative activities in industries not specifically permitted by Reg. 3. The inquiries have concerned such jobs as a computer programmer and computer applications demonstrator for a college, print and runway model, and musical director at a church or school. Often, these inquiries involved students who are especially gifted or career oriented in a particular field. A strict adherence to Reg. 3 requirements would not permit the employment of a 14- or 15-year-old in any of these scenarios, even though talented and motivated youth could safely and successfully perform these tasks without interfering with their schooling or health and well-being.

The Department proposed to revise Reg. 3 at § 570.34(b) (new) to permit the employment of 14- and 15-year-olds to perform work of a mental or artistically creative nature, such as computer programming, the writing of software, teaching or performing as a tutor, serving as a peer counselor or teacher's assistant, singing, playing a musical instrument, and drawing. Permitted work of a mental nature would be limited to work that is similar to that performed in an office setting and not involving the use of any power-driven equipment other than office machines. Artistically creative work would be limited to work in a recognized field of artistic or creative endeavor. The employment would be permitted in any industry other than those prohibited by Reg. 3 and would also be subject to all the applicable hours and times standards established in § 570.35 and the prohibited occupation standards contained in § 570.33.

The Department received comments from the YWN and CLC on this proposal. Both commenters supported the proposal, but made additional recommendations. The YWN suggested that the Department replace the word mental with intellectual, so that the phrase in the subsection would read "work of an intellectual or artistically creative nature." The YWN recommended that, for work of an artistic nature, certain locations such as tattoo and body piercing establishments should be excluded due to the potential for exposure to bloodborne pathogens. The YWN also stated that the proposal should prohibit youth employed in artistic endeavors from performing work that would expose them to carcinogenic, toxic, or hazardous substances, or to high heat. "For example, 14- and 15-year-olds would be permitted to work on a pottery wheel, but would be prohibited from applying certain glazes and would be prohibited from any work on or around the high heats of a pottery kiln. Another example would be that 14- and 15-year-olds would be permitted to sculpt, but would be prohibited from welding and soldering or any functions that expose them to heat, or to height or other existing restrictions." Finally, the YWN believed that some artistically creative work may "push the envelope on exploitative labor and/or prove detrimental to the morals of youth."

The CLC also supported this proposal with additional comments and recommendations. The CLC noted that although the proposed § 570.34(b) contains the statement that artistically creative work is limited to work in a recognized field of artistic or creative endeavor, it does not define the term *artistic or creative endeavor.* The CLC correctly stated that another of the Department's regulations, 29 CFR 541.302(b), advises this term includes such fields as music, writing, acting, and the graphic arts. The CLC also expressed concerns that singing and the playing of musical instruments are often in demand "in bars, lounges, cabarets, and other places that 14- and 15-year-olds might best avoid. These and other settings could cause untoward effects on

such youngsters' moral health, even if not on their physical health and safety."

The Department has carefully considered the comments and has decided to adopt the proposal with one modification. The Department agrees with the YWN that the word intellectual better comports with the intent of this proposal than the word mental. Accordingly, the Department is revising the proposed § 570.34(b) to reflect this suggested change.

The Department understands the concerns of both commenters as to the types of tasks young workers would be permitted to perform under the umbrella of "artistic or creative endeavors" and notes that it will rely on 29 CFR 541.302(b)—which limits the scope of this term to such fields as music, writing, acting, and the graphic arts—for guidance. The Department wishes to address concerns raised by the YWN by stating that it does not consider tattooing or body piercing performed by employees under the age of 16 years to be artistically creative endeavors under § 541.302(b).

The Department also notes that 14- and 15-year-olds who are employed in artistic or creative endeavors will continue to be prohibited from performing any of the occupations or tasks detailed in the revised § 570.33. These prohibitions, which include work in manufacturing and processing occupations, the operation of most power-driven equipment, and any duties in work rooms or work places where goods are manufactured or processed, should alleviate many of the concerns raised by the YWN and CLC. These prohibitions would prevent a 14- or 15-year-old from working in a factory or workroom as a "molder" or "hand painter" producing mass quantities of nearly identical pottery or ceramic items, but when coupled with this Final Rule, they would permit the youth to express his or her artistic talents to shape by hand a unique clay pot or sculpt a piece of art. Likewise, a 14- or 15-year-old could be employed, with all the safeguards of §§ 570.33–.35, as a painter of portraits but not as a painter of automobiles or houses. Similarly, a youth could be employed to create unique photographs that rise to the level of art, but would be prohibited from developing those photographs and working with the chemicals and solvents commonly used in such processing activities. In addition, the hours standards provisions of § 570.35 restrict the number of hours and times of day that 14- and 15-year-olds may be employed in any FLSA-covered work, including artistic or creative endeavors.

Finally, the Department appreciates the concerns of both the YWN and CLC that under the guise of "artistic or creative endeavors" some employers have attempted to employ youth in unsafe or unsavory lines of work that, as the commenters note, jeopardize the morals of the young workers. For example, the Department has encountered a situation involving the employment of very young females as "taxi-dancers" who were recruited and paid by bars and nightclubs to dance with male patrons, often late into the evening. The Department was able to quickly put an end to this unacceptable employment by not only enforcing the child labor and minimum wage provisions of the FLSA, but by partnering with local law enforcement authorities to ensure that city and state laws addressing community standards were enforced. The Department believes that the strict enforcement of such ordinances by the appropriate authorities will continue to be important supplements to the effectiveness of the federal child labor laws.

2. The Employment of 15-Year-Olds (But Not 14-Year-Olds) as Lifeguards

The Department proposed to revise Reg. 3 at § 570.34(l) to permit the employment of 15-year-olds as lifeguards at swimming pools and water amusement parks under certain conditions. A local chapter of the American Red Cross (Chapter) first raised this issue in 2000. The Chapter advised the Department that the Red Cross had revised its own rules and had begun certifying 15-year-olds as lifeguards. Prior to 2000, according to the Chapter, 16 years was generally the minimum age at which the Red Cross would provide such certification. The Chapter inquired as to whether Reg. 3 would permit the employment of 15-year-olds as lifeguards. Also in 2000, a municipality contacted the Department inquiring whether it could legally employ such youth as lifeguards at its city-owned swimming pools.

The occupation of lifeguard is not specifically authorized in Reg. 3 as an occupation that 14- and 15-year-olds may perform. In response to the inquiries, the Department adopted an enforcement policy in 2000 that allowed 15-year-olds (but not 14-year-olds) to be employed at swimming pools owned and operated by state and local governments or private-sector retail establishments under certain conditions. Those conditions included that the youth be trained and certified in aquatics and water safety by the Red Cross or by some similarly recognized certifying organization, and that the youth work under conditions acceptable to the Red Cross or some similarly recognized certifying organization. This enforcement position permitted such employment at swimming pools operated by hotels, amusement parks, cities, and state-owned universities, but did not permit such employment at pools operated by non-public and non-retail establishments such as apartment houses, country clubs, private schools, home-owner associations, and private health clubs. In early 2005, the Department, after reviewing additional information, extended this enforcement position to permit the employment of 15-year-olds as lifeguards at all traditional swimming pools regardless of who owns, operates or manages the establishments, and at those facilities of water amusement parks that constitute traditional swimming pools.

The Department proposed to revise Reg. 3 by creating § 570.34(l) to incorporate portions of the current enforcement position. The revision would permit 15-year-olds, but not 14-year-olds, to be employed as lifeguards, performing lifeguard duties, at traditional swimming pools and certain areas of amusement water parks operated by all types of employers, if the minors have been trained and certified by the Red Cross or a similarly recognized certifying organization.

The occupation of lifeguard, as used in this subpart, entails the duties of rescuing swimmers in danger of drowning, the monitoring of activities at a swimming pool to prevent accidents, the teaching of water safety, and assisting patrons. Lifeguards may also help to maintain order and cleanliness in the pool and pool areas, give swimming instructions, conduct or officiate at swimming meets, and administer first aid. Additional ancillary lifeguard duties may include checking in and out such items as towels, rings, watches and apparel. Permitted duties for 15-year-olds would include the use of a ladder to access and descend from the lifeguard chair; the use of hand tools to clean the pool and pool area; and the testing and recording of water quality for temperature and/or pH levels, using all of the tools of the testing process including adding chemicals to the test water sample. Fifteen-year-olds employed as lifeguards would, however, be prohibited from entering or working in any mechanical rooms or chemical storage areas, including any areas where the filtration and chlorinating systems are housed. The other provisions of Reg. 3, including the restrictions on hours of work contained at § 570.35(a), would

continue to apply to the employment of 15-year-old lifeguards.

Under the proposed rule, no youth under 15 years of age, whether properly certified or not, could legally perform any portion of the lifeguard duties detailed above as part of his or her FLSA covered employment. The core and defining duty of a lifeguard is the rescuing of swimmers in danger of drowning, often by entering the water and physically bringing the swimmer to safety. Under the Department's proposal, any employee under the age of 16 whose duties include this core duty—such as a "junior lifeguard" or a "swim-teacher aide"—or whose employment could place him or her in a situation where the employer would reasonably expect him or her to perform such rescue duties, would be performing the duties of a lifeguard while working in such a position. For such employment to comply with Reg. 3, the employee would have to be at least 15 years of age and be properly certified.

A traditional swimming pool, as used in this subpart, would mean a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith. A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches.

It is important to note that § 570.33(b) (old) prohibits the employment of 14- and 15-year-olds in occupations involving the operation or tending of power-driven machinery, except office machines. This prohibition has always encompassed the operation or tending of all power-driven amusement park and recreation establishment rides—including elevated slides found at water amusement parks. Such slides, which often reach heights of over 40 feet, rely on power-driven machinery that pump water to the top of the slides which facilitates the descents of the riders to the "splash-down" areas at the base of the slides. Minors less than 16 years of age may not be employed as dispatchers or attendants at the top of elevated water slides—employees who maintain order, direct patrons as to when to depart the top of the slide, and ensure that patrons have safely begun their ride—because such work constitutes "tending" as used in Reg. 3. In addition, when serving as dispatchers or attendants at the top of an elevated water slide, minors under 16 years of age are not performing, nor can they reasonably be expected to perform, the core lifeguard duty of rescuing swimmers because they are so far removed from the splash-down area of the slide. Accordingly, even if 15-year-old minors have been certified as lifeguards, the provisions of § 570.34(l) would not apply to the time spent as dispatchers or attendants at an elevated water slide. Properly certified 15-year-old lifeguards, however, may be stationed at the "splashdown pools" located at the bottom of the elevated water slides to perform traditional lifeguard duties.

The Department is aware that permitting 15-year-olds to be employed as lifeguards at such water amusement park facilities as lazy rivers, wave pools, and the splashdown pools of elevated slides could be construed as allowing these youth to tend power-driven machinery. But the Department believes that the overall predominance of their responsibility to perform the core life-saving duty of rescuing patrons who are in the water, which they have been properly trained and certified to perform, outweighs the minimum, isolated, and sporadic amount of tending such lifeguards may potentially be called upon to do when stationed at wave pools, lazy rivers, and splashdown pools.

The Department received eleven comments in response to this proposal. This includes three comments that were submitted as attachments to the comments of the International Association of Amusement Parks and Attractions (IAAPA). The comments centered around the following elements of the proposal: (1) Whether 15 should be the minimum age for employment as a lifeguard at a traditional swimming pool or water amusement park; (2) whether 16 should be the minimum age for employment as a lifeguard at natural environments such as lakes, rivers, and oceanside beaches; and (3) whether 15-year-olds should be prohibited from being employed as dispatchers or attendants at the top of elevated water slides.

Some of the commenters supported the entire proposal as written or suggested only minor modifications. The IAAPA, which describes itself as the largest international trade association for permanently-situated amusement facilities worldwide, supported this proposal. The proposal was supported by the General Manager of Shipwreck Island Waterpark of Panama Beach City, Florida, whose comments were submitted by the IAAPA. A representative of Six Flags, Inc. also supported the proposal and stated that "[w]hile we still believe that 15-year-olds could safely work as dispatchers on elevated water elements, we find the proposed changes to be an acceptable compromise."

The National Recreation and Park Association (NRPA), which described itself as "a non-profit organization seeking to enhance public park facilities and expand recreation opportunities," supported the adoption of the proposed change in regulations that would revise Reg. 3 in order to "conditionally allow" 15-year-olds to be employed at traditional swimming pools and water parks. The NRPA also supported establishing a minimum age of 16 for the employment of lifeguards at natural environments. In addition, the NRPA commented that "[l]ocal park and recreation agencies have a great need to find qualified, capable, and certified lifeguards to work in their outdoor pools, indoor pools, water amusement park facilities, and natural bodies of water. In proposing these regulations, the Department will help agencies meet their needs to hire certified lifeguards by allowing lifeguards to begin work at the age of 15. Expanding the eligible age for employment as a lifeguard at traditional swimming pools could help these communities enhance pool safety by providing a wider and larger applicant pool from which to select qualified candidates, and by increasing lifeguard availability, make shorter shifts an increasingly real probability."

The American Red Cross (Red Cross), which has been developing and implementing lifeguard training and certification programs since 1914, stated that it is "comfortable" with the Department's proposal with one small change. The Red Cross objected to the Department including the task of "giving swimming instructions" in the list of duties that 15-year-olds may perform because the Red Cross lifeguard training course does not include training on how to give swimming instructions. Such training is available to 15-year-olds via a separate Red Cross Water Safety Instructor (WSI) course. The Red Cross recommended that the Department

alleviate possible public misunderstanding by deleting "giving swimming instructions" from the list of permitted lifeguard duties.

The United States Lifesaving Association (USLA), which described itself as America's nonprofit, professional association of beach lifeguards and open water rescuers, reported that it "works to reduce the incidence of death and injury in the aquatic environment through public education, promulgation of national lifeguard standards, training programs, promotion of high levels of lifeguard readiness, and other means." The USLA commented that, since 1980, it has maintained the position that lifeguards serving at natural environments, whether surf or non-surf beaches, should be at least 16 years of age. The USLA further commented that this position was also reached by participants at a national conference held in 1980 which issued a report entitled "Guidelines for Establishing Open-Water Recreational Beach Standards." Participants included representatives of the American Camping Association, Red Cross, National Safety Council, YMCA of the USA, Council for National Cooperation in Aquatics, Centers for Disease Control and Prevention, U.S. Coast Guard, Boy Scouts of America, the National Park Service, several major municipal lifeguard agencies from throughout the USA, and several medical experts. The USLA noted that the participants at this conference, which used a consensus-based process to issue its recommendations, considered such factors as the physical and cultural parameters of the natural environments to be guarded; the psychological and physiological stresses of public safety employment; the lack of physical stamina, maturity, and experience of those under 16 years of age; and the varying levels of supervision provided young lifeguards. The USLA summarized its comments by stating "people under the age of 16 should not be permitted to work as lifeguards at natural environments." It also commented that it found it difficult to construct reasons that differentiate the natural environment from the pool environment, given that many of the reasons for establishing a minimum age of 16 years for employment as a lifeguard at a natural environment facility are equally applicable at traditional pools.

The YWN and the CLC opposed this proposal and both, apparently, support the comments submitted by the USLA, although this is not clear. The YWN referred to comments of the US Lifeguarding Association and the CLC referred to comments of the Lifeguard Standards Association. The Department has not been contacted by any organizations using those names in regards to this proposal.

The YWN also stated that work as a lifeguard may entail exposure to combative individuals, bloodborne pathogens, and chemicals. It added that, for these reasons, other organizations like the YMCA do not certify lifeguards until age 16 and thus "DOL's argument that this proposal ties DOL enforcement practice to 'standards' in the industry is not accurate." The YWN also questioned the justification for adding a new and unique age cut-off for this one particular job, when all other regulations group 15-year-olds with 14-year-olds.

The CLC stated that "most distressing is the fact that DOL gives no indication of what the Red Cross training requires." It also commented that the fact that DOL would require the lifeguards to be certified by the Red Cross (or a similar certifying organization) in aquatics and water safety "in no way assures that the DOL proposal is prudent."

The World Waterpark Association (WWA) supported the proposal to permit the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks, but opposed that portion of the proposal that would prohibit such youth from working as dispatchers or attendants at the top of elevated water slides. The WWA opined that "[it] is a universally accepted position of the aquatic community that a lifeguard's first responsibility is to prevent accidents and injuries by enforcing rules and educating patrons * * *. Therefore, 15-year-olds working at the tops of waterslides are fulfilling one of the core duties of properly trained lifeguards, in a manner which places them at the least possible risk." The WWA also disagreed with the Department's position that working as a dispatcher or attendant at the top of an elevated water slide constitutes tending of power-driven machinery under the provisions of Reg. 3 where there are no mechanized conveyance systems or emergency ride controls at the top.

A representative of Morey's Pier of Wildwood, New Jersey, whose comments were submitted by the IAAPA, supported the proposal to allow the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks. She also addressed the position of water slide dispatcher, stating "we see no reason or evidence that this is a dangerous job that should be restricted." She also opined that such dispatchers are not in contact with any power-driven machinery.

A representative of the Pleasant Hill Recreation and Park District (Pleasant Hill) of Pleasant Hill, California, expressed concern about how this proposal would affect youth who volunteer in her District's "junior lifeguard program." After reviewing the list of permitted lifeguard duties presented in § 570.34(l)(2), she noted that her facility has "swim instructors who are certified by the American Red Cross as Water Safety Instructors, but are not lifeguard certified." Her facility has "cashiers who are not lifeguard certified, but who help maintain order/cleanliness in the pool area (deck, locker rooms, crowd control during emergency, etc.). She questioned whether such employees, who are not employed as lifeguards, must be at least 16 years of age or be 15 years of age with proper lifeguard certification.

The representative of Pleasant Hill also noted that youth aged 11 to 14 years of age participate in her facility's junior lifeguard program. The participants attend 8 hours of training, which follows the Red Cross's Guard Start Program, and then volunteer at the pool as aides during swim lessons. Participating youths are assigned to assist an instructor, are never left alone to teach a class, and also help during recreational swims "by checking in/out patrons bags/apparel/belongings." She noted that the junior lifeguard program is an important tool for recruiting and developing future lifeguards.

The Department has carefully considered all the comments and has decided to adopt the proposal as written, with two modifications. The Department appreciates the concerns raised by the Red Cross that certified lifeguards may not have received the proper training, and therefore the proper certification, to give swimming instruction. This same issue was mentioned by Pleasant Hill, which noted that it had swimming instructors who were properly certified by the Red Cross but were not certified as lifeguards. In order to address the concerns of the Red Cross, ensure the maximum possible safety for young workers and their charges who are learning to swim, and eliminate confusion, the Department is modifying the language in the proposed § 570.34(l)(2) to reflect that 15-year-olds may be employed as swimming instructors only when they have been certified to perform both lifeguard and swimming instruction by the Red Cross or some other recognized certifying organization. This requirement for dual certification, like the other lifeguard

requirements contained in Reg. 3, will end when the minor reaches his or her 16th birthday.

The Department received an inquiry after the publication of the NPRM asking why ponds and quarries, places where swimming often occurs, were not specifically listed as natural environment swimming facilities in § 570.34(l)(2) where the term *traditional swimming pool* is defined. In order to clarify the Final Rule, the Department has decided to add ponds and quarries to the non-exhaustive list of examples of natural environment swimming facilities that currently includes rivers, streams, lakes, reservoirs, wharfs, piers, canals, and oceanside beaches.

The Department appreciates the concerns of the YWN, CLC, and USLA about lowering the employment age for lifeguards at traditional swimming pools and certain water amusement park facilities to 15, but believes that such safeguards as proper certification in aquatics and water safety by a recognized certification organization, the prohibition against tending power-driven machinery which prevents 15-year-olds from working as dispatchers or attendants at the top of elevated water slides, the OSHA standards addressing potential exposures to bloodborne pathogens and chemicals, and the hours and times of day standards established by § 570.35 combine to provide adequate protections to these young workers. The Department does not share the YWN's concerns about adding "a new and unique age cut-off for this one particular job, when all other regulations group 15-year-olds with 14-year-olds." The Department notes that when rules are clearly written and adequately explained, public understanding and compliance follow. This was evidenced by the revisions to HO 2 published on December 16, 2004 (*see* 69 FR 75382, *see also* § 570.52(b)) necessitated by the enactment of FLSA section 13(c)(6), which permits limited on-the-job driving by 17-year-olds under certain conditions, but not by 16-year-olds.

The Department does not agree with the CLC's comment that the DOL gives no indication of what Red Cross training requires and the YWN's comment that this proposal is not "tied to standards in the industry." The Red Cross, just like other nationally recognized certifying organizations, spends a great deal of time and effort formulating, refining, disseminating, and publicizing the elements and standards of its lifeguard certification program. It is difficult to argue that the Red Cross is not the "industry standard" when it estimates that about 90% of all lifeguards in the USA have received training through its lifeguard training program.

The Department appreciates the concerns of certain commenters that 15-year-olds should be permitted to be employed as dispatchers or attendants at the top of elevated water slides, but believes that continuation of its long-held position that such employment constitutes the prohibited tending of power-driven equipment—just as it is for attendants on roller coasters, merry-go-rounds, and ski-lifts—is both prudent and proper.

Finally, the Department acknowledges the concerns of Pleasant Hill which raised the issue of "junior lifeguard programs" and the "volunteer" participation of youths between the ages of 11 and 14 in such endeavors. The Department notes that when such programs do not involve an employer-employee relationship, they fall outside the provisions of the FLSA. But when it is determined that an employer-employee relationship does exist, and the employee is engaged in work that is subject to the FLSA, the minimum age for such employment at a traditional swimming pool would be 14. Such 14-year-old employees could not be employed as lifeguards or swim instructors, but could perform such tasks as maintaining the cleanliness of the pool area and locker rooms, signing in and signing out patrons, and checking in and out such items as towels, watches, and apparel. Such youth would not be permitted to perform any of the core functions of a lifeguard nor be employed in a situation where their employers could reasonably expect them to rescue swimmers in danger of drowning. Under this Final Rule, properly certified 15-year-olds could be employed at such pools as lifeguards.

3. The Employment of Certain Youth by Places of Business Where Machinery Is Used To Process Wood Products

The provisions of the Consolidated Appropriations Act, 2004, amended the FLSA by creating a limited exemption from the child labor provisions for certain minors 14 through 17 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained at section 13(c)(7) of the FLSA, allows eligible youth to work inside and outside of places of businesses that use machinery to process wood products, subject to specified limitations. The Department is incorporating the new requirements of this amendment into its regulations. The Department proposed to incorporate the amendment into Reg. 3 at § 570.34(m), and into § 570.54, Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4).

Section 13(c)(7) overrides the heretofore complete prohibition on the employment of 14- and 15-year-olds in manufacturing occupations contained in section 3(l) of the FLSA. Accordingly, to meet the requirements of this legislation, the Department proposed to revise Reg. 3 to permit the employment of qualifying 14- and 15-year-olds inside and outside of places of business where manufacturing (the processing of wood products by machinery) takes place, subject to specified conditions and limitations.

The Department proposed to limit the types of employers that may employ such minors, as well as the worksites at which such minors may be employed, to those contemplated by the language of the statute and mentioned by the sponsors of the legislation and the interested parties that testified at the hearings held by Congress prior to the enactment of the legislation (*see, e.g.,* Testimony Before Senate Labor, Health and Human Services, and Education Subcommittee of the Committee on Appropriations, The Employment Needs of Amish Youth, 107th Cong. 2 (2001)). The term *places of business where machinery is used to process wood products* shall mean such permanent workplaces as sawmills, lath mills, shingle mills, cooperage stock mills, furniture and cabinet making shops, gazebo and shed making shops, toy manufacturing shops, and pallet shops. The term shall not include construction sites, portable sawmills, areas where logging is being performed, or mining operations. The term *inside or outside places of business* refers to the distinct physical place of the business, *i.e.,* the buildings and the immediate grounds necessary for the operation of the business. This exemption would not apply to tasks performed at locations other than inside or outside the place of business of the employer such as the delivery of items to customers or the installation of items at customers' establishments or residences.

Although section 13(c)(7) permits the employment of certain youth inside and outside of places of business where machinery is used to process wood products, it does so only if the youth do not operate or assist in the operation of power-driven woodworking machines. The occupations of *operating* or *assisting in the operation of* and the term *power-driven woodworking machines* are well-established in the regulations, including in § 570.55. The Department proposed to revise Reg. 3 to

include definitions of these terms along with the specific prohibition against operating or assisting in the operation of power-driven woodworking machines. Section 570.55 lists, when discussing the prohibited occupations involved in the operation of power-driven woodworking machines, such activities as supervising or controlling the operation of the machines, feeding materials into such machines, and helping the operator feed material into such machines. The list also includes the occupations of setting up, adjusting, repairing, oiling, or cleaning the machines. That same section defines *power-driven woodworking machines* to mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. The Department proposed to amend the definition of *power-driven woodworking machines* to include those machines that process trees, logs, and lumber in recognition that section 13(c)(7) now permits certain youth 14 through 17 years of age to work in such places of business as sawmills, lath mills, and shingle mills where trees, logs, and lumber would be processed. Expanding this definition thus clarifies that youth are prohibited from operating or assisting in the operation of wood-processing machinery typically found in the workplaces covered by the 2004 amendment. This revised definition of power-driven woodworking machines would be included in § 570.34(m) of Reg. 3 and both § 570.54 (HO 4) and § 570.55 (HO 5).

The limited exemption contained in section 13(c)(7) applies only to certain youth—new entrants into the workforce—and only when certain additional criteria are met. Section 13(c)(7) defines a new entrant into the workforce as an individual who is under the age of 18 and at least the age of 14, and, by statute or judicial order, is exempt from compulsory school attendance beyond the eighth grade.

In addition, in order to be employed inside or outside of places of business where machinery is used to process wood products, the new entrant must be supervised by an adult relative or an adult member of the same religious sect or division as the entrant. The term *supervised* refers to the requirement that the youth's on-the-job activities be directed, monitored, overseen, and controlled by a specified named adult. Although the statute does not define the terms *adult* and *relative,* the Department proposed that, for purpose of this exemption, a *relative* would include a parent (or person standing in place of a parent), a grandparent, an aunt, an uncle, and a sibling; and an *adult* would be someone who has reached his or her eighteenth birthday. The Department also proposed that the term *adult member of the same religious sect or division as the youth* would mean an adult who professes membership in the same religious sect or division to which the youth professes membership. The Department believes that in order to ensure these youth receive the degree of protection from injury Congress intended, the supervision of the minors must be close, direct, and uninterrupted. It is important to note that this requirement of close, direct, and uninterrupted supervision, just like the requirement that youth not operate or assist in the operation of power-driven woodworking machinery, applies to the employment of 16- and 17-year-olds as well as 14- and 15-year-olds.

Furthermore, section 13(c)(7) permits the employment of a new entrant inside or outside places of business where machinery is used to process wood products only if the youth is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation, and is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust. It is the Department's position that section 13(c)(7)'s prerequisite that the youth is "required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust" includes the youth's actual use of such equipment and not just the employer's obligation to mandate such use.

The Wage and Hour Division has consulted with representatives of the Department's Occupational Safety and Health Administration (OSHA) and will defer to that agency's expertise and guidance when determining whether an employer is in compliance with the safety provisions of this exemption—*i.e.,* whether a workplace barrier is appropriate to the potential hazard, whether a sufficient distance has been maintained from machinery in operation, and whether the youth is exposed to excessive levels of noise and saw dust. The Department proposed that compliance with the safety and health provisions discussed in the previous paragraph will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued by OSHA or, in those areas where OSHA has authorized the state to operate its own Occupational Safety and Health Plan, the applicable standards issued by the Office charged with administering the State Occupational Safety and Health Plan.

The Department received three comments on this proposal. Although both the YWN and CLC stated that they did not support enactment of FLSA section 13(c)(7), they strongly supported the Department's efforts to ensure that the regulations provide adequate protections for youths who are now permitted to be employed inside and outside places of business where machinery is used to process wood products. Both of these commenters, along with the AFL–CIO, made additional recommendations to the proposal.

Both the YWN and the AFL–CIO recommended that the Department add a requirement to the revised § 570.34(m)(1) that all youth who come within the exemption provided by FLSA section 13(c)(7) must receive safety training or certification for the specific activities allowed under the proposal.

The CLC labeled as a "wise approach" the Department's proposal to rely on the expertise of OSHA, or the Office charged with administering an OSHA-authorized state plan where appropriate, to determine if employers are complying with certain of the safety standards established by FLSA section 13(c)(7). As an outgrowth of this proposal, it stated that "it would make sense either for the Wage and Hour Division to enforce OSHA in this context by issuing OSHA citations that assert OSHA violations, or for the Wage and Hour Division investigator to notify OSHA of an OSHA violation and direct OSHA to investigate the matter as well for OSHA violations. The reason for this recommendation that the CLC makes here is that if there are OSHA violations that give rise to child labor violations, then the adults who work with the woodworking machinery are subject to the same workplace hazards as the children."

The CLC commented that the Department's proposal that the supervision received by young workers employed under the provisions of FLSA section 13(c)(7) be close, direct, constant, and uninterrupted is essential in view of the serious hazards that such youth will face. The CLC recommended that the proposal should also require that the supervision be "one-on-one" and that the supervisors of the young workers should be required to have experience within the wood processing industry or that workplace.

The CLC also expressed concern that neither the statute nor the proposal

addresses the potential exposure of young workers to "the toxic chemicals present in adhesives and coating agents that are used in woodworking operations." The CLC noted that many of these chemicals pose risks of both short-term and long-term effects on the human body and also are extremely flammable, and hence pose significant fire and explosion hazards. CLC stated "DOL's OSHA experts are familiar with these hazards."

Finally, the CLC noted that the statute did not require woodworking establishments that employ youth under the provisions of FLSA section 13(c)(7) to report all work-related accidents and deaths of such workers to the Department. The CLC stated that even in the absence of such a reporting requirement, the Department can play an important role by publicizing not only the hazards of working in such places of business, but also the results of any child labor investigations involving woodworking machines. The CLC believed that such publicizing will remind all American youth, their parents, and their employers "of the grave dangers that these machines represent to working children."

The Department has carefully reviewed the comments of the YWN, AFL–CIO, and CLC. It has decided to adopt the proposal as written, with one clarifying modification.

Since the enactment of FLSA section 13(c)(7) on January 23, 2004, the Department's enforcement position has been that the employment of 14- and 15-year-olds employed under the provisions of that section must still be in compliance with all other provisions of Reg. 3, including the hours and time of day standards of § 570.35. Although this is evidenced by the Department's compliance and enforcement guidance and the structure of the NPRM, it was not explicitly stated in the proposed rule. The Department received an inquiry on this issue after the publication of the proposal. In order to prevent any possible confusion and to provide maximum clarity, the Department has revised the Final Rule by adding the following sentence to the end of § 570.34(m)(2): The employment of youth under this section must comply with the other sections of this subpart, including the hours and time of day standards established by § 570.35.

The Department appreciates the support and concerns of the commenters. The Department believes that the youths who will be employed under the provisions of FLSA section 13(c)(7) will receive significant workplace protections from the statute and these resulting regulations. Requiring pre-employment certification or training of youth was not envisioned by Congress, especially for a population of young workers whose formal education ends at such an early age. The Department also believes that the CLC recommendations that the ratio of supervisors to young workers should be one-to-one and that all adults supervising have experience in the workplace or the industry were not contemplated by Congress and would be viewed as excessive. Similarly, the Department believes that the CLC recommendation regarding the mandatory reporting of work-related injuries and deaths that might occur to youth employed under the provisions of FLSA section 13(c)(7) would be duplicative of the reporting requirements already established by OSHA.

The Department has long recognized the importance of, and the benefits resulting from, OSHA and WHD working together to share enforcement expertise and information, and to leverage compliance assistance initiatives. As recognized by the CLC, these two agencies have a long and productive history of partnering for the benefit of American workers and those who employ them. It is the Department's intention that this relationship will continue to grow and accommodate additional partnering opportunities as they arise. As stated in the Final Rule, WHD will continue to rely on OSHA's expertise for guidance when applying the specific occupational health and safety-affecting requirements of FLSA section 13(c)(7) (*see* § 570.34(m)(1)(iii) and (iv)) as well as when assessing the risks from potential exposures to toxic chemicals; but WHD will not itself issue citations for violations of OSHA standards. As the CLC stated, "DOL's OSHA experts are familiar with these hazards."

Finally, the Department is well aware of the importance of keeping all stakeholders informed of its compliance assistance initiatives and enforcement findings, and of serious occupational injuries involving youth. WHD, OSHA, and NIOSH have, for many years, shared information among themselves concerning occupational injuries that have contributed to the deaths of young workers as soon as one of the parties learned of the death. WHD, OSHA, and NIOSH then work together to ensure that the appropriate rules are followed and enforced and to learn from each event in the hopes that future tragedies can be prevented. This cooperation will continue after the adoption of the Final Rule.

*C. Periods and Conditions of Employment (29 CFR 570.35)*

FLSA section 3(l) authorizes the Secretary of Labor to provide by regulation for the employment of young workers 14 and 15 years of age in suitable nonagricultural occupations and during periods and under conditions that will not interfere with their schooling or with their health and well-being. In enacting FLSA section 3(l), Congress intended to assure the health and educational opportunities of 14- and 15-year-olds, while allowing them limited employment opportunities.

Reg. 3 was promulgated in 1939 under the direction of the Chief of the Children's Bureau, in whom Congress vested the original delegation of authority to issue child labor regulations. The record on which Reg. 3 was based included hearings where advocates of children expressed concern over the need for children to avoid fatigue, so as not to deplete the energy required for their school work. Similarly, witnesses stressed that early morning and late evening work hours, which interfered with sleep and often fostered exhaustion, were unhealthful for children and also diminished the time that children should have spent with the family (*see* In the Matter of Proposed Regulation Relating to the Employment of Minors Between 14 and 16 Years of Age Under the Fair Labor Standards Act, Official Report of the Proceedings Before the Children's Bureau, *February 15, 1939, at 19, 21, 34, 82). Reg. 3 limits the hours that 14- and 15-year-olds may work to:*

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session; and

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

The Department did not propose to change any of these hours and time-of-day limitations, but wished to foster both understanding of, and compliance with, these provisions by incorporating into the regulations certain long-standing Departmental enforcement positions and interpretations. For example, the Department has developed long-standing enforcement positions regarding the application of certain of the hours standards limitations to minors who, for differing reasons, no

longer attend or are unable to attend school. Some of these positions have been in place since the 1970s and all have been detailed in the Wage and Hour Division's Field Operations Handbook since 1993. The Department proposed to incorporate them into Reg. 3 to promote both clarity and compliance. The Department proposed to amend § 570.35 to reflect that school would not be considered to be in session for a 14- or 15-year-old minor who has graduated from high school; or has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the requirements of the state school attendance law; or has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for this minor; or is subject to an order of a state or federal court prohibiting him or her from attending school; or has been permanently expelled from the local public school he or she would normally attend. Such minors would be exempt from the "when school is in session" hours standards limitations contained in §§ 570.35(a)(1), (a)(3) and (a)(5). The employment of such minors would still be governed by the remaining provisions of Reg. 3, including the daily, weekly, morning, and evening hours standards limitations contained in §§ 570.35(a)(2), (a)(4), and (a)(6).

The Department also proposed to clarify the hours restriction contained in § 570.35(a)(5), which limits the employment of 14- and 15-year-olds in nonagricultural employment to no more than 3 hours on a day when school is in session, by adding a statement that this restriction also applies to Fridays. The WHD occasionally receives requests for clarification from employers seeking to lengthen the work shifts of younger employees on nights that do not precede a school day. As the stated purposes of the hours standards limitations include the protection of young workers from exhaustion and the preservation of time for rest and family relations, no more than 3 hours of work is permitted on any day when school is in session.

The Department also proposed to incorporate into Reg. 3 its long-standing position that the term *week* as used in Reg. 3 means a standard calendar week of 12:01 a.m. Sunday through midnight Saturday, not an employer's workweek as defined in 29 CFR 778.105. The calendar week would continue to serve as the timeframe for determining whether a minor worked in excess of 18 hours during any week when school was in session or in excess of 40 hours in any week when school was not in session.

Finally, as noted above, Reg. 3 limits the employment of 14- and 15-year-olds to periods that are outside of school hours and to designated hours depending upon whether or not school is in session. Although neither the FLSA nor Reg. 3 defines the terms *school hours* and *school is in session* as they apply to nonagricultural employment, the Department has developed and applied a long-standing enforcement position that these terms refer to the normal hours of the public school system in the child's district of residence. This enforcement position mirrors the provisions of FLSA section 13(c)(1), which Congress added in 1949, to clarify how these terms apply to the employment of youth in agricultural employment. FLSA section 13(c)(1) states, in relevant part: "The provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee * * *. (C) is fourteen years of age or older."

Though the Department did not propose specific regulatory language regarding these terms when it published the NPRM, it did seek information from the public regarding whether such regulatory provisions would be appropriate, including whether: (1) The Department should continue to use the hours of operation of the local public school where a minor resides to determine when he or she may legally be employed, even when that minor does not attend that local public school or, for whatever reason, may actually have attendance requirements that differ from those of the rest of the students attending that local school; (2) the FLSA's requirement that such a minor only be employed under conditions and during periods that will not interfere with his or her schooling or health and well-being would be equally or better served if it were based on the minor's own actual academic schedule; and (3) using the academic schedule and attendance requirements of each minor when determining when school was in session for that minor would provide working youths greater opportunities and flexibility when seeking safe, positive and legal employment. The Department stated that, based on the comments it received, it would consider adding regulatory provisions to the Final Rule defining the terms school hours and school is in session as they apply to nonagricultural employment.

The Department received nine comments on this proposal. Two commenters, the YWN and the CLC, addressed the proposal to incorporate into § 570.35 certain long-standing departmental enforcement positions regarding the application of the hours standards. Both supported the Department's enforcement positions that school should not be considered in session for a 14- or 15-year-old youth who has graduated from high school; has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the provisions of the state school attendance law; or is subject to an order prohibiting him or her from attending school. Although the YWN supported the proposals that school should also not be considered in session for a youth who (1) has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for that minor, or (2) has been permanently expelled from the local public school he or she would normally attend, the CLC did not. The CLC stated that it believes it is "ill-advised to excuse 14- and 15-year-olds from compulsory school attendance on the basis of parental status. It serves the best interests of the 14- and 15-year-old parent, as well as the young parent's child, for the parent to complete his or her education, thus realizing a long-term benefit of increased and better employment in the future." The CLC stated that a child permanently expelled from public school might still be required, under state or local law or perhaps court order, to attend some other school. The CLC recommended that the Department amend its proposed revision to read "Has been permanently expelled from the local public school he or she would normally attend, unless the child is required, by state or local law or ordinance, or by court order, to attend another school."

Only the YWN and CLC commented on the Department's proposal to clarify the Reg. 3 limitation that 14- and 15-year-olds may not be employed to work more than three hours on any one day when school is in session by adding the phrase "including Fridays." Both the YWN and the CLC supported this proposal. The representative of White Hat recommended that participants in programs similar to those of the charter schools he advises should be permitted to work up to five hours on a school day.

The Department received six comments that addressed its proposal to incorporate into Reg. 3 its long-standing

position that the term "week" as used in Reg. 3 means a standard calendar week of 12:01 a.m. Sunday through midnight Saturday, not an employer's workweek as defined in 29 CFR 778.105. The proposal stated that the calendar week would continue to serve as the timeframe for determining whether a minor worked in excess of 18 hours during any week when school was in session or in excess of 40 hours in any week when school was not in session.

Both the YWN and CLC supported this proposal. Four commenters, the Food Marketing Institute (FMI), Six Flags, the WWA, and the representative of Morey's Pier, opposed the proposal. The FMI described itself as a conductor of "programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies—food retailers and wholesalers—in the United States and around the world." The FMI reported that its retail membership is composed of large multi-store chains, regional firms and independent supermarkets. The FMI stated "[w]e strongly object to this change, which would create an administrative nightmare, and see no reason for it." The FMI commented that most of its members already have systems in place based on their own workweeks that automatically check hours worked to make sure minors do not exceed their allowable hours. "By requiring the use of a Sunday to Saturday midnight week, employers would be forced to check hours worked manually, making it more likely that mistakes would be made."

The WWA echoed the concerns of the FMI and asked that the proposed rule be amended to allow employers to calculate hours worked so that Saturday and Sunday hours may be included within the same workweek. Six Flags expressed the same concern regarding its ability to use its payroll tracking system as a compliance tool and recommended that the Department allow employers to use any reasonable system such as labor tracking and payroll monitoring tools that complement their record keeping systems. The representative of Morey's Pier recommended that the term *workweek* should be defined, but not necessarily by the calendar.

The Department received six comments on its enforcement position that defines the term *school in session* as applying to the normal hours of the public school system in the minor employee's district of residence. The YWN and the CLC supported using the hours of the local public school district the minor would attend if he or she attended public school when defining the term *school in session.* The YWN praised the enforcement benefits that would arise from having only one standard in each school district, thereby avoiding multiple schedules that would create unworkable and needlessly complex enforcement standards. The YWN also suggested that the Department should clearly state in the Final Rule that school is considered to be in session during any week in which school attendance is required for one or more days. The CLC commented that "[if] the school day schedules established by private schools and by parents of home-schooled children could determine when children being educated in those settings governed here, there would be nothing in the DOL child labor regulations that would prevent such a school or parent from setting a schedule that would permit children to work during the hours that the public school system is in session. Indeed, non-public schools could be established by organizations whose prime goal is to provide 14- and 15-year-old working children to employers during normal business hours in the middle of the day, rather than to make sure that the children are in school during the hours when they are most alert and receptive to classroom instruction. We do not say that there would be many such schools or home-schooling parents, but the mere fact that such outcomes could occur should be reason enough to cause DOL to reject this approach." The CLC, when commenting on the Department's inquiry regarding whether employers of working youth should be given greater flexibility, stated "[t]here is no need for DOL to bend over backwards to try to assure that children have the absolute maximum opportunity to squeeze every possible minute of the day into the three hours that they can work during a school day. This approach seems to us to give far more emphasis to work experiences for 14- and 15-year-olds than to their education."

The National Council of Chain Restaurants (Council), the representative of Morey's Pier, and the FMI supported defining the term *school in session* by following the academic schedule and attendance requirements of each minor, rather than that of the local public school. The Council noted that frequently "the academic schedule and attendance requirements followed by public schools do differ, sometimes significantly, from the schedule followed by private schools. By applying each minor's actual school schedule, rather than arbitrarily applying the local public school schedule, job opportunities would be expanded for minors subject to Child Labor Reg. 3 without adversely impacting the school work of such minors." The FMI stated that adopting the hours of the local public school when defining the term *school is in session* would "make no sense" for the many young people who do not go to public schools. The FMI found it "hard to understand why their work hours should be governed by a school system they have nothing to do with." The representative of Morey's Pier believed that each minor should be treated individually and that his or her own academic schedule and attendance requirements should be used when determining when school was in session for the minor. Barring adoption of her recommendation, she believed the Department's enforcement position to be the "second best option."

The DOLWD did not oppose this enforcement position but suggested that an "exception" from the definition of *school is in session* should be created for youth enrolled in home school or other alternative school programs based on considerations of "whether the work interferes with the individual's schooling, health or well being rather than the hours of operation for public schools." The DOLWD also suggested that the federal regulations on the number of hours that 14- and 15-year-olds may work should be amended to be consistent with the more permissive standards established in Alaska. The Council also recommended that the Department expand the number of hours that such youth may be employed to four hours on any school day; to as late as 8 p.m. on any evening between Labor Day and May 31st; and as late as 10 p.m. on any evening between June 1st and Labor Day. The YWN recommended that the Department eliminate the reference to between June 1st and Labor Day and replace it with the actual calendar of each public school, noting that an increasing number of school districts have year-round schedules.

After carefully reviewing the comments, the Department has decided to continue its long-standing enforcement position that *school hours* are defined by the hours that the local public school district where the minor resides when employed is in session, and to add this definition to § 570.35(b) to avoid confusion and to simplify both compliance and enforcement of the hours standards of Reg. 3. The Department has also included in this definition the YWN's recommended clarifying statement that school should be considered to be in session during any week when school attendance is

required for any portion of a day. The Department is also adding to that section its long-standing position that *outside school hours* means such periods as before and after school hours, holidays, summer vacations, weekends, and any other day or part of a day when the local public school district where the minor resides while employed is not in session. This section will also note that summer school sessions, held in addition to the regularly scheduled school year, are considered to be outside of school hours.

The Department appreciates the concerns of the one employer and two employer associations that recommended that an employee's own academic schedule and individual attendance requirements should be used to determine when school is in session for that minor and recognizes how such a position could be seen as a means of providing minors with more work experiences while addressing employer staffing problems. But the Department is concerned that such a system may not give the proper emphasis to obtaining an education and would make employer compliance and WHD enforcement more difficult and more complicated than necessary, given the broad variety of daily school schedules that each young employee could have.

The Department believes that the continuation and incorporation of this enforcement position brings clarity in that employers need only look to the hours of operation of the local public school where the minor resides to attain compliance. It also ensures that the consistent application of these terms for both agricultural and nonagricultural employment will continue, thereby avoiding confusion among those employers who offer both agricultural and nonagricultural employment to young workers. Finally, continuation of this enforcement position facilitates the enforcement of the Reg. 3 hours standards by establishing a single, easily determinable standard.

The Department also believes that continuation of this enforcement position is appropriate as it does not provide any minor or class of minors with an incentive to leave public school or with an unfair and improper advantage over public school youth when competing for employment. The Department notes the CLC's concerns that determining when school is in session by using each student's individual academic schedule could foster the development of nonpublic schools or home-schooling programs created primarily to provide 14- and 15-year-old working children to employers during the hours they would normally have attended public school. While the Department agrees with the CLC that it is unlikely that many such schools or home-schooling programs would materialize, it does note that the emergence of schools that were designed to allow migrant children to work on farms during the daylight hours when the local public school was in session, was an impetus for the 1949 amendment to the FLSA that codified this very same enforcement position as it relates to agricultural employment.

The Department has decided not to incorporate into Reg. 3 its long-standing enforcement position that a calendar week—12:01 a.m. Sunday through midnight Saturday—shall be the framework for determining if a 14- or 15-year-old has been employed more than 18 hours in any week when school is in session or more than 40 hours in any week when school is not is session. The Department agrees with several commenters who noted that applying the same definition of the term *week* for determining compliance with the minimum wage, overtime, and child labor provisions of the FLSA would make it much easier for employers to use their payroll systems as tools and tracking systems for implementing and maintaining compliance with the child labor requirements. Accordingly, as suggested by those commenters, the Department will define the term *week* as used in Reg. 3 to be the same workweek the employer establishes for the youth to determine overtime compensation under 29 CFR 778.105—a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods.

Finally, the Department acknowledges the recommendations of the DOLWD, the Council, and the representative of White Hat regarding the relaxation of certain of the hours and time of day restrictions of Reg. 3 to permit 14- and 15-year-olds to work more hours on a school day or in a school week, or later into the evening. As noted in the NPRM, the Department did not propose any revisions to those standards. Any such changes, therefore, would be outside the scope of this rulemaking.

*D. Work-Study Programs*

Effective November 5, 1969, Reg. 3 was amended to provide a variance from some of the provisions of § 570.35 for the employment of minors 14 and 15 years of age enrolled in and employed pursuant to a school-supervised and administered Work Experience and Career Exploration Program (WECEP). Although originally proposed as an experimental program, Reg. 3 was amended to make the WECEP a permanent exception.

WECEP was created to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youth who can benefit from a career-oriented educational program designed especially to meet the participants' needs, interests, and abilities. The program was, and continues to be, specifically geared to helping dropout-prone youth become reoriented and motivated toward education and to prepare for the world of work. WECEPs may, however, be tailored to meet the needs of other students as well.

Section 570.35a establishes the criteria that must be met in order for states to apply for and receive authorization to operate a WECEP. This same section details the terms, conditions, and responsibilities participating states agree to assume upon receiving authorization to operate a WECEP.

As mentioned, certain provisions of § 570.35 relating to the Reg. 3 hours standards are varied for youth enrolled in and employed pursuant to an approved WECEP. Such youth may work up to 23 hours in any one week when school is in session and not more than 3 hours in any day when school is in session, any portion of which may be during school hours. The other provisions of § 570.35 (limiting employment to no more than 8 hours a day on any one day school is not in session, and no more than 40 hours in any one week when school is not in session) remain applicable to the employment of WECEP participants. Section 570.35a also includes provisions that allow the Administrator of the Wage and Hour Division discretion to grant requests for special variances from the occupation standards established by §§ 570.33 and 570.34.

Several states have advised the Department that WECEP serves its targeted audience well, helping those who are not academically oriented stay in school and complete their high school educations. However, WECEP, by design, does little to help those students who wish to use work experience, and the wages such experiences generate, as a means to realize their academic potential and acquire a college education.

In 2003, the Department became aware of a non-profit network of private schools, hereafter referred to as the Network, that was operating a corporate work-study program for its students. The Network is an association of private, not-for-profit college preparatory high schools that strive to

meet the educational needs of people in many economically challenged areas throughout the country. The work-study program was implemented to help students offset the costs of a quality college preparatory education and develop important work experience and socialization skills that will allow them to assume leadership roles as adults.

Under the Network's model, four students share a single, full-time clerical position with a private employer at a work place screened and selected by the school. Each youth works five full days per four-week period for the employer at the work place—one eight-hour day once a week for three weeks, and two eight-hour days every fourth week. The academic schedules of the students are carefully coordinated so that students do not miss any classes on the days they work and the school year has been extended beyond the standard academic schedule of the local public school to compensate for the time the students spend at work. These accommodations ensure that students complete a fully accredited, college preparatory curriculum that exceeds both state and accrediting agency requirements. Under the Network model, students do not work more than eight hours a day, before 7 a.m. or after 7 p.m., and are transported to and from their jobs by the school. The students receive at least the applicable federal and state minimum wages, and applicable taxes are withheld and reported by their respective employers. The Network envisioned the work-study program as an integral part of the academic program, yielding benefits on many different levels. Students, their parents, and the work-study director sign an agreement defining performance expectations and program support structures. Participating employers are also required to sign an agreement defining job duties and expectations. All students are required to participate in the work-study program, beginning with their freshman year and ending at graduation.

The Network provided information that its model is achieving its stated aims. It advised the Department that 100 percent of the students of the 2003 graduating class of one of its schools were accepted into college. The school is located in a neighborhood where 20 percent of those attending the local public school drop out annually and the high school graduation rate of the local public school is 55 percent.

Reg. 3, as currently written, does not allow 14- and 15-year-olds to participate in the Network's work-study programs. Such youth may not work during the hours school is in session—unless participating in a state sponsored WECEP—and may not work more than three hours on a day the local public school is in session.

Because the Department believes that the health, well-being, and educational opportunities of 14- and 15-year-olds who are academically oriented are not placed at risk by participation in structured work-study programs such as the Network's model—and are in fact enhanced by such participation—it proposed that Reg. 3 be revised to accommodate such programs. The Department proposed to allow public and private school districts or systems to apply to the Administrator of the Wage and Hour Division for approval to operate a work-study program that would permit certain 14- and 15-year-olds to work during school hours and up to eight hours on a school day under specific circumstances. An individual private school that was not part of a network, district, or system would also be able to apply to participate in a work study program.

The youth would have to be enrolled in a college preparatory curriculum and must receive, every year they participate in the work-study program, at least the minimum number of hours of class room instruction required by the applicable state educational agency responsible for establishing such standards. Participating youth would also be required to receive annual classroom instruction in workplace safety and child labor provisions. Home-schooled youth would be able to participate in work-study programs operated by local public schools in the same manner many currently participate in team sports programs, band, and other extracurricular activities.

Each participating school would be required to name a teacher-coordinator to supervise the work-study program, make regularly scheduled visits to the students' work sites, and ensure that participants are employed in compliance with the minimum wage and child labor provisions of the FLSA. In addition, the teacher-coordinator, the employer and the student would be required to sign a written participation agreement that details the objectives of the work-study program, describes the specific job duties to be performed by the student, and the number of hours and times of day that the student would be employed each week. The agreement, which must also be signed or otherwise consented to by the student's parent or guardian, would also affirm that the student will receive the minimum number of hours of class room instruction as required by the state educational agency for the completion of a fully-accredited college preparatory curriculum and that the employment will comply with the applicable child labor and minimum wage provisions of the FLSA.

Students participating in a valid work-study program would be permitted to work up to eighteen hours a week, a portion of which may be during school hours, in accordance with the following formula that is based upon a continuous four-week cycle. In three of the four weeks, the participant would be permitted to work during school hours on only one day per week, and for no more than eight hours on that day. During the remaining week of the four-week cycle, such minor would be permitted to work during school hours on no more than two days, and for no more than eight hours on each of those two days. The employment of such minors would still be subject to the time of day and number of hours standards contained in § 570.35(a)(2), (a)(3), (a)(4), and (a)(6).

The Department received eight comments on this proposal. The Cristo Rey Network, which described itself as "a non-profit corporation that co-ordinates twelve college prep high schools across the country," self-identified itself as the Network that the Department describes in the NPRM. The Cristo Rey Network was most supportive of the proposal and noted that its work-study program meets the statutory objective of permitting youth employment only "during periods and under conditions that will not interfere with their schooling or health and well being" as required by FLSA section 3(l). Cristo Rey stated "[m]eeting those objectives can be quantified in Cristo Rey's 97+% attendance rate and/or in its graduates' own achievements: *i.e.,* of 219 graduates in 2006, 212 were accepted into colleges including schools such as the University of California at Berkley, the University of Illinois, the University of Notre Dame, the University of Chicago, and Wellesley College; and the success continues: of 318 graduates in 2007, 313 will attend college this Fall." Cristo Rey noted that the schools in the Network provide an option for private education to children who are "predominantly Latino (63%) or African-American (25%) and who are all from economically-disadvantaged families; the average family income of these students is approximately $33,000—far too little to make private education an option absent the work-study program that the schools in the Network have pioneered."

The YWN disagreed with the proposal, stating that § 570.35a already includes provisions that allow the WHD

to grant requests for special variances from the occupation standards regarding prohibited work, and that this should be expanded to grant variances from the Reg. 3 hours standards as well. The YWN stated that this proposal benefits one single program and makes the regulations unnecessarily complex. It also raises concerns that the "host employer" might not be subject to the same restrictions and requirements as any other employer who hires youth and that students may be replacing a "regular paid employee."

The CLC noted that it had several serious concerns about this proposal. It felt that the proposal was so narrowly tailored to one specific program that it could easily bar other school systems "that have similar, but not identical, approaches" from taking advantage of the program. The CLC stated that "[w]hat is particularly troubling—and what DOL does not indicate in its preamble to the proposed regulation—is that the only school system that appears to qualify for the proposed program is a private Roman Catholic system." The CLC stated that "[t]he DOL proposal raises serious questions under the First Amendment to the United States Constitution, which forbids the government favoring one religious sect over another."

The CLC also raised concerns as to whether DOL would "be able to assure that no violations occur under this system" and of "the secrecy of the approval process that DOL would adopt." The CLC believed that the proposed approval process is not sufficiently transparent and recommended that DOL be required to publish a notice in the **Federal Register** detailing every work-study program application and invite public comment during a specified period of 30 or 60 days.

The CLC also noted that the proposal would not prohibit an employer from replacing a permanent worker at an establishment participating in the work-study program with student-workers, as prohibited under the WECEP provisions contained in § 570.35a(e). The CLC also expressed concerns that the Cristo Rey Network has been operating a work-study program for almost a decade and questioned how much of each youth's pay check goes to Cristo Rey and how much, if any, goes to the youth. Finally, the CLC also questioned, as did the YWN, if the "host employers" or the Cristo Rey High School would be considered the actual employers of the youth under the FLSA.

The Department received several comments supporting the creation of a work-study program that would allow youth to work during the hours school was in session, but opposing that such a program be limited, as the Department proposed, to students enrolled in a college preparatory curriculum. The DOLWD recommended that the program should be expanded to include pre-apprenticeship work training programs, and a representative of the New Jersey Department of Education (NJDOE) recommended that "determining the educational and eligibility requirements for such programs be left to state education agencies." The NJDOE also stated that the Department's proposal to limit participation in the work-study program "conflicts with the federal No Child Left Behind Act, the federal Carl D. Perkins Career and Technical Education Act, the federal Individuals with Disabilities Education Act, and state laws and regulations, which require state education agencies and public schools to serve all students and provide all students with comprehensive career education, including opportunities to further explore careers in work-based learning activities."

The representative of White Hat supported the creation of a work-study program but suggested that charter schools of the type he represents should not be subjected to the "bureaucratic requirements" imposed by the work-study application process proposed by the Department, "which can be prohibitive for some smaller schools and which serve to take needed resources away from educational instruction and helping more students." He also stated that limiting participation in the proposed work-study program to students enrolled in a college preparatory curriculum "can also have the unintended consequence of denying extended work hours and compensation from those who need it the most, the undereducated."

A representative of the National Association of State Directors of Career Technical Education Consortium (State Directors) apparently believed that the adoption of the proposal contained in § 570.35b would preclude anyone but a student enrolled in a college preparatory curriculum from participating in any work-study program in the future. He stated "such a rule would cripple career technical education (CTE) programs that have work-based learning opportunities embedded within the curriculum." The same assumption was made by a teacher at the Sunrise Mountain High School in Peoria, Arizona who commented "[t]hese internships provide our students valuable hands-on experiences to help connect school and careers in a meaningful way. The RIN 1215–AB44 proposal would remove this valuable learning experience from our students."

The Department has carefully reviewed the comments and has decided to implement the proposal as written with two minor modifications. The first modification involves a redesignation of the sections dealing with both WECEP and the Work Study Program as requested by the **Federal Register.** The current § 570.35a will be redesignated as § 570.36 and the proposed § 570.35b will be issued as § 570.37. The second modification clarifies the role of the teacher-coordinator.

The Department wishes to emphasize that this proposal creates a new, limited, work-study program designed to accommodate the needs of a narrowly defined population—14- and 15-year-old students enrolled in a college preparatory curriculum at a public or private school that has been granted authority to operate such a program by the Department. This new program does not in any way negate or preclude schools or employers from participating in other preexisting or future work-study programs, work experience and/or career exploration programs, internships, or apprenticeships that also comport with the provisions of the FLSA (whether with the hours standards and time of day restrictions in § 570.35 or the special WECEP rules in § 570.35a (old) and § 570.36 (new)). This proposal was developed and offered solely with the intent, as stated earlier in this section, of providing reasonable and structured accommodations within Reg. 3 so that academically oriented 14- and 15-year-olds could begin their pursuit of college educations through work-study programs. Participation in the proposed work-study program is voluntary and it in no way conflicts with other federal, state, or local programs addressing the educational needs of young workers. The concerns of the State Directors and the NJDOE are unfounded.

The Department appreciates the recommendations of several commenters that the work-study program should be extended to youth enrolled in programs other than college preparatory, such as vocational programs, internships, and apprenticeships. The Department notes that the already existing WECEP (*see* § 570.36 (new)) would provide those programs with limited exemptions from the hours standards contained in § 570.35(a) that are similar to the exemptions provided by the proposed work-study program.

The Department also disagrees with the YWN and CLC comments that the

proposed work-study program was designed to accommodate a single program—the Cristo Rey Network. Although the Cristo Rey Network work-study model was reviewed by the Department, the proposed work-study program differs considerably from that model. The Department's proposed WSP, unlike the Cristo Rey model, requires annual classroom instruction in workplace safety and state and federal child labor provisions and rules (*see* § 570.37(b)(3)(ii)), the oversight of a designated teacher-coordinator required to make visits to the students' workplaces (*see* § 570.37(b)(3)(iii)), the completion of a detailed written participation agreement (*see* § 570.37(b)(3)(iv)), and a rigorous certification process. The Department believes that these additional requirements, many of which correspond to the criteria established for operating a WECEP under § 570.36 (new), will provide adequate protections to all students who participate in an approved work-study program under the provisions of § 570.37 (new). The Department also believes that the certification process as proposed by the Department, which again is similar to that required of WECEP applicants, provides sufficient transparency without requiring publication in the **Federal Register** or public comment. In addition, pursuant to the President's commitment to openness and transparency,[1] the Department intends to publish the list of schools authorized to operate a work-study program on the WHD Web site.

The Department also notes that the proposed work-study program provides considerable flexibility to those schools that choose to participate. The limitations on the number of hours that participating students may be employed (*see* § 570.37(c) (new)), though in line with those established by the Cristo Rey Network, constitute the absolute maximum number of hours that participants may be employed. Participating schools and employers may choose to adopt some other schedule of work hours that comport with the established maxima—such as one four-hour day or one six-hour day each workweek; or two eight-hour days each weekend; or three hours a day at the end of each of three school days, as long as those hours comply with end-of-day hours standards established by § 570.35(a)(6). In addition, a school could apply and receive authorization under § 570.37 (new) to operate a work-study program for just one student, one group of students, or, as in the case of the Cristo Rey Network, the entire student body.

The Department wishes to emphasize that the development of this student-work program was never intended to advantage any single, private school system, but was proposed for the benefit of all academically motivated students enrolled in college preparatory curricula that can avail themselves of such a program of employment that clearly facilitates, rather than interferes with, their schooling. The Department, for this very reason, did not specifically identify the Cristo Rey Network in the NPRM. It did not want the public mistakenly to believe that participation in the proposed work-study program would be limited to private schools, public schools, or any particular religious or nonreligious sect. For similar reasons, the Department did not identify the municipalities that inquired about the employment of youth by state and local governments and as lifeguards, which led to the Department's enforcement positions on those topics. Since publication of the NPRM, the Department has received inquiries from public schools and private schools (not part of the Cristo Rey Network) about establishing work-study programs under § 570.37 (new).

The Department also wishes to assure both the YWN and CLC that employers participating in the work-study program authorized by § 570.37 (new) would indeed be the employer of the youth under the FLSA and held to all the Act's minimum wage, overtime, record keeping, and child labor provisions—unless subject to a specific exemption or exception—as would any other employer. In fact, depending upon the facts of each situation and the degree of control the school exercises over the employment of the participating student, it is possible that the student would be considered to be jointly employed by the host-employer and the youth's school under the FLSA (*see* 29 CFR part 791). The FLSA would require that students participating in the work-study program, if covered by the Act and not exempt from the minimum wage requirements of section 6, receive the applicable minimum wage for all hours worked. Such students may, in accordance with 29 CFR 531.40, make a voluntary assignment of their wages to a third party. The employment of students participating in the work-study program would also most likely be subject to state wage requirements and child labor provisions. When state and federal requirements differ, the FLSA does not supersede any more protective state child labor requirement and employers must normally comply with the more stringent standard.

Under § 570.37 (new), the participating school district and employers share the burden of ensuring that the employment of work-study program participants is in compliance with the FLSA. When the Department conducts an investigation of a work-study program participating employer, it will follow its normal investigation procedures to determine if the employer complied with child labor requirements. The employer will be held responsible for any violations of the FLSA or the child labor regulations. But the Department considers it appropriate that the school district sponsoring the work-study assist the employer in the both achieving and monitoring the compliance of the work-study program.

Therefore, the Department has revised the proposed regulatory language at § 570.37(b)(3)(iii) to emphasize the role of the teacher-coordinator in confirming that the employment of the work-study program participant complies with the child labor and minimum wage requirements of the FLSA. In addition, when a school system files a letter of application to renew an existing work-study program, it will be required to note that the teacher-coordinator has confirmed that the employment of students in the work-study program has been in compliance with the child labor and minimum wage provisions of the FLSA.

The Department believes that the teacher-coordinator occupies an ideal position to both help the employer attain and maintain compliance with the all the requirements of work-study program and assist the Department's enforcement efforts by confirming that compliance. In addition to the regularly scheduled visits to the workplaces the teacher-coordinator is required to make, the Department suggests that such things as frequent interactions with the work-study program students, program assessments and evaluations completed by the students and the employers, and surprise or unscheduled visits to the workplaces can all contribute to the operation of a safe, compliant, and positive work-study program. The suggested methods of confirmation are purely discretionary; no work-study participating school district will be penalized for not adopting them. The Department notes that it is not imposing any recordkeeping burdens on the employers or the school districts beyond those proposed in the 2007 NPRM, therefore no additional estimates of costs or burdens will be incurred that

[1] January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, available at: *http://edocket.access.gpo.gov/2009/pdf/E9-1777.pdf.*

must be accounted for pursuant to the Paperwork Reduction Act and Regulatory Flexibility Act.

The Department appreciates the concerns of both the YWN and the CLC that the proposed work-study program, unlike the WECEP, does not prohibit participating employers from displacing a worker already employed in the employer's establishment with a student (*see* § 570.36(e) (new)). The Department's experience with the pilot work-study program indicates that most of the jobs occupied by the students were entry-level positions created especially for the work-study program. In addition, the pilot program reduced the number of jobs being occupied by student participants by requiring that four students share a single full-time position. The Department expects that its experiences under the new work-study program will be similar. It believes that encouraging employers to create such multiple employment opportunities for youth who qualify for participation in the work-study program warrants this flexibility.

*E. Logging Occupations and Occupations in the Operation of Any Sawmill, Lath Mill, Shingle Mill, or Cooperage Stock Mill (Order 4) (29 CFR 570.54)*

HO 4 generally prohibits minors 16 and 17 years of age from being employed in most occupations in logging and in the operation of a sawmill, lath mill, shingle mill or cooperage stock mill. The HO was created because of the extremely high numbers of occupational fatalities and injuries that were experienced by workers of all ages in these industries.

HO 4 currently provides exemptions that allow 16- and 17-year-olds to perform some occupations within the logging industries. Such minors may perform work in offices or repair or maintenance shops. They may work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps. They may work in the peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by HO 4. They may work in the feeding and care of animals. Finally, they may work in timber cruising, surveying, or logging engineering parties; in the repair or maintenance of roads, railroads, or flumes; and in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookouts or fire patrolman away from the actual logging operations—but only if such tasks do not involve the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and working on trestles.

HO 4 also provides exemptions at § 570.54(a) (old and new), permitting 16- and 17-year-olds to be employed in certain sawmill, lath mill, shingle mill, or cooperage stock mill occupations. These exemptions, which do not apply to work performed in a portable sawmill or that entails the young worker entering the sawmill building, permit 16- and 17-year-olds employed in occupations in the operation of sawmills, lath mills, shingle mills, or cooperage stock mills to work in offices or in repair or maintenance shops; to straighten, mark, or tally lumber on the dry chain or the dry drop sorter; pull lumber from the dry chain; to clean up the lumberyard; to pile, handle, or ship cooperage stock in yards or storage sheds other than operating of or assisting in the operation of power-driven equipment; to perform clerical work in the yards or shipping sheds, such as done by ordermen, tally-men, and shipping clerks; to perform clean-up work outside shake and shingle mills, except when the mill is in operation; to split shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover; to pack shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover; and to manually load bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

The NIOSH Report recommends that the Department not only retain HO 4, but expand its coverage to include work in the operation of timber tracts (Standard Industrial Classification (SIC) 081) and forestry services (SIC 085) because of the high number of fatalities occurring in such operations (*see* NIOSH Report, page 27). The SIC industry group of timber tracts encompasses establishments primarily engaged in the operation of timber tracts or tree farms for the purpose of selling standing timber, including those establishments that grow Christmas trees. The SIC industry group of forestry services encompasses establishments primarily engaged in performing, on a contract or fee basis, services related to timber production, wood technology, forestry economics and marketing, as well as other forestry services not contained in another SIC such as timber cruising, forest fire fighting, and reforestation. Establishments that perform timber estimation and valuation and forest fire prevention and pest control are also included in SIC 085.

The Report states: "The logging industry * * * had the highest lifetime risk of fatal injury of any industry, at 47 deaths per 1,000 workers based on an analysis of National Traumatic Occupational Fatality Surveillance System data for 1990 and 1991. Sawmills, planing mills, and millwork * * * had the 14th highest lifetime risk of 5.8 deaths per 1,000 workers" (*see* NIOSH Report, page 28). The Report also documents that the forestry industry has a high fatality rate as well, and workers face injury risks similar to those of logging workers. Citing data from the Census of Fatal Occupational Injuries (CFOI), the Report identified 82 fatalities of workers between 1992 and 1997 employed in the forestry industry as a whole, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries and those providing related forest service activities such as cruising and estimating timber, reforestation, fire prevention and fire fighting, pest control, timber valuation, and the gathering of forest products. Transportation incidents were the most common fatal event among forestry workers, accounting for 43 of the 82 deaths (*see* NIOSH Report, page 30).

Although the Report notes that there was almost no data specific to workers 16 and 17 years of age, the CFOI identifies 35 deaths in timber tract operations for all age groups between 1992 and 1997 and 39 deaths in forestry service operations for all age groups during the same period. Forestry workers also experienced fatal injuries such as those typically associated with the logging industry; in 26 of the 82 fatalities the worker was struck by a falling object (a tree in all but one instance). In addition, NIOSH also was able to identify 16 additional deaths of workers of all ages that were attributable to forest fire fighting activities (*see* NIOSH Report, page 30).

NIOSH notes that work in SIC 083, forest nurseries and gathering of forest products, is associated with very small numbers of fatalities and should not be prohibited by HO 4. SIC 083 encompasses those establishments primarily engaged in growing trees for purposes of reforestation or in gathering forest products. The concentration or distillation of these products, when carried out in the forest, is also included

in this industry. Examples of industries or activities included in SIC 083 are the gathering of balsam needles, ginseng, huckleberry greens, maple sap, moss, Spanish moss, sphagnum moss, teaberries, and tree seeds; the distillation of gum, turpentine, and rosin if carried on at the gum farm; and the extraction of pine gum. It should also be noted that section 13(d) of the FLSA already provides an exemption from the Act's minimum wage, overtime, and child labor provisions to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

The Report also recommends that the Department remove the current exemption that permits 16- and 17-year-olds to work in the construction of living and administrative quarters of logging camps. The Report states: "Construction work has high risks for fatal and nonfatal injuries and should not be exempted in the construction of living or administrative quarters at logging sites or mills" (*see* NIOSH Report, page 27). The Department sought public comments about this issue in the ANPRM that was published concurrently with the NPRM on April 17, 2007 (72 FR 19328).

As mentioned earlier, the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), amended the FLSA by creating a limited exemption from the child labor provisions for minors 14 to 18 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained in section 13(c)(7) of the FLSA, allows eligible youth, under specific conditions, to be employed by businesses that use machinery to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines. This exemption necessitates that the Department revise both Reg. 3 and HO 4.

The Department agreed with the NIOSH Report recommendation that HO 4 should be expanded to cover work in forest fire fighting and forest fire prevention because of the risks inherent in those occupations. The Department also considered adopting NIOSH's recommendation that the employment of 16- and 17-year-olds be prohibited in the operation of timber tracts, tree farms, and forestry services, but was concerned that such youth may be able to be safely employed in certain facets or occupations within those industries. Therefore, the Department requested in the NPRM that the public provide information that would help it identify which occupations or tasks within the timber tract, tree farm, and forestry services industries are not particularly hazardous to youth.

The Department proposed to revise HO 4 to add a prohibition on the employment of youth 16 and 17 years of age in forest fire fighting and forest fire prevention occupations to the current prohibitions on logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill. The Department proposed to revise the title of HO 4 to reflect these changes.

Under the proposal, all occupations in forest fire fighting and forest fire prevention would include the controlling and extinguishing of fires, the wetting down of areas or extinguishing of spot fires, and the patrolling of burned areas to ensure the fire has been extinguished. The term would also include the following tasks when performed in conjunction with, or in support of, efforts to extinguish a fire: The piling and burning of slash; the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; acting as a fire lookout or fire patrolman; and tasks associated with the operation of a temporary fire fighting base camp. The proposed prohibition concerning the employment of youth in forest fire fighting and forest fire prevention would apply to all forest locations and buildings located within the forest, not just where logging or sawmilling takes place. The Department notes that, because the FLSA does not cover individuals who volunteer to perform services for state or local government agencies when the provisions in section 3(e)(4) are met, this proposal would not prohibit 16- and 17-year-old volunteers from donating their forest fire fighting services to state and local governments.

The Department also proposed to incorporate into HO 4 the provisions of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), which amended the FLSA by creating a limited exemption from the child labor provisions for certain minors 14 through 17 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained at section 13(c)(7) of the FLSA, overrides the HO 4 prohibition against 16- and 17-year-olds performing any work in the sawmill industry that entails entering the sawmill building by permitting certain youth to be employed inside and outside of places of business where machinery is used to process wood products. The Department proposed to revise HO 4 to incorporate the provisions of section 13(c)(7) in the same manner, and using the same definitions and interpretations, as it proposed when discussing revisions to Reg. 3, above.

The term *all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill,* as defined by HO 4, specifically excludes work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill. Although not defined in the regulations, the Department has, since at least 1942, considered the term *remanufacturing departments* to mean those departments of a sawmill where lumber products such as boxes, lawn furniture, and the like are remanufactured from previously cut lumber. The kind of work performed in such departments is similar to that done in planing mill departments in that rough lumber is surfaced or made into other finished products. The term is not intended to denote those operations in sawmills where rough lumber is cut to dimensions. Because the Department has, over the years, received requests for clarification as to the meaning of remanufacturing departments, it proposed to add the above definition to HO 4.

The Department also proposed to revise HO 4 to include all the definitions necessitated by the incorporation of the provisions of FLSA section 13(c)(7) as discussed earlier in this document. In addition, the Department proposed to restructure all the definitions in HO 4 in an alphabetical sequence to comport with guidance provided by the **Federal Register.**

The Department decided not to address, in the NPRM, the NIOSH Report recommendation to remove the HO 4 exemption that permits 16- and 17-year-olds to work in the construction of living and administrative quarters of logging camps. This is because the Report also recommended the creation of a new HO that would prohibit all work in construction occupations which, if adopted, would impact the provisions of not only HO 4 but several other HOs. The Department believes additional information is needed before it can address such a broad recommendation that would impact all construction occupations. In an attempt to obtain such additional information, the Department requested public comment on this subject in the 2007 ANPRM.

The Department received five comments addressing this proposal. The DOLWD stated it was in agreement with

the NIOSH recommendations, except that it believed that 16- and 17-year-olds, after completion of the ten-hour construction safety and health course certified by OSHA, could safely be employed to work in the construction of living and administrative quarters of logging camps. The DOLWD also recommended that an exception be granted allowing such youth "to be employed in logging camp support positions such as cook, janitor, etc."

The Director of Human Capital Management of the U.S. Department of Agriculture's Forest Service stated that the Forest Service applauded the Department of Labor's proposal that would prohibit 16- and 17-year-olds from performing fire fighting duties. The Forest Service did, however, recommend that the proposal be revised to permit such youth to work in forest protection-type activities, which it sees as non-hazardous, such as clearing fire trails or roads, maintaining fire fighting equipment, and acting as a fire lookout or fire patrolman. The Forest Service also noted that it "currently uses 16- and 17-year-old Job Corps employees and private contractors in our fire camps to perform such tasks as building platforms for tents, stocking commissary items, performing timekeeping activities and providing food services."

The AFL–CIO, YWN, and CLC all supported the proposed changes to prohibit the employment of young workers in forest fire fighting and forest fire prevention occupations. All three also expressed their disappointment that although the Department considered adopting NIOSH's recommendation that the employment of 16- and 17-year-olds be prohibited in the operation of timber tracts, tree farms, and forestry services, it did not do so. All three commenters provided rationales for adopting this NIOSH recommendation, which included examples of tasks and exposures commonly associated with such industries that they consider to be hazardous. For example, the AFL–CIO noted that "[w]orking in the forest industry can involve working at heights * * * These workers also cut the trees with a chainsaw and drag them from the cutting area to a truck and then load them on to a truck. The AFL–CIO strongly urges DOL not to permit children under 18 to do any of this work. Other forestry workers gather products which requires them to climb trees * * * children under 18 should not be able to work at heights in timber tracts or tree farms." The CLC commented that "[w]orking in the forestry industry can involve working at heights * * * using machetes and pruning shears * * * These workers also cut the trees with a chainsaw and drag them from the cutting area and then load them on to a truck. The CLC strongly urges DOL not to permit children under 18 to do any of this work, much of which is already prohibited."

Finally, the YWN, AFL–CIO, and the CLC all encouraged the Department to revise its proposal and accept the NIOSH recommendation to prohibit the employment of 16- and 17-year-olds in the constructing and repairing of living or administrative quarters of logging camps. The CLC also argued that language in the proposed HO 4 is changed from the current rule and contradicts itself in that § 570.54(a) declares all occupations in logging to be particularly hazardous; that the definition of *all occupations in logging* contained in § 570.54(b) includes the constructing, repairing, and maintaining of camps used in connection with logging; and § 570.54(a)(1)(ii) permits youth to perform such work.

The Department has carefully reviewed all the comments and has decided to adopt the proposal with certain modifications that will clarify the Final Rule. First, the Department has been persuaded by the comments of the Forest Service and the DOLWD that 16- and 17-year-olds can safely be employed in certain capacities in forest protection and in the operation of fire fighting base camps. The Department now concurs that employment at such camps, which are purposely located considerable distances from forest fires, when in compliance with all other Hazardous Occupations Orders, is not particularly hazardous or detrimental to the health or well-being of 16- and 17-year-olds. Such employment is very similar to that involved with the operation of logging camps, occupations that 16- and 17-year-olds have been permitted to perform for many years. Accordingly, the Department has revised the regulatory language in § 570.54(a)(2).

The Final Rule also provides that 16- and 17-year-olds may perform such fire prevention tasks as the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; the maintaining of fire fighting equipment; acting as a fire lookout or fire patrolman; and the piling and burning of slash. However, such tasks are permitted only when not performed in conjunction with extinguishing a forest fire. The Department believes the hazards associated with the activities of extinguishing a forest fire warrant this prohibition and has clarified the definition of all occupations in forest fire fighting and forest fire prevention to note that such work is prohibited not only in all forest and timber tract locations, but also in logging operations, and sawmill operations, including all buildings located within such areas.

The revisions the Department proposed to § 570.54(a)(1) (old) that removed paragraph (iii) of that subsection evidenced the Department's intention to prohibit 16- and 17-year-olds from employment in most timber tract and forestry service occupations. The previous § 570.54(a)(1)(iii) specifically excluded from the list of logging tasks deemed to be particularly hazardous to young workers who work in timber cruising, surveying or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; and work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire look-out or fire patrolman away from the actual logging operation. By removing this subsection, the Department removes the exception for timber tract and forestry service occupations.

The Department, in its 2007 NPRM, specifically requested public comments as to which occupations or tasks within the timber tract, tree farm, and forestry service industries, if any, are not particularly hazardous or detrimental to the health and well-being of youth (*see* 72 FR 19351). It was the Department's intention to qualify in the Final Rule which occupations, if any, would be permitted for 16- and 17-year-olds after the comments were reviewed. No comments were received that identified any tasks in these industries as being safe for minors to perform.

The Department believes that despite the lack of comments, 16- and 17-year-olds can safely perform certain tasks within the timber tract, tree farm, and forestry service industries. Such youth should be permitted to perform many of the tasks that HO 4 has long permitted youth employed in logging to perform: Working in offices and in repair or maintenance shops; work in the construction, operation, repair, or maintenance of living and administrative quarters, constructing and maintaining telephone lines; and work in the feeding or care of animals. In addition, youth employed in timber tract, tree farm, and forestry service industries should be permitted to perform tasks related to forest marketing and forest economics that are not performed in a forest. Finally, as mentioned above, such youth should also be permitted to perform certain tasks related to forest fire fighting and

forest fire prevention, when not performed in conjunction with the extinguishing of a fire, such as the clearing of trails or roads; the construction, maintenance, and patrolling of fire lines; acting as a fire lookout or fire patrolman; and tasks associated with the operation of a fire fighting base camp.

The Department has revised the regulatory language proposed in the NPRM for HO 4 at § 570.54(a) to make it clear that the employment of 16- and 17-year-olds to perform most jobs in timber tract, forestry service, and tree farm operations are prohibited. The revisions also simplify the section by combining, clarifying, and condensing previous subsections. The Department notes that the use of Standard Industrial Codes by the NIOSH Report was helpful in identifying the different occupations and industries that could be impacted by the Department's HO. But because many of the occupations and tasks addressed by the Final Rule either appear in more than one code or are not included in the codes listed in the Report, the Department did not use those codes in formulating the definitions used in the Final Rule. The Department has added language to § 570.54(a) to make it clear that the limited exceptions to HO 4 listed in that paragraph do not include any work that would be prohibited by any other HO contained in subpart E. The Department also added clarifying statements to § 570.54(a)(8) regarding the types of work that 14-year-olds employed under the provisions of FLSA section 13(c)(7) may perform inside a sawmill. As discussed earlier, similar clarifying language was added to § 570.34(m)(2). The Department has also moved the definition of *portable sawmill* contained within § 570.54(a)(2) (old) to the *Definitions* section (§ 570.54(b) (new)). In addition to changing the title of HO 4 to accommodate this revision, the Department has also added definitions of the terms *all occupations in forestry services* and *all occupations in timber tracts* to § 570.54(b). The Department has also replaced the words *firefighting* and *firelines* in the Final Rule with the words *fire fighting* and *fire lines.*

*All occupations in forestry services* shall mean all work involved in the support of timber production, wood technology, forestry economics and marketing, and forest protection. The term includes such services as timber cruising, surveying, or logging-engineering parties; estimating timber; timber valuation; forest pest control; forest fire fighting and forest fire prevention as defined in this section; and reforestation. The term shall not include work in forest nurseries, establishments primarily engaged in growing trees for purposes of reforestation. The term shall not include the gathering of forest products such as balsam needles, ginseng, huckleberry greens, maple sap, moss, Spanish moss, sphagnum moss, teaberries, and tree seeds; the distillation of gum, turpentine, and rosin if carried on at the gum farm; and the extraction of pine gum.

*All occupations in timber tracts* means all work performed in or about establishments that cultivate, manage or sell standing timber. The term includes work performed in timber culture, timber tracts, timber-stand improvement, and forest fire fighting and fire prevention. It would also include work on tree farms, except those tree farm establishments that meet the definition of agriculture contained in 29 U.S.C. 203(f).

*F. Occupations Involved in the Operation of Power-Driven Wood Working Machines (Order 5) (29 CFR 570.55)*

HO 5 generally prohibits the employment of 16- and 17-year-olds in occupations involving the operating, setting up, adjusting, repairing, oiling, or cleaning of power-driven woodworking machines. It also prohibits the occupations of off-bearing from circular saws and from guillotine-action veneer clippers. As previously mentioned, FLSA section 13(c)(7) now permits certain minors who are at least 14 years of age and under the age of 18 years to be employed inside and outside of places of business where machinery is used to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines.

The term *power-driven woodworking machines* has long been defined in § 570.55(b) to mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. Although FLSA section 13(c)(7) does not impact the prohibitions of HO 5 because eligible youth are still prevented from operating power-driven woodworking machinery, it does expand the types of workplaces where certain youth may be employed to include sawmills, lath mills, shingle mills, and cooperage stock mills as well as other workplaces the Department's Final Rule includes under Reg. 3 and HO 4. Employees at these newly permitted work sites routinely use power-driven equipment that process materials that may not be included in the current definition of power-driven woodworking machines contained in HO 5, such as trees, logs, and lumber. Accordingly, the Department proposed to amend the definition of power-driven woodworking machines to include those machines that process trees, logs, and lumber. To ensure consistency, the Department proposed that this single definition of power-driven woodworking machines be included in § 570.34(m) (Reg. 3), § 570.54 (HO 4), and § 570.55 (HO 5).

The Department also proposed to restructure the two definitions in this section to reflect an alphabetical sequence in accordance with guidance provided by the **Federal Register.**

The Department received three comments on this proposal. The AFL–CIO and YWN agreed with the Department's proposal to amend the definition of power-driven woodworking machines to include those machines that process trees, logs, and lumber. The YWN also recommended that the proposed definition of power-driven woodworking machines be revised to permit 16- and 17-year-olds to use small hand-held battery-operated drills that accommodate bits no larger than ⅜″ and hand-held oscillating- or vibrating-type sanders.

The CLC, YWN, and AFL–CIO expressed disappointment that the Department did not adopt NIOSH's alternative recommendation that the Department rewrite HOs 5, 8, and 12, which respectively address machines that work with wood, metal, and paper, by merging them into a single or multiple HOs which address the function of the machines rather than the material processed (*see* NIOSH Report, page 31).

After carefully reviewing the comments, the Department has decided to adopt the proposal as written. The Department did not request, nor does it possess, data regarding whether 16- and 17-year-olds can safely operate portable drills or sanders, or what requirements should be imposed to ensure their safe operation by young workers. Accordingly, it cannot adopt the recommendation of the YWN at this time. The Department notes that it is exploring the feasibility of adopting NIOSH's alternative recommendation that certain power-driven equipment be prohibited based on function rather than on the material being processed. Because of the complexity of the issue and in the hopes of obtaining additional information, the Department requested public comment on this recommendation in the ANPRM that

was published in conjunction with, and on the same day as, the NPRM.

*G. Occupations Involved in the Operation of Power-Driven Hoisting Apparatus (Order 7) (29 CFR 570.58)*

*HO 7 generally prohibits 16- and 17-year-olds from employment in occupations that involve the work of:* (1) Operating an elevator, crane, derrick, hoist, or high-lift truck except such youth may operate unattended automatic operation passenger elevators and electric or air operated hoists not exceeding one ton capacity; (2) riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator; and (3) assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

The NIOSH Report recommended that the Department expand HO 7 to prohibit the repairing, servicing, and disassembling of the machines and assisting in tasks being performed by the machines named in the HO. Assisting in tasks being performed by the machines would be tending the machines. The Report shows that a substantial number of deaths and injuries are associated with operating and assisting in tasks performed by power-driven hoisting apparatus, including deaths of youth (*see* NIOSH Report, page 36). Additionally, a considerable number of deaths were associated with activities not directly related to operation of the hoisting apparatus, notably servicing, repairing, and disassembling. Currently, the work of repairing, servicing, disassembling, and tending the machines covered by HO 7 is prohibited to 14- and 15-year-olds under Reg. 3 at § 570.33(b) (old) and § 570.33(c) (new). Under HO 7, 16- and 17-year-olds may currently perform such work, except they may not assist in the operation of a crane, derrick, or hoist as defined by the HO.

The Report also recommends that HO 7 be expanded to prohibit youth from riding on any part of a forklift as a passenger (including the forks) and from working from forks, platforms, buckets, or cages attached to a moving or stationary forklift. The Report notes that substantial numbers of fatalities occur among workers who are passengers on forklifts, riding on the forks, or working from the raised forklift attachments (*see* NIOSH Report, page 36). Currently, 14- and 15-year-olds are prohibited from riding on forklifts because Reg. 3 prohibits such youth from operating or tending hoisting apparatus and any power-driven machines other than office equipment. The Department has long interpreted tending to include riding upon the power-driven equipment. HO 7, however, prohibits older youth only from operating high-lift trucks such as forklifts. Since 1999, the WHD has investigated at least three incidents where youth under 18 years of age were seriously injured while riding on forklifts being operated by other employees. One 16-year-old who was riding on the tines of a forklift suffered especially serious injuries to his liver and pancreas as a result of being pinned against a wall when the driver was unable to stop the forklift.

The Report also recommends that HO 7 be expanded to prohibit work from truck-mounted bucket or basket hoists commonly termed "bucket trucks" or "cherry pickers" because worker fatalities are associated with work from such equipment (*see* NIOSH Report, page 36). The Report specifically notes the risk of falls and electrocution being linked with such equipment. The Report, citing CFOI data, reflects that there were 99 worker deaths associated with truck mounted bucket or basket hoists between 1992 and 1997 (*see* NIOSH Report, page 37).

In addition, the Report recommends that HO 7 be expanded to prohibit 16- and 17-year-olds from employment involving certain commonly used manlifts—especially aerial platforms—that do not meet the current definition of manlift contained in the HO. The Report contends that such manlifts appear to pose more significant injury risk than those traditionally prohibited by HO 7 (*see* NIOSH Report, page 36). HO 7 defines a manlift as a device intended for the conveyance of persons that consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom. The Report is correct that this current definition of manlift does not include, and therefore does not prohibit, 16- and 17-year-olds from operating or tending aerial platforms and other manlifts such as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

The Report also recommends that HO 7 be revised to eliminate the exemption that permits 16- and 17-year-olds to operate an electric or air-operated hoist not exceeding one-ton capacity. The Report states that current injury and fatality surveillance systems do not provide sufficient detail to justify this exemption. "A hoisted load weighing less than one ton has the potential to cause injury or death as a result of falling, or being improperly rigged or handled. Hoist-related fatalities of young workers have been reported, including a recent case in which a youth was killed while operating a half-ton capacity hoist" (*see* NIOSH Report, page 36).

The Department proposed to implement all five of the Report recommendations concerning HO 7. Sections 570.58(a)(1) and (a)(2) would be revised to reflect that in addition to work involved with operating the named equipment, the work of tending, riding upon, working from, servicing, repairing or disassembling such equipment would also be prohibited. Section 570.58(a)(3) would be eliminated because its provisions would now be contained in the revised § 570.58(a)(1). The work of assisting in the operation of a crane, derrick, or hoist would be prohibited because such tasks fall within the scope of tending of equipment. The exemption contained in § 570.58(a)(1) permitting youth to operate and ride inside passenger elevators would be retained, but the exemption that currently allows 16- and 17-year-olds to operate an electric or air-operated hoist not exceeding one ton capacity would be eliminated as per the Report recommendation.

The Department also proposed to reformat the definitions section contained in HO 7 to reflect an alphabetical sequence in accordance with guidance provided by the **Federal Register.** In addition, the Department proposed to revise the definition of manlift so that, as recommended by the Report, it incorporates those pieces of equipment that perform the same functions as manlifts but that do not currently fall within the prohibitions of the HO. The proposed definition included a statement that the term *manlift* shall also include truck- or equipment-mounted aerial platforms commonly referred to as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

The Department also proposed to revise the definition of high-lift truck to incorporate a long-standing enforcement position that industrial trucks such as skid loaders, skid-steer loaders, and Bobcat loaders are high-lift trucks as defined by HO 7. Although not specifically named as high-lift trucks in the current HO 7, such equipment meets the definition of high-lift trucks because each is "a power-driven industrial type of truck * * * equipped with a power-operated lifting device * * * capable of

tiering loaded pallets or skids one above the other." The Department has opined on this matter, in writing, since at least 1993. By adding skid loaders, skid-steer loaders, and Bobcat loaders to the definition of high-lift trucks, the Department believes it will clarify the requirements for compliance with HO 7. The Department has successfully defended this enforcement position, most recently in a case where minors were employed to operate a skid-steer loader to clean trailers used to haul livestock. In addition to affirming the Department's position that a skid loader was a "high-lift truck" within the meaning of HO 7, the court also found that the youths' operation of the equipment violated the HO even though the youth did not operate or utilize the loader's hoisting device but used the skid-steer loader as a "scraper" (*see Lynnville Transport, Inc.* v. *Chao,* 316 F. Supp. 2d 790 (S.D. Iowa 2004)).

The Department received three comments on this proposal. The YWN, AFL–CIO, and CLC supported all elements of the proposal, with additional recommendations. The YWN and AFL–CIO suggested that HO 7 be expanded to prohibit 16- and 17-year-olds from working with hydraulic grease racks, though the YWN recommended that an exception be made to permit automotive repair students in cooperative education programs who have been properly trained and receive appropriate supervision to "work around these racks" but not to operate them. The YWN also noted that "back hoes" and "front-end-loaders" would fall within the definition of *high-lift trucks* and recommended, for the sake of clarity, that the Department specifically name them in the revised § 570.58(b).

The CLC noted that the NIOSH Report recommended that HO 7 prohibit 16- and 17-year-olds from employment that, among other things, included "assisting in tasks being performed" by the power-driven hoisting equipment. The CLC took issue with the Department's statement that assisting in tasks being performed by the machines would constitute *tending*—an activity prohibited by the proposal. The CLC recommended that the Department clarify the proposal by specifically adding "assisting in tasks being performed by the equipment" to the language of the Final Rule. The importance of this recommendation was poignantly demonstrated by the August 2008 death of a 17-year-old in Georgia who was crushed to death when a one-ton electrical inverter box fell from a fork lift. The minor was not operating the forklift at the time of his death but was serving as a "spotter" and assisting the operator of the forklift.

The Department appreciates the comments of the YWN, AFL–CIO, and CLC and has decided to adopt the proposal with slight modifications designed for clarification. The Department will add backhoes and front-end loaders to the examples of high-lift trucks contained in § 570.58(b) as recommended by the YWN. The Department will also clarify in § 570.58(a)(1) and (2) that the term *tending* includes assisting in the hoisting tasks being performed by the equipment, to add clarity as recommended by the CLC.

The Department believes additional information is needed before it can determine whether 16- and 17-year-olds who operate hydraulic grease racks are at risk and notes it requested public comment on this issue in 2007. Accordingly, adoption of the recommendations of the YWN and AFL–CIO that HO 7 also prohibit the operation of such equipment would be premature.

*H. Occupations in the Operation of Power-Driven Meat-Processing Machines and Occupations Involving Slaughtering, Meat Packing or Processing, or Rendering (Order 10) (29 CFR 570.61)*

HO 10 generally prohibits 16- and 17-year-olds from being employed in all occupations in or about slaughtering, meat packing or processing establishments, and rendering plants. The HO also prevents such minors from performing all occupations involved in the operation or feeding of several power-driven meat processing machines when performed in slaughtering and meat packing establishments, as well as in wholesale, retail, or service establishments. The term *slaughtering and meat packing establishments* is defined in HO 10 to mean places in which cattle, calves, hogs, sheep, lambs, goats, or horses are killed, butchered, or processed. The term also includes establishments that manufacture or process meat products or sausage casing from such animals. Under the existing regulation, the term does not include establishments that process only poultry, rabbits, or small game. The term *retail/wholesale or service establishments,* as defined in HO 10, includes establishments where meat or meat products are processed or handled, such as butcher shops, grocery stores, restaurants, quick service establishments, hotels, delicatessens, and meat locker (freezer-locker) companies, and establishments where any food product is prepared or processed for serving to customers using machines prohibited by the HO. Included on the list of prohibited power-driven meat processing machines are meat patty forming machines, meat and bone cutting saws, meat slicers, knives (except bacon-slicing machines), headsplitters, and guillotine cutters; snoutpullers and jawpullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (except belly-rolling machines). The term *operation* includes setting-up, adjusting, repairing, oiling, or cleaning such machines, regardless of the product being processed by the machine. For example, HO 10 prohibits a minor from operating a meat slicer in a restaurant to cut cheese or vegetables. In addition, the Department has, as early as 1991, interpreted the prohibition on cleaning such machines as precluding 16- and 17-year-olds from performing the hand or machine washing of parts of and attachments to power-driven meat processing machines, even when the machine was disassembled and reassembled by an adult. This provision is designed to prevent such youth from being injured by contact with the machines' sharp blades and cutting surfaces. HO 10 provides a limited exemption that permits the employment of apprentices and student-learners under the conditions prescribed in § 570.50(b) and (c).

The NIOSH Report recommends that HO 10 be expanded to prohibit work in all meat products manufacturing industries including those engaged in the processing of sausages and/or other prepared meat products and those engaged in poultry slaughtering and/or processing (*see* NIOSH Report, page 41). The rationale for this recommendation is that although injury fatality rates in meat products manufacturing industries are relatively low, rates of disorders due to repeated trauma are extremely high. This is also true for poultry processing which is not encompassed in the existing HO. In addition, there are a number of diverse and serious health hazards associated with the slaughtering of animals and manufacturing of meat products, including exposure to infectious agents and respiratory hazards. The Report notes that in 1997 there were an estimated 13,646 occupational injuries and illnesses resulting in days away from work among employees in the meat products manufacturing industry. Although the greatest number of these injuries and illnesses occurred in meat packing

plants (5,526), establishments that produce sausages and prepared meats experienced 4,147 injuries and illnesses, and poultry slaughtering and processing establishments experienced 3,937 that same year (*see* NIOSH Report, page 43). In 1999, the Department investigated the death of a young poultry processing worker in Arkansas and the serious injury of a similarly employed minor in Missouri who injured both of his legs when he slipped and fell into an auger. The minor also suffered severe nerve damage and second degree burns.

The Report also recommends that HO 10 be revised to allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers in retail, wholesale and service industry establishments. This is one of the few recommendations the Report makes that would relax current prohibitions, and it is made with the rationale that "although data show high numbers of injuries associated with power-driven slicers, the injuries appear to be relatively minor." NIOSH includes the caveat that if this recommendation is implemented "it should be accompanied by a mandatory reporting period in which all serious youth injuries and deaths resulting from previously prohibited activities are promptly reported to the U.S. Department of Labor." Such a reporting plan would allow an assessment as to whether the revision should be rescinded or further refined to best protect working youth (*see* NIOSH Report, page 48).

Finally, the Report recommends that the apprenticeship and student-learner exemption contained in HO 10 be restricted to apply only to 16- and 17-year-olds employed in retail, wholesale, and service industries. The Report recommends that this exemption no longer be applicable to the employment of such minors in meat products manufacturing industries.

The Department proposed to implement the Report recommendation to expand the application of HO 10 to prohibit the employment of 16- and 17-year-olds in all meat products manufacturing industries, including those engaged in the processing of sausages and/or other prepared meat products and those engaged in poultry slaughtering and/or processing. The Department proposed to revise the term *slaughtering and meat packing establishments* contained in § 570.61(b) so that the term also includes places where poultry are killed, butchered, or processed. This term would also include establishments that manufacture or process meat products, including poultry, sausage, or sausage casings. The Department also proposed to add buffalo and deer to the lists of animals contained in the definitions of the terms *killing floor* and *slaughtering and meat packing establishments* and to note that these lists are not exhaustive. The Department also proposed to revise the title of HO 10 to reflect its expansion to the slaughtering of poultry, and the processing, packing, and rendering of poultry and poultry products. The current HO 10 exemption permitting the killing and processing of rabbits or small game in areas physically separated from the killing floor would not be changed.

The Department also proposed to revise § 570.61(a)(4) to incorporate its interpretation that the prohibition against 16- and 17-year-olds cleaning power-driven meat processing machines extends to washing the machine's parts and attachments, even if the machine is disassembled and reassembled by an adult. This proposal, however, would not prevent a 16- or 17-year-old from operating a commercial dishwasher to run a self-contained rack containing parts of or attachments to a power-driven meat processing machine through the dishwasher so long as the youth does not actually handle or touch the machine parts or attachments.

The Department also proposed to reformat, in an alphabetical sequence, all the definitions found in § 570.61(b) to comport with guidance provided by the **Federal Register**.

The Department decided not to propose implementation of the Report recommendation that would allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers in retail, wholesale and service industry establishments. Both the Report and the Department's enforcement experience reflect that meat slicers are responsible for many occupational injuries. The Report notes that the Survey of Occupational Injuries and Illnesses reports that in 1997, food and beverage processing machinery were responsible for 11,737 nonfatal injuries and illness that resulted in days away from work. Over sixty percent of that number, 7,280 injuries and illnesses, were caused by food slicers. The median number of days away from work for workers who suffered food slicer related injuries or illnesses was four days, not an insignificant number (*see* NIOSH Report, page 47). Since October 1999, the Department has investigated at least 36 injuries of young workers that were caused by operating or cleaning power-driven meat slicers. Although none of these injuries were life threatening, most were considered to be serious and many caused the partial loss of digits and will leave some permanent scarring.

The Department also decided not to propose implementation at this time of the Report recommendation concerning limiting the current apprenticeship and student-learner exemption contained in HO 10 to retail, wholesale and service industries. The apprenticeship and student learner exemptions contained in certain HOs were developed relatively independently of each other as each HO was adopted. The issue of allowing certain training exemptions from the HOs first arose in the early 1940s, after the enactment of the first six HOs. HO 5 was amended to permit the employment of student learners and apprentices, but HOs 1 through 4 were not. Each committee convened thereafter to study, draft, and implement a new HO developed its own criteria for determining the appropriateness of including apprentice and student-learner exemptions and was not restricted by the determinations made by previous committees. The Report makes several recommendations concerning the establishment, revision, and elimination of apprenticeship and student-learner exemptions, but the rationale for each recommendation either is vague or is not provided. The Department believes that before any changes to the existing exemptions are made, it is important to consider and develop criteria for determining when apprenticeship and student-learner exemptions are appropriate. Such criteria, which must be consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and most effective safety protections, will also be of value as the Department considers creating new HOs. Accordingly, the Department issued an ANPRM, in conjunction with and on the same day as the NPRM, to solicit public comment on this important issue.

The Department received six comments in response to this proposal. The AFL–CIO, YWN, and CLC supported the proposal to expand the scope of HO 10 to prohibit the employment of 16- and 17-year-olds in or about places where such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are killed, butchered, or processed and where sausage and sausage casings are manufactured or processed. The Department received no comments opposing adoption of this portion of the proposal. The YWN also recommended that HO 10 be expanded to cover seafood processing occupations.

The AFL–CIO, YWN, CLC and Six Flags all supported the Department's decision not to accept the NIOSH

Report's recommendation to allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers in retail, wholesale and service industry establishments. These four commenters also supported the Department's proposal regarding the cleaning of such equipment. The FMI and the Council both recommended that the Department reconsider and adopt the NIOSH recommendation that would allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers. The Council stated "[t]he NIOSH recommendation appears well-supported" while the FMI believed the Department's position to be "surprising as the NIOSH recommendations are based on the hard data and analysis that DOL asked NIOSH to provide." Neither the Council nor the FMI commented on the Department's proposal regarding the cleaning of power-driven meat processing equipment.

Both the YWN and the CLC disagreed with the Department's decision not to implement at this time the NIOSH Report recommendation to limit the student-learner and apprentice exemption contained in HO 10 to retail, wholesale, and service industries.

After carefully reviewing the comments, the Department has decided to implement the proposal as written with the following modifications. The Department is adding poultry scissors and shears to the list of prohibited power-driven meat processing machines listed in § 570.61(a)(4) in recognition that the HO now covers poultry processing. The Department is also revising § 570.61(a)(7), which for many years has prohibited 16- and 17-year-olds from handlifting or handcarrying any carcass or half carcass of beef, pork or horse, to include carcasses or half carcasses of buffalo and deer. This revision would also expand the current prohibitions involving quarter carcasses of beef and horse to include buffalo. These revisions are necessitated by the expansion of the prohibitions of HO 10 to include the processing of such animals. Finally, the Department is adding a statement to § 570.61(a)(4) to clarify that the limited exemption to HO 11 which permits 16- and 17-year-olds to operate certain lightweight, small capacity, portable counter-top power-driven food mixers (*see* § 570.62(b)(1)) would not apply when the equipment is adapted—through the use of various attachments—to perform functions other than mixing, or to process meat or poultry products because of the prohibitions of HO 10. This modification is discussed in more detail further in the section of this preamble that addresses HO 11.

The Department appreciates the concerns of the FMI and the Council, but must reiterate that the number and severity of occupational injuries suffered by youth who operate or clean power-driven meat slicers do not justify allowing youth to operate or clean such equipment. The Department notes that, since publishing the NPRM, it has investigated the serious injuries of at least ten more young workers who operated or cleaned such equipment.

The Department also recognizes the concerns of the YWN and CLC over the Department's decision not to limit the student-learner and apprentice exemption contained in HO 10 at this time. As noted in the NPRM, the Department believes that before any changes to the existing student-learner and apprentice exemptions are made, it is important to consider and develop criteria for determining when student-learner and apprentice exemptions are appropriate. As mentioned, the Department issued an ANPRM, in conjunction with and on the same day as the NPRM, to solicit public comment on this important issue.

The Department appreciates the YWN's recommendation that HO 10 should be expanded to cover seafood processing occupations, but notes that no data was submitted regarding the level of youth employment in that industry or the injury rates experienced by that industry.

*I. Occupations Involved in the Operation of Bakery Machines (Order 11) (29 CFR 570.62)*

HO 11 generally prohibits the employment of 16- and 17-year-olds in occupations involved in the operation of power-driven bakery machines. Prohibited activities include operating, assisting to operate, setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake cutting band saw. The HO also prohibits the employment of such youth in the occupation of setting up or adjusting a "cooky" or cracker machine. The prohibitions of the HO do not differentiate between portable and non-portable equipment, and models designed for use in the home versus those solely designed for industrial applications. Therefore, the prohibitions of HO 11 include the employment of 16- and 17-year-olds to operate even the smallest of counter-top vertical mixers.

In response to information presented by several restaurants and employer associations, the Department adopted an enforcement position in 1990 that it would not assert a violation of HO 11 when a 16- or 17-year-old employee operated a pizza-dough roller, a type of dough sheeter, when the machine: (1) Is constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; (2) has gears that are completely enclosed; and (3) has microswitches that disengage the machinery if the backs or sides of the rollers are removed. This enforcement position applies only when all the safeguards detailed above are present on the machine, are operational, and have not been overridden. In addition, this enforcement position applies only to the operation of the machine. HO 11 still prohibits 16- and 17-year-olds from being employed in occupations involving the setting up, adjusting, repairing, oiling, or cleaning of such pizza-dough rollers. The Department has restated this position numerous times in response to written requests and has included this position in its Field Operations Handbook since at least 1992.

The Report recommends that HO 11 be relaxed to allow the operation of counter-top models of power-driven bakery machines, comparable to those intended for household use. The Report's rationale for this recommendation is that available data suggest that there were no fatalities involving such counter-top power-driven machines, and nonfatal injuries requiring time away from work are of moderate severity (*see* NIOSH Report, page 48). Although, as noted, the HO prohibits the use of several different power-driven bakery machines, the thrust of the Report's recommendation involves food mixers. The Report notes that there were 712 non-fatal injuries and illnesses in 1997, with a median of 11 days away from work, associated with work with mixers, blenders, and whippers (*see* NIOSH Report, page 49).

The Department's enforcement experience includes situations where employers have questioned why 16- and 17-year-olds were not permitted to use small mixers to process such things as cheese dip and batter for seafood when such machines generally appeared to present no risks to such minors. Recently, the Department adopted an enforcement policy that it would not assert violations of HO 11 when 16- and 17-year-olds operate, assist to operate, setup, adjust, repair, oil, or clean certain small, lightweight, counter-top mixers.

The Department proposed to implement the Report's recommendation by creating a new § 570.62(b)(1) that would include an

exemption allowing the employment of 16- and 17-year-olds to operate—including setting-up, adjusting, repairing, oiling, and cleaning—lightweight, small capacity, portable counter-top power-driven food mixers that are, or are comparable to, those models intended for household use.

The Department, during its meetings held after the release of the Report with various stakeholders, including representatives of the full-service and quick-service restaurant industries, sought to identify which types of mixers could be operated safely in the workplace by 16- and 17-year-olds. The information provided, which also echoed the Department's enforcement experiences, indicated that such factors as bowl capacity, the horsepower of the motor, the portability of the machine (light weight and not permanently wired or "hardwired" into the establishment's electrical power source), and similarity to equipment designed exclusively for home use were all important criteria. For purposes of this exemption, the Department proposed that a lightweight, small capacity mixer is one that is not hardwired into the establishment's power source, is equipped with a motor that operates at no more than ½ horsepower, and whose bowl capacity does not exceed five quarts. Minors 14- and 15-years of age would still be prohibited from operating or assisting in the operation of such mixers under the provisions of Reg. 3 (*see* § 570.33(e) (new)).

The Department also proposed to incorporate into § 570.62 its long-standing enforcement position regarding the operation of certain pizza-dough rollers by 16- and 17-year-old workers. The Department's enforcement experience indicates that when employers properly apply this limited enforcement position, 16- and 17-year-olds can safely operate pizza-dough rollers. Accordingly, the Department proposed to create a new § 570.62(b)(2) that will permit such youth to operate—but not set-up, adjust, repair, oil, or clean—those power-driven pizza-dough rollers that: (1) Are constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; (2) have gears that are completely enclosed; and (3) have microswitches that disengage the machinery if the backs or sides of the rollers are removed. The exception in § 570.62(b)(2) would apply only when all the safeguards detailed above are present on the machines, are operational, and have not been overridden.

The Department also proposed to change the word *cooky* in § 570.62(a)(2) to *cookie* to reflect the more common spelling of that word.

The Department received five comments regarding this proposal. The FMI, Council, AFL–CIO, and YWN all supported adoption of the Department's enforcement position allowing 16- and 17-year-olds to operate—including setting-up, adjusting, repairing, oiling, and cleaning—lightweight, small capacity, portable counter-top power-driven food mixers that are, or are comparable to, those models intended for household use. No comments were received opposing this proposal.

The FMI, Council, and AFL–CIO also supported the proposal to adopt the Department's long-standing enforcement position permitting 16- and 17-year-olds to operate—but not set-up, adjust, repair, oil, or clean—certain power-driven pizza dough rollers. The YWN opposed this proposal, stating "[a]bsent any concrete information on injury data, and on the specific size, make, or models under consideration as possible examples, we disagree with this proposal at this time." The YWN also endorsed the NIOSH Report recommendation that more intensive surveillance of pertinent injuries and deaths resulting from the operation of power-driven bakery machines be conducted should the Department adopt these proposals.

The CLC opposed this proposal and reiterated its concerns about the Department's use of its prosecutorial discretion to establish enforcement positions in the administration and enforcement of the child labor provisions of the FLSA.

The Department carefully considered all the comments and has decided to adopt the proposal with one clarifying modification. The Department wishes to make it clear that the exemption contained in § 570.62(b)(1) (new) that permits 16- and 17-year-olds to operate certain lightweight, small capacity, portable counter-top power-driven food mixers would not apply when the equipment is adapted—through the use of various attachments—to perform functions other than mixing, or to process meat or poultry products because of the prohibitions of HO 10 (Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering) (*see* § 570.61, old and new). It is important to note that the functions of such mixers, as well as how they are addressed by HO 10 and HO 11, change when different "attachments" are used. For example, a "mixer" as discussed in § 570.62(b)(1) would become a "grinder" prohibited by HO 10 (*see* § 570.61(a)(4)) when the grinding attachment is in use. As per the provisions of § 570.61(a)(4), it would not matter if products other than meat—such as vegetables or cheese—were being processed. The Department is including this information in both § 570.62(b)(1) and § 570.61(a)(4)) to avoid confusion and facilitate compliance.

The Department appreciates the concerns of the YWN and CLC regarding the use of certain power-driven pizza dough rollers, but again notes that its enforcement experience indicates that when employers properly apply all the provisions of the enforcement position—which have been included in the proposed limited exemption—16- and 17-year-olds can safely operate such equipment. The Department also notes, as it has stated previously in this Final Rule, that its limited and public exercise of its prosecutorial discretion is an efficient and permissible tool available to the Secretary in the administration of the child labor provisions of the FLSA.

*J. Occupations Involved in the Operation of Paper-Products Machines, Scrap Paper Balers, and Paper Box Compactors (Order 12) (29 CFR 570.63)*

Hazardous Occupations Order No. 12 generally prohibits minors under 18 years of age from working in occupations involving the operation of paper-products machines. The HO prohibits, with certain exceptions discussed below, the loading, operating, and unloading of scrap paper balers, including paper box balers and compacting machines, and other power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. When HO 12 was promulgated in 1954, the dangers specifically associated with the operation of scrap paper balers involved being caught in the plungers during the compression process and suffering strains and other injuries while moving the compressed bales.

The Compactor and Baler Act was enacted on August 6, 1996 (Pub. L. 104–174). This legislation amended the FLSA by adding subsection 13(c)(5), which permits 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors only when certain conditions are met. One such condition is that the equipment must meet specific standards issued for balers or for compactors by the American National Standard Institute (ANSI). ANSI is a national organization that coordinates the development of voluntary,

consensus standards in a wide range of areas, including product and worker safety.

When enacting the Compactor and Baler Act, Congress explicitly applied certain industry standards for the determination of which balers and/or compactors are safe for minors to load: ANSI Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. Congress has used ANSI standards in other contexts as expressions of the best available technology in the safety area. For example, the Occupational Safety and Health Act of 1970 directed the Department of Labor to adopt the then-existing ANSI standards, rather than delay any activity until the agency promulgated particular occupational safety and health standards (*see* section 6(a) of the Occupational Safety and Health Act, 29 U.S.C. 655(a)). The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. The Compactor and Baler Act also provides that any new standard(s) adopted by ANSI would also be sufficient for the safety of the scrap paper balers and paper box compactors, if the Secretary of Labor certifies the new standard(s) to be at least as protective of the safety of minors as the two standards specified in the Act. In the Final Rule issued in 2004, the Department stated that it would publish a Notice in the **Federal Register** when the Secretary made any such certifications.

Because these ANSI standards are copyright-protected, the Department cannot include them in the regulations or reproduce them for distribution to the public. Copies of these standards are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd St., Fourth Floor, New York, NY 10036. The telephone number for ANSI is (212) 642–4900 and its Web site is located at *http://www.ansi.org.* In addition, these standards are available for inspection 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.* These standards are also available for inspection at the Occupational Safety and Health Administration's Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or any of its regional offices. The telephone number for the Occupational Safety and Health Administration's Docket Office is (202) 693–2350 and its Web site is located at *http://dockets.osha.gov.*

The Department issued a Final Rule on December 16, 2004 (69 FR 75382), which revised HO 12 to incorporate the provisions of the Compactor and Baler Act. The Final Rule became effective on February 14, 2005. As supported by the provisions of the Compactor and Baler Act, the Final Rule expanded the coverage of HO 12 to include those balers and paper box compactors that process other materials in addition to paper products. Prohibited machines include those indoor-types of power-driven trash compactors equipped with built-in carts that detach from the compactor to facilitate disposal of the compacted waste. With this type of machine, an attendant wheels the cart to the dumpster, empties the cart into the dumpster, and then wheels the cart back to the compactor where it is reattached. Also included would be "public use" waste receptacles—often found at airports and other large complexes—that include compaction equipment that allow the public to dispose of refuse and then automatically processed the waste at predetermined intervals.

The Final Rule also included the Secretary's certification, as permitted by the Compactor and Baler Act, that the new Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI–S245.5–1990, and that the new Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992. Accordingly, these newer standards were incorporated into HO 12.

The Department, when issuing the 2004 Final Rule, noted that there still remained one class of balers and compactors that falls outside of the scope of HO 12—those machines that are designed or used exclusively to process materials other than paper. The Report, in recognition of this gap in coverage, recommends that HO 12 be revised to include such machines because "balers and compactors used to process other scrap materials such as plastic and aluminum cans pose similar risk of injury from crushing or amputation" (*see* NIOSH Report, page 50).

The Report notes that baler and compactor related deaths are not limited to those in which paper or cardboard is being processed. Many machines are adaptable for the baling and compacting of a wide variety of materials, including paper, aluminum cans, plastic milk jugs, and general refuse. Other machines are intended specifically for processing a single product, such as metals. These specialized metal balers and compactors, which process such items as cars, radiators, and siding, may share similar designs and operating procedures with those compactors and balers that process only paper products or process other materials in addition to paper products. However, these specialized metal balers also include large industrial machines that feature shear blades that are not normally present on lighter-duty type balers. The Report notes that while these large specialized balers are generally found in facilities that specialize in processing scrap and waste materials, smaller general-purpose portable machines that serve the same functions are marketed for use in businesses such as grocery stores, hotels, restaurants, and hospitals. These smaller general-purpose machines operate in essentially the same manner as the larger machines and present similar risks of injury.

In addition, the Report recommends that the Department continue to emphasize enforcement of portions of the Compactor and Baler Act requiring that balers and compactors conform to construction and operations standards that greatly reduce exposure to hazardous energy. The Report notes that investigations of baler-related incidents show that failure to maintain machinery in safe operating condition contributes to fatalities and serious injuries and that neither adult supervisors nor young workers may fully appreciate the risks posed by uncontrolled hazardous energy. The Report also recommends that the Department retain the limited exemption contained in § 570.63(c)(2) that permits apprentices and student-learners to perform, under specific guidelines, tasks that would otherwise be prohibited by HO 12.

The Department agreed with the NIOSH Report recommendation regarding the scope of the HO and proposed to revise HO 12 to prohibit 16- and 17-year-olds from operating, loading, and unloading, with limited exceptions, all balers and compactors, regardless of the materials being processed. Both NIOSH occupational injury data and the Department's enforcement experience reflect that injuries occur when youth operate balers and compactors that are designed and used to process materials other than paper. For example, the Department investigated the employment of a 17-year-old who had both legs amputated in a large industrial baler machine at a recycling center. The machine was the only baler at the center and, therefore, was used to process a wide variety of items. In a different investigation, another 17-year-old lost his right index

finger while putting recyclables into an industrial waste compactor by hand.

The limited exemption provided by FLSA section 13(c)(5) and contained in § 570.63(c)(1), which allows 16- and 17-year-old workers, under specific conditions, to load but not operate or unload certain scrap paper balers and paper box compactors, would remain. This exemption, as detailed in the Compactor and Baler Act, would apply only to certain scrap paper balers and paper box compactors, as currently defined in § 570.63(b). The exemption would not apply to balers and compactors that are not designed or used to process paper or cardboard as such equipment may not be considered scrap paper balers or paper box compactors as required by the Compactor and Baler Act.

The proposed revision would be accomplished by adding new subsections to § 570.63 that would prohibit 16- and 17-year-olds from performing the occupations of operating or assisting to operate any baler or compactor that is designed or used to process materials other than paper. A baler that is designed or used to process materials other than paper would be defined in § 570.63(b) to mean a powered machine designed or used to compress materials other than paper or cardboard boxes, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container. A compactor that is designed or used to process materials other than paper would be defined in § 570.63(b) to mean a powered machine that remains stationary during operation, designed or used to compact refuse other than paper or cardboard boxes, into a detachable or integral container or into a transfer vehicle. The occasional processing of paper or a cardboard box by a machine designed to process other materials would not bring the loading of such machines within the limited exemption provided by section 13(c)(5).

The prohibition against such youth setting up, adjusting, repairing, oiling, or cleaning any of the machines currently listed in HO 12 would be extended to include compactors and balers that are designed to process materials other than paper.

As previously noted, the Compactor and Baler Act provides that any new standard(s) adopted by ANSI would also be sufficient for the determination of the safety of the scrap paper balers and paper box compactors, if the Secretary of Labor certifies the new standard(s) to be at least as protective of the safety of minors as the two standards specified in the Act. In the 2004 Final Rule, the Secretary certified that Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI–S245.5–1990 and that Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992. Accordingly, the newer standards were incorporated into HO 12.

In 2004 ANSI adopted Standard ANSI Z245.2–2004 (Stationary Compactors—Safety Requirements for Installation, Maintenance, and Operations) and Standard ANSI Z245.5–2004 (Baling Equipment—Safety Requirements for Installation, Maintenance, and Operations). The Department's preliminary review of these new Standards, which included input from NIOSH, indicated that the Standards are as protective as those cited in the Compactor and Baler Act and should be included in HO 12 along with the older Standards.

The Department appreciates the Report's recommendation to continue emphasizing enforcement of portions of the Compactor and Baler Act requiring that balers and compactors conform to construction and operations standards that greatly reduce exposure to hazardous energy. The Report notes that investigations of baler-related incidents show that failure to maintain machinery in safe operating condition contributes to fatalities and serious injuries and that neither adult supervisors nor young workers may fully appreciate the risks posed by uncontrolled hazardous energy (*see* NIOSH Report, page 50). The Department's enforcement experience supports these findings. Most recently, the Department investigated the death of a 16-year-old grocery store worker in New York who was crushed to death by a baler that had been jerry-rigged to operate while the door to the loading chamber was open. This over-riding of an important safety device required by each of the ANSI Standards was done to speed up the loading process. As discussed previously, in order for an employer to avail itself of the limited exemption contained in § 570.63(c)(1) that permits 16- and 17-year-olds under certain conditions to load, but not operate or unload, certain scrap paper balers and paper box compactors, the employer must determine that the equipment meets an appropriate ANSI Standard listed in HO 12. The employer must also post a notice on the machine that states, among other things, which applicable ANSI Standard the machine meets. The appropriate ANSI Standards govern not only the manufacture and modification of the equipment, but the operation and maintenance of the equipment, and employee training as well. During enforcement actions involving employers who avail themselves of the limited exemption contained in § 570.63(c)(1), the Department routinely confirms whether the scrap paper baler or paper box compactor being loaded by 16- or 17-year-olds meets the requirements of the applicable ANSI Standard, as determined and declared by the employer. If the equipment does not meet the requirements of an applicable ANSI Standard, or if the employer failed to make such a determination, or if any other requirement of the limited exemption contained in FLSA section 13(c)(5) was not met, a violation of HO 12 has most likely occurred. The Department will carry on these efforts and will continue to work with both NIOSH and OSHA to better educate employers, employees, and enforcement personnel about the requirements of the ANSI Standards. Such efforts impact the safety of all workers, not just those under the age of 18.

Finally, the Department proposed to take no action concerning the NIOSH Report recommendation concerning the apprenticeship and student-learner exemption to HO 12 at this time. As previously discussed, the Department issued an ANPRM, in conjunction with and on the same day as the NPRM, that requested information from the public on this issue.

The Department received three comments on this proposal. The brief comments of the AFL–CIO stated that it "strongly supports the DOL's proposal to extend prohibitions to include operating, loading and unloading balers and compactors designed or used to process materials other than paper." The YWN was equally brief, stating "[t]he Network strongly agrees with this proposed change."

The CLC "welcomed" the expansion of the prohibitions of HO 12 to include balers and compactors designed or used to process materials other than paper. It states that the Department did not address the NIOSH Report's third recommendation dealing with HO 12 regarding the importance of enforcing the requirements of FLSA section 13(c)(5) that balers and compactors being loaded by 16- and 17-year-olds meet the designated ANSI standards. The CLC also cited additional ANSI standards that touch upon equipment used in the waste disposal and recycling industries and questioned why these are not incorporated into HO 12. The CLC also was concerned that the ANSI standards are copyright-protected and that employers must either purchase them from the American National

Standards Institute or visit a designated OSHA office to view them. It also expressed concerns that employers may have difficulty interpreting the ANSI standards. Finally, the CLC disapproved of the Department's decision to not revisit the limited exemption currently contained in HO 12 for student-learners and apprentices.

No comments were received regarding whether Standard ANSI Z245.5–2004 is as protective of the safety of minors as Standard ANSI Z245.5–1990 and whether Standard ANSI Z245.2–2004 is as protective of the safety of minors as Standard ANSI Z245.2–1992.

The Department has carefully reviewed the comments and has decided to adopt the proposal, but with one modification concerning recently issued ANSI Standards and a revision to the section heading. The Department disagrees with the CLC's comment that it failed to address NIOSH's third recommendation and notes that the recommendation clearly reads that the Department should "continue to emphasize enforcement positions of the Compactor and Baler Act requiring balers to conform to construction and operational standards that greatly reduce exposure to hazardous energy." As noted in the NPRM and again in this Final Rule, the Department considers this statement to be an endorsement of its administration and enforcement of HO 12 and agreed to continue this important activity.

The Department notes that when the Compactor and Baler Act was enacted, Congress took considerable pains to ensure that the legislation contained appropriate safeguards that would provide young workers with necessary protections while ensuring that the employers of such youth could achieve and maintain compliance. During this process, Congress solicited input from the Department, NIOSH, employers, employer associations, and employee associations. The result was, as discussed earlier, that the Compactor and Baler Act required that before 16- and 17-year-olds could load such equipment, the scrap paper baler had to meet Standard ANSI Z245.5–1990 and the paper box compactor had to meet Standard ANSI Z245.2–1992. Congress could have chosen to include other standards—earlier versions of those ANSI standards the CLC now suggests the Department should include in HO 12—but it did not.

The Department believes Congress was aware that such standards are copyright protected and available to the public only at a cost or for reviewing at an appropriate library. The Department's enforcement experience confirms that employers have many ways of ensuring that, should they wish to take advantage of the limited exception contained in FLSA section 13(c)(5), their balers and compactors comply with the appropriate ANSI standard. Such employers can consult with the manufacturer of the equipment, the supplier of the equipment, the owner of the equipment if the equipment is leased, industry and/or employer associations, OSHA, and safety engineering consultants. No employer or employer association, when commenting on the 1999 or the 2007 NPRM, reported that it was difficult or expensive to determine that their balers and/or compactors met or failed to meet the appropriate ANSI standards.

Congress also provided the Secretary of Labor with flexibility when administering FLSA section 13(c)(5) by allowing balers and compactors to meet any additional standards adopted by ANSI if certified by the Secretary to be at least as protective of the safety of minors as the standards contained in the Compactor and Baler Act. The Department interprets this provision as permitting it to incorporate only more recent versions of Standard ANSI Z245.5–1990 and Standard ANSI Z245.2–1992—the two standards contained in the original legislation. The Department followed this interpretation when it amended HO 12 and added Standards ANSI Z245.5–1997 and ANSI Z245.2–1997 in 2004 (*see* 69 FR 75396) and again when promulgating this Final Rule.

The Department's review of Standard ANSI Z245.2–2004 has found it to be as protective of the safety of minors as Standard ANSI Z245.2–1992, and the Department's review of Standard ANSI Z245.5–2004 has found it be as protective of the safety of minors as Standard ANSI Z245.5–1990.

The NPRM notified the public that the Department intended to update HO 12 to include the 2004 ANSI standards for compactors and balers, and no comments were received as to whether the standards identified in the NPRM were as protective of minors as the standards listed in the Compactor and Baler Act. After the 2007 NPRM was published, ANSI adopted two new standards related to balers and compactors: Standard ANSI Z245.2–2008 (Stationary Compactors—Safety Requirements for Installation, Maintenance, and Operations) and Standard ANSI Z245.5–2008 (Baling Equipment—Safety Requirements for Installation, Maintenance, and Operations). The Department's review of these new Standards, which included input from NIOSH, concluded that the 2008 ANSI Standards are also as protective as those cited in the Compactor and Baler Act. Therefore, the Department has decided to also incorporate the 2008 ANSI standards into this Final Rule. The Secretary, in promulgating this Final Rule, hereby certifies that Standard ANSI Z245.2–2004 and Standard ANSI Z245.2–2008 are as protective of the safety of minors as Standard ANSI Z245.2–1992 and that Standard ANSI Z245.5–2004 and Standard ANSI Z245.5–2008 are as protective of the safety of minors as Standard ANSI Z245.5–1990. Accordingly, these four newer standards are included in the Final Rule. The Department has also decided to provide a table listing all the applicable ANSI Standards in § 570.63(c)(1)(iv)(A).

The Department has decided to revise the title of HO 12 to reflect that, under the Final Rule, it will prohibit occupations involved in the operation of all balers and compactors, including those that do not process any paper products. Accordingly, the title has been revised as follows: Occupations involved in the operation of balers, compactors, and paper-products machines (Order 12).

As noted earlier, FLSA section 13(c)(5) and § 570.63(c)(1)(iv) require that before a 16- or 17-year-old employee may load a baler or compactor subject to HO 12, his or her employer must first post a notice on the equipment stating that: (1) The baler or compactor meets the named applicable ANSI standard; (2) sixteen- and 17-year-old employees may only load the baler or compactor; and (3) any employee under the age of 18 may not operate or unload the baler or compactor. The Department recognizes the importance of these posting requirements in the administration of section 13(c)(5) and addressed this issue in detail in the preamble to the Final Rule published in the **Federal Register** on December 16, 2004 (69 FR 75382).

Since publication of the 2007 NPRM, the Department has received several inquiries regarding how these posting requirements impact employers of youth who do not own or control the baler or compactor that is available for use by their employees. In certain situations, such as at shopping malls, industrial parks, office buildings, or military bases, multiple employers may have access to and use "community" balers and compactors that the facilities manager or owner has made available to the tenants or contractors. In these situations, the Department has determined that it is not necessary for every employer (tenant) that wishes to take advantage of the loading exemption to post a notice on

the communal equipment as required by FLSA section 13(c)(5). The facilities manager or owner, or the owner of the equipment, may make the necessary postings and satisfy each employer's (tenant's) posting obligations under the exemption. But the employer (tenant) must exercise due vigilance, for should the notice be inaccurate or incomplete—*i.e.,* the baler or compactor fails to meet the appropriate ANSI standard, or the notice fails to fully identify the appropriate ANSI standard—the burden of compliance remains with the employer (tenant) of any youth who loaded the equipment. An incomplete or inaccurate posting by the facilities manager or owner will not relieve an employer from being charged with a violation of HO 12 or assessed a child labor civil money penalty. Employers that avail themselves of the provisions of the loading exemption contained in FLSA section 13(c)(5) and rely on the accuracy of notices posted by others cannot delegate their compliance obligations imposed by that exemption.

Finally, the Department notes that the CLC takes exception to the Department not taking any action on the NIOSH Report recommendation regarding the limited exemption contained in HO 12 for student-learners and apprentices. As the Report recommends that the limited exception contained in HO 12 for apprentices and student-learners be retained, the Department's decision not to address that issue is in full agreement with that recommendation.

*K. Occupations Involved in the Operation of Circular Saws, Band Saws, and Guillotine Shears (Order 14) (29 CFR 570.65)*

HO 14 generally prohibits the employment of 16- and 17-year-olds in the occupations of operator or helper on power-driven circular saws, band saws, and guillotine shears, except those that are properly guarded and equipped with devices for full automatic feeding and ejection. The prohibitions of HO 14 are based on the equipment and apply regardless of the materials being processed. Section 570.65(b)(4) defines the term *circular saw* to mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials. The term *band saw* is defined in § 570.65(b)(5) to mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials. Section 570.65(b)(6) defines the term *guillotine shear* to mean a machine equipped with a moveable blade operated vertically and used to shear materials. The term does not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears. HO 14 also prohibits such minors from setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

The original report that led to the issuance of HO 14 in 1960 noted that these machines had already been found and declared to be particularly hazardous for 16- and 17-year-old employees when used to process certain materials. Circular saws and band saws were already covered under HO 5 when used on wood, HO 10 when used on meat, and HO 12 when used on paper products. Band saws were also covered under HO 11 when used to cut sheet cakes to desired sizes and shapes. Guillotine shears are covered under HOs 5, 8, 10 and 12 when used on wood, metal, meat, and paper products, respectively. Reports showing that minors were being injured when operating these machines on materials not covered by an existing HO led the Department to issue the all-encompassing HO 14.

The NIOSH Report recommends that HO 14 be expanded to cover other machines, such as chain saws, that perform cutting and sawing functions through direct contact between the cutting surfaces and the materials. The Report also recommends, alternatively, that the Department consider developing a new HO that would prohibit all sawing machinery that performs cutting and sawing functions through direct contact of the cutting surface and the material being processed. The Report states: "Stationary saws and hand-held saws, including chain saws, continue to be the source of substantial numbers of fatalities as well as nonfatal injuries which may be unusually severe" (*see* NIOSH Report, page 56). The Report observes that not all machines that perform cutting and sawing functions fit into HO 14's definitions of circular saw, band saw, or guillotine shears; for example, abrasive cutting disks do not have visible notches or teeth, but they perform the same function. The Report notes that available data demonstrate that chainsaws specifically contributed to 70 worker deaths between 1992 and 1997 and over 1,600 lost workday injuries. Some of these fatalities involved workers under 18 years of age (*see* NIOSH Report, page 57). The Report also recommends that the Department retain the exemption contained in HO 14 that permits 16- and 17-year-old apprentices and student learners to perform work that would be otherwise prohibited by the HO.

The Department has long taken the position that HO 4 (Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill) prohibits 16- and 17-year-olds from operating chain saws in logging operations because the HO prohibits all work "in connection with the felling of timber." Likewise, the Department has consistently taken the position, starting as early as 1959, that HO 5 (Occupations involved in the operation of power-driven woodworking machines) prohibits these same minors from using chain saws to cut wood and wood products, including trees and branches. Over the last ten years, the Department has investigated the serious injuries of several youth that resulted from the use of chain saws to cut branches and trees, charged violations under HO 5, and assessed and collected civil money penalties because of those violations. However, as the Report implies, the use of chain saws by 16- and 17-year-olds would not be prohibited when cutting other materials such as metal, concrete, stone, and ice.

The Department has also long taken the position that HO 5 prohibits the employment of 16- and 17-year-olds to operate wood chippers to grind tree limbs, branches, and trunks into chips, mulch, or debris. Some questions have recently been raised concerning the appropriateness of this position, but the Department has been consistent in its application when the equipment is used to process wood and trees. Young workers have been killed or seriously injured while operating wood chippers. In 2000, the Department investigated the death of a 14-year-old member of a tree-trimming crew who was dismembered when he became entangled in branches he was feeding into a drum-type wood chipper. In 2001, the Department investigated the serious injury of a 17-year-old who suffered a fractured skull when the wood chipper he was feeding "spit out" a 12-inch long, 4-inch diameter, piece of a tree branch. Three titanium plates were permanently implanted into the minor's skull. The Department charged the employer of this youth with a violation of HO 5, and assessed and collected a civil money penalty because of the violation.

Just like in 1960 when HO 14 was first issued, the Department is receiving reports of injuries and deaths, such as the ones described in the preceding paragraphs, of youth operating power-driven machines that may be prohibited when used to process certain types of materials and not prohibited when processing other types of materials.

Reciprocating saws constitute another example of such a machine. HO 5 prohibits the employment of 16- and 17-year-olds to operate reciprocating saws that are used or designed for cutting wood, but the same piece of equipment is permitted when used or designed exclusively to cut materials other than wood, such as metal. The Department has learned of occupational injuries to workers operating reciprocating saws to cut materials other than wood. The Department is aware of the death of an adult plumber in Minnesota in 2002 who was killed when the blade of the reciprocating saw he was using to rough-in plumbing entered his head near his eye. The U.S. Department of Energy has also reported that in 2002 an adult worker injured his larynx when the reciprocating saw he was operating kicked back and cut him in his lower throat. The American Journal of Forensic Medicine and Pathology (Volume 28, No. 4, December 2001) reports on the death of a 32-year-old male who lost his balance and fell on the blade of an electric reciprocating saw he was using to trim branches. The blade perforated his anterior chest wall, right lung, heart, and aorta. The Journal noted that the victim had been drinking beer while trimming the branches. Finally, in 2004, the Department investigated the death of a 17-year-old worker who was employed to operate a reciprocating saw to salvage automobile catalytic converters for recycling. While operating the saw, the vehicle upon which he was using the saw fell on him and crushed him to death.

The Department proposed to revise the prohibitions of HO 14 to include chain saws, wood chippers, and reciprocating saws. The prohibition would not depend on the material or materials being processed and would encompass the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines. This revision would be accomplished by revising § 570.65(a)(2) to prohibit the employment of minors in the occupations of operator of or helper on power-driven chain saws, wood chippers, and reciprocating saws, whether the machines are fixed or portable. Unlike the machines currently listed in § 570.65(a)(1), the prohibition would not be lifted if the chain saws, wood chippers, or reciprocating saws were equipped with full automatic feed and ejection-devices—devices that are almost never found on such equipment. The current § 570.65(a)(2) would be redesignated as § 570.65(a)(3) and revised to reflect that 16- and 17-year-olds could not be employed in occupations involving the setting-up, adjusting, repairing, oiling, or cleaning of any of the equipment covered by the HO. The Department also proposed to revise the title of HO 14 to reflect its application to the additional pieces of machinery and to change the word *operations* to *operation*. Finally, the Department proposed to restructure the definitions section contained at § 570.65(b) in an alphabetical sequence to comport with guidance provided by the **Federal Register** and to include definitions of the terms chain saw, wood chipper, and reciprocating saw. The term *chain saw* would mean a machine that has teeth linked together to form an endless chain used for cutting materials. The term *wood chipper* would mean a machine equipped with a feed mechanism, knives mounted on a rotating chipper disc or drum, and a power plant used to reduce to chips or shred such materials as tree branches, trunk segments, landscape waste, and other materials. The term *reciprocating saw* would mean a machine equipped with a moving blade that alternately changes direction on a linear cutting axis used for sawing materials.

The Department is evaluating the alternative recommendation made by the Report that it consider developing a new HO that combines the sawing machinery covered under HO 14 with other specialized machinery that performs cutting and sawing functions through direct contact of the cutting surface and the material. Similar alternative recommendations were made regarding HO 5 (Occupations involved in the operation of power-driven woodworking machines) and HO 8 (Occupations involved in the operation of power-driven metal forming, punching, and shearing machines). The Department will continue to study these recommendations.

Finally, the Report also recommended that the Department retain the limited exemption contained in § 570.65(c) that permits apprentices and student-learners to perform, under specific guidelines, tasks that would otherwise be prohibited by HO 14. As discussed previously in the sections dealing with HOs 10 and 12, the Department proposed to take no action concerning the apprenticeship and student-learner exemptions to certain HOs at this time.

The Department received three comments on this proposal. The YWN stated that it "strongly agrees with this change." The AFL–CIO supported the proposal and suggested that "abrasive cutting discs" be added to the list of prohibited equipment. Such discs were mentioned in the NIOSH Report as cutting equipment that falls outside the prohibitions of HO 14. The CLC stated that it "welcomes" the proposed inclusion of chain saws, wood chippers, and reciprocating saws but also "sees no reason for DOL's failure to include abrasive cutting discs as well." The CLC also disagreed with the Department's decision not to address the issue of student-learners and apprentices in this Final Rule.

The Department has carefully reviewed the comments and has decided to adopt the proposal with one modification. The Department appreciates the comments of the AFL–CIO and the CLC concerning the omission of abrasive cutting discs from the list of prohibited equipment contained in HO 14. The Department notes that although NIOSH did not include injury data specific to the operation of abrasive cutting discs, NIOSH did report that the potential contact with the moving disk of an abrasive cutting tool does put operators at risk. The Department has decided to add abrasive cutting discs to the list of machines prohibited by HO 14 because it would be in keeping with the NIOSH recommendation and will provide important protections to working youth. The Department has defined *abrasive cutting disc* to mean a machine equipped with a disc embedded with abrasive materials used for cutting materials.

The Department once again notes that it has requested public comment on the issue of exemptions for student-learners and apprentices in the ANPRM that was published in conjunction with, and on the same day as, the NPRM.

*L. Additional Recommendations of the Report*

The NIOSH Report recommends that the Department retain, as currently issued, HO 3 (Coal mining occupations), HO 13 (Occupations involved in the manufacture of brick, tile, and kindred products), HO 15 (Occupations involved in wrecking, demolition, and shipbreaking occupations), and HO 17 (Occupations in excavation operations). The Department accepted those recommendations and proposed no revisions to these HOs. The Report also recommends that the Department remove the limited exemption for apprentices and student-learners contained in HO 16 (Occupations in roofing operations and on or about a roof) and HO 17, and retain the same exemption as it applies to HO 5 (Occupations involved in the operation of power-driven woodworking machines) and HO 8 (Occupations involved in the operation of power-

driven metal forming, punching, and shearing machines). As discussed previously in the sections dealing with HOs 10, 12, and 14 of this preamble, the Department proposed to take no action concerning the apprenticeship and student-learner exemptions to any of the HOs at this time. The Department believes that before any changes to the existing exemptions are made, it is important to first consider and develop criteria for determining when apprenticeship and student-learners exemptions are appropriate. Accordingly, the Department issued an ANPRM, in conjunction with and on the same day as the NPRM, that sought information from the public on this and other issues.

Only the CLC commented on this proposal, expressing its disappointment that the Department has decided not to address recommendations regarding the limited exemptions provided for student-learner and apprentices at this time.

*M. Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended (29 CFR 570.101–570.129)*

Subpart G discusses the meaning and scope of the child labor provisions of the FLSA. The interpretations of the Secretary of Labor contained in subpart G indicate the construction of the law that guides the Secretary in administrating and enforcing the Act. Since the last revision of subpart G in 1971, Congress has passed several amendments to the FLSA and the Department has revised other subparts of 29 CFR part 570 that are not currently reflected in subpart G. The Department proposed to revise subpart G to accommodate not only the statutory and regulatory changes that have occurred, but to reflect the proposed revisions to part 570 made by the NPRM and discussed earlier in this document. The proposed revisions to subpart G were as follows:

1. Section 570.103(c) states that there are only four specific child labor exemptions contained in the FLSA, and only one of them, concerning the delivery of newspapers to the consumer, applies to the minimum wage and overtime requirements of the Act as well. Congress has created four additional exemptions to the nonagricultural child labor provisions of the FLSA that are not currently reflected in subpart G (the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens by homeworkers; the loading of certain scrap paper balers and paper box compactors by 16- and 17-year-olds; the limited driving of certain automobiles and trucks by 17-year-olds; and the employment of certain youth between the ages of 14 and 18 years inside and outside of places of business that use power-driven machinery to process wood products). The exemption concerning the employment of homeworkers who make wreaths, contained in FLSA section 13(d), is an exemption from the minimum wage and overtime provisions of the Act as well as its child labor provisions. The Department proposed to revise § 570.103(c) to reflect that the FLSA now contains eight exemptions from the child labor provisions and that two of these exemptions are also exemptions from the Act's minimum wage and overtime requirements.

This same subsection cites FLSA section 3(d), which defines the term employer and then, in footnote 4, discusses that definition. FLSA section 3(d) was amended in 1966, and the provisions of that amendment are not reflected in subpart G. The Department proposed to revise footnote 4 of § 570.101(c) to include the more recent definition of the term employer and to correct an erroneous reference to FLSA section 13(d).

2. Section 570.118 notes that the FLSA sets a minimum age of 16 years for employment in manufacturing or mining, but does not take into account the effects of the 2004 enactment of FLSA section 13(c)(7). Section 13(c)(7) allows the employment of certain 14- and 15-year-olds inside and outside of places of business that use power-driven machinery to process wood products as discussed above. The Department proposed to revise § 570.118 to incorporate the provisions of FLSA section 13(c)(7).

3. Section 570.119 discusses those occupations in which 14- and 15-year-old minors may and may not be employed under Reg. 3. The Department proposed to revise this section to incorporate the changes necessitated by the adoption of FLSA section 13(c)(7) and to reflect the proposed revisions to §§ 570.33 and 570.34 as discussed above. For the sake of both brevity and clarity, the Department proposed not to repeat in § 570.119 the lists of all the occupations contained in §§ 570.33 and 570.34, but rather to refer readers to those sections.

The proposed revision to § 570.119 would contain the general prohibition against the employment of minors under 14 years of age under any circumstances that is currently included at the end of § 570.119.

4. Section 570.120 describes the authority and process by which HOs are adopted, and lists those occupations the Secretary has found and declared to be particularly hazardous or detrimental to the health or well-being of minors 16 and 17 years of age. Since subpart G was last revised, not only have several HOs been amended, but the process for promulgating and revising the HOs has also changed. Before 1995, the process for promulgating and amending HOs included public hearings and advice from committees composed of representatives of employers and employees of the impacted industry and the public, in accordance with the procedures established by subpart D of this part. The Department issued a Final Rule on April 17, 1995 (60 FR 19336) that deleted subpart D and placed the process of promulgating and revising HOs solely under the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* which governs Departmental rulemaking.

The Department proposed to revise § 570.120 to reflect the 1995 change in the process for issuing and revising HOs. The Department also proposed, for the sake of brevity and clarity, not to repeat the list of individual HOs as they are already listed in subpart E of 29 CFR part 570.

5. Section 570.122 lists the four exemptions from the FLSA child labor provisions that existed when subpart G was last revised. As discussed earlier, Congress has added four more exemptions that are not included in the current subpart G.

The Department proposed to revise § 570.122 by creating new subsections (e), (f), (g), and (h), which will list the exemptions from the child labor provisions contained in FLSA sections 13(d), 13(c)(5), 13(c)(6), and 13(c)(7), respectively. A more thorough discussion of each of these exemptions was proposed to be included in §§ 570.127-.130.

6. The Department proposed to revise §§ 570.127, .128, and .129, and create a new § 570.130 to present detailed discussions of the exemptions from the child labor provisions contained in FLSA sections 13(d), 13(c)(5), 13(c)(6), and 13(c)(7). These proposed provisions were structured similarly to those already contained in subpart G that address the earlier FLSA exemptions concerning employment of youth in agriculture (§ 570.123), in the delivery of newspapers (§ 570.124), as actors and performers (§ 570.125), and by one's parents (§ 570.126). The Department also proposed to revise and redesignate the sections of subpart G currently dealing with general enforcement

(§ 570.127), good faith defense (§ 570.128), and the relation of the child labor provisions to other laws (§ 570.129). These sections would be redesignated as § 570.140, § 570.141, and § 570.142, respectively. The Department proposed to reserve §§ 570.131 through 570.139 to accommodate any additional statutory amendments to the FLSA child labor provisions that may be enacted.

7. Section 570.127 contains a general discussion of the enforcement of the FLSA child labor provisions. Since that last revision of subpart G, Congress in 1996 amended the FLSA at section 16(e) so that any person who violates the provisions of section 12 or section 13(c)(5) relating to child labor, or any regulation issued under section 12 or section 13(c)(5), shall be subject to a civil money penalty, currently not to exceed $11,000, for each employee who was the subject of such a violation. The Department, as discussed above, proposed to redesignate this section as § 570.140 and to revise it to include the Department's authority to assess civil money penalties against persons who violate the child labor provisions of the Act.

8. Section 570.128 deals with a provision of FLSA section 12(a) that relieves from liability a purchaser who ships or delivers for shipment in commerce goods acquired in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with section 12 and that were acquired for value without notice of any violation. The Department proposed to redesignate this section as § 570.141.

9. Section 570.129 discusses the relationship of the child labor provisions of the FLSA to other laws. The Department proposed to redesignate this section as § 570.142.

No comments were received on these proposals to amend Subpart G. The Department has decided to adopt the above proposals as written, with three exceptions. The Department is slightly modifying the proposed revisions to § 570.122 so as to incorporate guidance provided by the **Federal Register.** This modification does not change the content of the Department's original proposal. In addition, the Department will not implement its proposal to reserve §§ 570.131 through 570.139, again at the direction of the **Federal Register.**

Finally, on May 21, 2008, after publication of the NPRM, the Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, was signed into law. This Act, among other things, amends section 16(e) of the Fair Labor Standards Act by increasing the maximum permissible civil money penalty an employer may be assessed for child labor violations that cause the death or serious injury of a young worker. FLSA Section 16(e) now states that any person who violates the provisions of FLSA sections 12 or 13(c), relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed $11,000 for each employee who was the subject of such a violation. This same section also permits the assessment of a penalty not to exceed $50,000 with regard to each violation that causes the death or serious injury of any employee under 18 years of age. That penalty may be doubled up to $100,000 if the violation is determined to be a repeated or willful violation. Accordingly, the Department is revising the proposed § 570.140 (as redesignated as discussed in paragraph 7 above) to incorporate the provisions of GINA. The provisions of GINA and the impact they have on this rulemaking are more fully discussed later in Section O of this preamble.

*N. Miscellaneous Matters, 29 CFR Part 570*

The Department proposed to change the name of HO 8 from Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8) to Occupations involved in the operation of power-driven metal forming, punching, and shearing machines (Order 8).

The Department has decided to adopt this proposal as written. Only the CLC commented on this proposal, incorrectly referring to it as "correcting a typographical error." The word "operations" was the word used by the Department when HO 8 was first enacted in 1950 and its use was appropriate for the time. The Department's replacing of that word with "operation" reflects the current usage of the word.

The Department has made minor, nonsubstantive changes to the proposed § 570.119 to better explain the purpose of § 570.33. In addition, the Department has updated references made in § 570.102 and in Footnote 21, which is cited in § 570.111. These changes were necessitated by the other revisions made in subpart G. Typographical and grammatical errors in the proposed regulatory text were also corrected.

Finally, pursuant to guidance provided by the **Federal Register**, the Department is issuing the proposed §§ 570.35a and 570.35b as §§ 570.36 and 570.37 and redesignating existing §§ 570.36 and 570.37 as §§ 570.38 and 570.39, respectively.

*O. Civil Money Penalties; 29 CFR Part 579*

Section 16(e) of the FLSA subjects any person who violates the child labor provisions of the Act to civil money penalties. On May 21, 2008, the Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110–233) was enacted into law. GINA, among other things, amended FLSA section 16(e) so that any person who violates the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil money penalty not to exceed $11,000 for each employee who was the subject of such a violation. In addition, GINA also permits the assessment of a civil money penalty not to exceed $50,000 with regard to each violation that caused the death or serious injury of any employee under the age of 18 years. That penalty may be doubled, up to $100,000, when such violation is determined by the Department to be a repeated or willful violation. These changes in the law became effective May 21, 2008.

As mentioned above, the NPRM proposed to revise § 570.127 and redesignate it as § 570.140. In addition to taking these steps, the Final Rule will incorporate the provisions of GINA into (new) § 570.140. The Final Rule will also revise those provisions of 29 CFR part 579 relevant to civil monetary penalties in order to incorporate the provisions of this recent statutory amendment into the regulations.

The Department is incorporating the child labor civil money penalty provisions of the GINA amendments into this Final Rule without prior notice and opportunity for public comment because it has for good cause found, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), that these procedural requirements are unnecessary with respect to these particular regulatory changes. The regulatory changes in (new) § 570.140 and Part 579 implement the recent legislation that revised the civil monetary penalties that may be assessed under section 16(e) of the FLSA. In bringing the regulations into conformity with the statutory amendments, the Department is not exercising any interpretative authority. Accordingly, the Department is incorporating the provisions of the statutory amendments into the Final Rule without notice and comment.

Specifically, the Department is revising § 579.1(a) to incorporate the

provisions of section 16(e) of the FLSA as revised by GINA. The Department is also revising the definitions section in § 579.2 to include the terms *serious injury, repeated violations,* and *willful violations.*

GINA amended FLSA section 16(e) to define *serious injury* as (1) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation); (2) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or (3) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

Although GINA does not define the terms *repeated violations* and *willful violations,* those terms already have been defined by the Wage and Hour Division (*see* 29 CFR 578.3(b) and (c)), and are currently applied, pursuant to section 16(e) of the Act, in the assessment of civil money penalties for repeated and willful violations of sections 6 and 7 of the FLSA. Applying those definitions to civil money penalties under 29 CFR part 579, an employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *repeated:* (1) Where the employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or (2) where a court or other tribunal has made a finding that an employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

For purposes of the assessment of civil money penalties under 29 CFR part 579, an employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *willful* where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful. For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

Finally, the Department is also revising § 579.5, sections (a) and (e), to note that FLSA section 16(e) references both sections 12 and 13(c) when discussing the types of child labor violations that are subject to the assessment of civil money penalties.

## IV. Paperwork Reduction Act

In accordance with requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, the Department seeks to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the agency. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule (*see* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8). The NPRM published in the **Federal Register** on April 17, 2007 (72 FR 19337) invited comments on the information collection burdens imposed by these regulations. No comments were received regarding the information paperwork burden estimates.

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 (*see* 5 CFR 1320.6). The Department submitted the information collections contained in § 570.37 (previously proposed as § 570.35b) of this rule to the OMB for approval, and OMB approved them under OMB Control Number 1215–0208. The approval expires on May 31, 2013, unless extended by OMB. A copy of the information collection request can be obtained at *http://www.RegInfo.gov* or by contacting the Wage and Hour Division as shown in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*Circumstances Necessitating Collection:* The Department has created a new 29 CFR 570.37 that describes the conditions that allow the employment of 14- and 15-year-olds—pursuant to a school-supervised and school-administered Work-Study Program (WSP)—under conditions Reg. 3 otherwise prohibits. The new regulation requires the implementation of a new paperwork burden with regard to a WSP.

FLSA section 3(l) establishes a minimum age of 16 years for most nonagricultural employment but allows the employment of 14- and 15-year-olds in occupations other than manufacturing and mining, if the Secretary of Labor determines such employment is confined to periods that will not interfere with the minor's schooling and conditions that will not interfere with the minor's health and well-being.

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of their employees' wages, hours, and other conditions and practices of employment. Section 11(c) also authorizes the Secretary of Labor to prescribe the recordkeeping and reporting requirements for these records. Reg. 3 sets forth the employment standards for 14- and 15-year-olds.

*Reporting Requirements: WSP Application:* In order to utilize the Reg. 3 WSP provisions, § 570.37(b)(2) requires a local public or private school system to file with the Administrator of the Wage and Hour Division an application for approval of a WSP as one that does not interfere with the schooling or health and well-being of the minors involved.

*Written Participation Agreement:* The regulations require preparation of a written participation agreement for each student participating in a WSP and that the teacher-coordinator, employer, and student each sign that agreement (*see* § 570.37(b)(3)(iv)). The regulation also requires that the student's parent or guardian sign the training agreement, or otherwise give consent to the agreement, in order for it to be valid.

*Recordkeeping Requirements:* The regulation requires a school system operating a WSP to keep a copy of the written participation agreement for each student enrolled in the WSP at the student's school. Employers of WSP participants are also required to keep a copy of the written participation agreement for each student employed. These agreements shall be maintained for 3 years from the date of the student's

enrollment in the WSP (*see* § 570.37(b)(4)(ii)).

*Purpose and Use: WSP Application:* Under the regulations, a local school system shall file a letter of application requesting the Administrator of the Wage and Hour Division to approve a WSP that permits the employment of 14- and 15-year-olds under conditions that Reg. 3 would otherwise prohibit. The Department will evaluate the information to determine if the program meets the requirements specified in the regulation, in order to respond to the request.

*Written Participation Agreement:* The school system administering the WSP and each applicable employer shall separately maintain a copy of the written participation agreement for each student. The written agreement shall be signed by the teacher-coordinator, the employer, and the student. In addition, the student's parent or guardian shall either sign or otherwise provide consent for the participation agreement to be valid. The written participation agreement shall be structured to ensure that the quality of the student's education, as well as his or her safety and well-being, are not compromised. School systems, employers, and the Department will use these records to document the validity of the WSP and that the 14- and 15-year-old students were employed in accordance with the special WSP rules.

*Information Collection Burdens*

*Total Number of Respondents:* 1530 (30 school districts and 1500 employers).

*Total Number of Responses:* 3030 (30 WSP applications, 1500 school district written participation agreements, 1500 employer written participation agreements).

*Total Reporting and Recordkeeping Burden Hours:* 1586.

*Total Dollar Cost Burden:* $14.

The DOL has slightly increased the total burden hour estimate from 1585 hours to 1586 to align the data with what appears in the General Services Administration, Regulatory Information Service Center and the OMB, Office of Information and Regulatory Affairs Combined Information System (ROCIS) used to track the burdens imposed by Federal government information collections. This difference is due to differences in how initial Departmental efforts and ROCIS dealt with rounding issues. The Department has also increased the dollar cost from $13 to $14 to account for increased postage costs since publication of the NPRM.

**V. Executive Order 12866; Regulatory Flexibility**

This Final Rule is being treated as a "significant regulatory action" within the meaning of E.O. 12866 because of its importance to the public and the Department's priorities. Therefore, the Office of Management and Budget has reviewed this rule. However, because this rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. The new information collection, recordkeeping, and reporting requirements subject to the PRA being imposed with the enactment of the new work-study program are discussed above.

It is well established that several characteristics of youth place adolescent workers at increased risk of injury and death. Lack of experience in the work place and in assessing risks, and developmental factors—physical, cognitive, and psychological—all contribute to the higher rates of occupational injuries and deaths experienced by young workers. CFOI data reflect that during the period of 1994–2004, 15-year-olds experienced an occupational fatality rate of 4.7 fatalities per 100,000 workers—a rate that was greater than that experienced by all workers aged 15 and older. Older working youth share similar risks. The NIOSH Report notes that the fatality rate for adolescents aged 16 and 17 was 5.1 per 100,000 full-time equivalent workers for the 10-year period 1980–89 [Castillo et al. 1994], while the rate for adults aged 18 and older was 6.1. As NIOSH stated, "[t]his relatively small difference in rates is cause for concern because youth under age 18 are employed less frequently in especially hazardous jobs." NIOSH reports on its Web site (*see http://www.cdc.gov/niosh/topics/youth*) that in 2007, an estimated 48,600 work-related injuries and illnesses among youth 15 to 17 years of age were treated in hospital emergency departments. As an estimated one-third of work-related injuries are seen in emergency departments, it is likely that approximately 146,000 youth sustain work-related injuries and illnesses each year. The NIOSH statistics show that, despite the fact that workers aged 15 through 17 are generally restricted from employment in hazardous occupations such as mining, motor-vehicle driving, logging, sawmilling, and construction, they have a higher rate of injuries requiring emergency room treatment than any other age group except 18- and 19-year-olds (who are not restricted from performing such work). The economic and social costs associated with the deaths and serious injuries of young workers are substantial.

The Department considers the issuance of this rule to be an important and necessary step in its ongoing review of the criteria for permissible child labor employment, a review which strives to balance the potential benefits of transitional, staged employment opportunities for youth with the necessary protections for their education, health and safety. Because youth often overcome the effects of those characteristics that initially place them at increased risk of injury and death in the workplace only through the maturation process, it is believed that requiring older workers to perform those tasks that present greater risks to younger workers actually eliminates injuries and deaths—rather than delaying them or transferring them to the older workers.

Additionally, this document revises the child labor regulations in response to a statutory amendment enacted by the Congress that permits certain youth between 14 and 18 years of age who are excused from compulsory school attendance beyond the eighth grade to be employed under specific conditions inside and outside places of business that use machinery to process wood products. Affecting the Reg. 3 occupations standards and both HOs 4 and 5, this statutory provision would be available to a very small number of minors and therefore is expected to have little or no economic impact. The Department believes that only a few minors have obtained employment in such occupations since the amendment was enacted and doubts that the number will increase. Moreover, the amendment's strong safety-affecting requirements that such youth not operate or assist in the operation of power-driven woodworking machines, use personal protective equipment to prevent exposure to excessive levels of noise and sawdust, and be protected from wood particles and other flying debris within the workplace, should significantly reduce potential costs resulting from accidents and injuries to minors on the job.

The implementation of revised subpart G of the child labor regulations, General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended, to incorporate all the changes made by the agency since this subpart was last revised in 1971, will simply provide compliance guidance on the child labor provisions detailed in earlier subparts of 570 and therefore imposes no economic costs.

The additional changes being implemented are also expected to have little or no direct cost impact. The changes affecting the types of occupations and industries in which 14- and 15-year-olds may or may not be employed, as well as the periods and conditions of such employment (Reg. 3 occupations and hours standards), are largely clarifications of existing provisions or enforcement positions, though new occupations involving work of an intellectual or creative nature, lifeguarding, and the loading of personal hand tools onto motor vehicles, are being added to the list of permitted occupations. The revision of several of the nonagricultural HOs—implementing specific recommendations made by NIOSH or that arise from the Department's enforcement experience—will, in all but one instance involving the use of certain counter-top mixers (HO 11), require employers to assign older workers to perform tasks that previously may have been performed by 16- and 17-year-olds.

Revisions resulting from the NIOSH recommendations include the expansion of HO 4 to prohibit the employment of minors in forest fire fighting and fire prevention activities and in timber tract and forestry service occupations; the revision of HO 7 to prohibit the employment of minors in the tending, servicing, and repairing of hoisting equipment and the addition of such equipment as cherry pickers, scissor lifts, bucket trucks, aerial platforms, and hoists of less than one ton capacity to the list of prohibited equipment; and the expansion of HO 10 to prohibit the employment of minors in poultry slaughtering and processing occupations. Revisions to HO 12 to prohibit the employment of minors in the operation of balers and compactors not currently covered by the HO, and the expansion of HO 14 to add additional power-driven equipment to the list of equipment minors may not operate, are also the result of NIOSH Report recommendations. The Department's enforcement experience led it to incorporate into the regulations certain long-standing enforcement positions involving the definitions of remanufacturing departments of sawmills (HO 4), high-lift trucks (HO 7), and the cleaning of power-driven meat processing equipment (HO 10). The Department is also, based on its enforcement experience, amending HO 11 to incorporate the Department's long-standing position permitting 16- and 17-year-olds, under certain conditions, to operate certain pizza-dough rollers, and expanding HO 14 to prohibit the employment of minors to operate wood chippers and reciprocating saws.

The Department has incorporated certain provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA) into 29 CFR parts 570 and 579 to implement the legislation, which revised the civil monetary penalties that may be assessed under section 16(e) of the FLSA. The regulatory changes that implement these statutory changes do no more than conform the previously-existing regulations to the recent statutory amendments and do not impose any economic costs on employers that are required to comply with the provisions of sections 12 and 13(c) of the FLSA. GINA, effective May 21, 2008, increased the maximum civil money penalty that may be assessed for violations that cause the death or serious injury of a minor from $11,000 to $50,000. GINA also permits a doubling of the civil money penalty up to $100,000 when such violations are determined to be willful or repeated.

The Department believes that implementation of the Final Rule would not reduce the overall number of safe, positive, and legal employment opportunities available to young workers. In fact, employment opportunities for 14- and 15-year-olds would increase with creation, for example, of a limited exemption for certain work-study programs, allowing youth to be employed in work of an intellectual or creative nature, and allowing youth to be employed in those permitted occupations listed in § 570.34(a) to be performed in additional industries, rather than just in retail, food service, and gasoline service establishments.

Although, as mentioned above, some employers would need to replace younger workers with older workers, the impact would be minimal as relatively few minors are currently employed to perform these occupations. But the Department believes that these changes are important as they are essential to fulfilling its charge of keeping working youth safe by prohibiting occupations that are particularly hazardous or detrimental to their health or well-being. Any costs that might result from using older employees to perform the previously permitted tasks would be more than offset by reduced health and productivity costs resulting from accidents and injuries to minors on the job. Rules that limit permissible job activities for working youth to those that are safe do not, by themselves, impose significant added costs on employers, in our view. In fact, ensuring that permissible job opportunities for working youth are safe, healthy, and not detrimental to their education, as required by the statute, produces many positive benefits in addition to fewer occupational injuries and deaths, including reduced health and productivity costs that employers may otherwise incur because of higher accident and injury rates to young and inexperienced workers. In any event, the direct, incremental costs that would be imposed by this rule are expected to be minimal. Collectively, they would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or its individual sectors, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Therefore, this rule is not "economically significant" and no regulatory impact analysis has been prepared.

The Department has similarly concluded for the same reasons noted above that this rule is not a "major rule" under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It would not likely result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While the impact that these regulatory changes will have on most affected entities has already been discussed, even those entities that are most heavily impacted should each spend an average of less than $1500 to comply with the new requirements of this rule. Specifically, the Department believes school districts sponsoring a WSP will incur the greatest additional costs. An analysis of the time it will take to prepare the application and written training agreements for a WSP and the associated recordkeeping suggests these educational institutions will each spend an average of about 52.5 hours more to comply with this Final Rule than might otherwise be spent to establish a similar work-study program. The Department associates no additional costs for the workplace observation requirement to ensure compliance with the FLSA child labor provisions, because such monitoring will normally be conducted when school staff visit the workplace to see whether educational objectives are being met. Absent any specific data on compensation of the persons who will actually perform the work to ensure

compliance, the DOL has estimated hourly costs this rule will impose on WSP sponsor schools by increasing the October 2009 average annual hourly rate for production or nonsupervisory workers on educational and health services payrolls of $19.59 by 40 percent to account for the value of fringe benefits (*see* The Employment Situation: December 2009, DOL, Bureau of Labor Statistics, January 2010, Table B–3, *http://www.bls.gov/news.release/archives/empsit_01082010.pdf*). The Department then multiplied this rate, which includes fringe benefits, by 52.5 hours. Accordingly, the DOL estimates WSP sponsor school districts will incur an average of $1440 (rounded) in additional compliance costs. (52.5 hours x $19.59 hourly rate x 1.4 fringe benefits factor.) As previously noted, the Department expects 30 school districts will have a WSP.

The costs imposed by this rule should not be significant for any single entity, and they do not affect a substantial number of small entities in a way that would require an analysis under the Regulatory Flexibility Act. At the time the NPRM was published, the Department certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration (SBA). Therefore, no Initial Regulatory Flexibility Analysis was required. The Department received no comments raising concerns about the initial certification. For the reasons discussed in this preamble, the Department has similarly concluded and certified to the SBA Office of Advocacy Chief Counsel that this Final Rule is not expected to have a significant economic impact on a substantial number of small entities in a manner that would require a Final Regulatory Flexibility Analysis.

**VI. Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this rule does not include any federal mandate that may result in excess of $100 million in expenditures by state, local and tribal governments in the aggregate or by the private sector.

**VII. Executive Order 13132; Federalism**

This rule does not have federalism implications as outlined in E.O. 13132 regarding federalism. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

**VIII. Executive Order 13175, Indian Tribal Governments**

This rule was reviewed under the terms of E.O. 13175 and determined not to have "tribal implications." The rule does not have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." As a result, no tribal summary impact statement has been prepared.

**IX. Effects on Families**

The undersigned hereby certifies that this rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

**X. Executive Order 13045, Protection of Children**

E.O. 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be "economically significant" as defined in E.O. 12866, and (2) concerns an environmental health or safety risk that the promulgating agency has reason to believe may have a disproportionate effect on children. This rule is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866. In addition, although this rule impacts the child labor provisions of the FLSA and the employment of adolescents and young adults, it does not impact the environmental health or safety risks of children.

**XI. Environmental Impact Assessment**

A review of this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

**XII. Executive Order 13211, Energy Supply**

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

**XIII. Executive Order 12630, Constitutionally Protected Property Rights**

This rule is not subject to E.O. 12630, because it does not involve implementation of a policy "that has takings implications" or that could impose limitations on private property use.

**XIV. Executive Order 12988, Civil Justice Reform Analysis**

This rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

**List of Subjects in 29 CFR Part 570**

Child labor, Child Labor occupations, Employment, Government, Incorporation by reference, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

**List of Subjects in 29 CFR Part 579**

Child labor, Law enforcement, Penalties.

Signed at Washington, DC, this 10th day of May, 2010.

**Nancy J. Leppink,**

*Deputy Administrator, Wage and Hour Division.*

■ For the reasons set out in the preamble, the Department amends Title 29, parts 570 and 579, of the Code of Federal Regulations as follows:

## PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

■ 1. The authority citation for part 570 subpart C is revised to read as follows:

**Authority:** 29 U.S.C. 203(l), 212, 213(c).

■ 2. Sections 570.31 through 570.35 are revised to read as follows:

### Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

Sec.

§ 570.31 Secretary's determinations concerning the employment of minors 14 and 15 years of age.
§ 570.32 Effect of this subpart.
§ 570.33 Occupations that are prohibited to minors 14 and 15 years of age.
§ 570.34 Occupations that may be performed by minors 14 and 15 years of age.

§ 570.35 Hours of work and conditions of employment permitted for minors 14 and 15 years of age.

* * * * *

**§ 570.31 Secretary's determinations concerning the employment of minors 14 and 15 years of age.**

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions specified in § 570.34 and § 570.35, does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

**§ 570.32 Effect of this subpart.**

This subpart concerns the employment of youth between 14 and 16 years of age in nonagricultural occupations; standards for the employment of minors in agricultural occupations are detailed in subpart E–1. The employment (including suffering or permitting to work) by an employer of minors 14 and 15 years of age in occupations detailed in § 570.34, for the periods and under the conditions specified in § 570.35, shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938, as amended. Employment that is not specifically permitted is prohibited.

**§ 570.33 Occupations that are prohibited to minors 14 and 15 years of age.**

The following occupations, which is not an exhaustive list, constitute oppressive child labor within the meaning of the Fair Labor Standards Act when performed by minors who are 14 and 15 years of age:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined or otherwise processed, except as permitted in § 570.34 of this subpart.

(b) Occupations that the Secretary of Labor may, pursuant to section 3(l) of the Fair Labor Standards Act, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being.

(c) Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing hoisting apparatus.

(d) Work performed in or about boiler or engine rooms or in connection with the maintenance or repair of the establishment, machines, or equipment.

(e) Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing any power-driven machinery, including but not limited to lawn mowers, golf carts, all-terrain vehicles, trimmers, cutters, weed-eaters, edgers, food slicers, food grinders, food choppers, food processors, food cutters, and food mixers. Youth 14 and 15 years of age may, however, operate office equipment pursuant to § 570.34(a) and vacuum cleaners and floor waxers pursuant to § 570.34(h).

(f) The operation of motor vehicles; the service as helpers on such vehicles except those tasks permitted by § 570.34(k); and the riding on a motor vehicle, inside or outside of an enclosed passenger compartment, except as permitted by § 570.34(o).

(g) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes.

(h) All baking and cooking activities except that cooking which is permitted by § 570.34(c).

(i) Work in freezers and meat coolers and all work in the preparation of meats for sale except as permitted by § 570.34(j). This section, however, does not prohibit the employment of 14- and 15-year-olds whose duties require them to occasionally enter freezers only momentarily to retrieve items as permitted by § 570.34(i).

(j) Youth peddling, which entails the selling of goods or services to customers at locations other than the youth-employer's establishment, such as the customers' residences or places of business, or public places such as street corners and public transportation stations. Prohibited activities associated with youth peddling not only include the attempt to make a sale or the actual consummation of a sale, but also the preparatory and concluding tasks normally performed by a youth peddler in conjunction with his or her sales such as the loading and unloading of vans or other motor vehicles, the stocking and restocking of sales kits and trays, the exchanging of cash and checks with the employer, and the transportation of minors to and from the various sales areas by the employer. Prohibited youth peddling also includes such promotion activities as the holding, wearing, or waving of signs, merchandise, costumes, sandwich boards, or placards in order to attract potential customers, except when performed inside of, or directly in front of, the employer's establishment providing the product, service, or event being advertised. This provision does not prohibit a young salesperson from conducting sales for his or her employer on property controlled by the employer that is out of doors but may properly be considered part of the employer's establishment. Youth may conduct sales in such employer exterior facilities, whether temporary or permanent, as garden centers, sidewalk sales, and parking lot sales, when employed by that establishment. Youth peddling does not include the activities of persons who, as volunteers and without compensation, sell goods or services on behalf of eleemosynary organizations or public agencies.

(k) Loading and unloading of goods or property onto or from motor vehicles, railroad cars, or conveyors, except the loading and unloading of personal non-power-driven hand tools, personal protective equipment, and personal items to and from motor vehicles as permitted by § 570.34(k).

(l) Catching and cooping of poultry in preparation for transport or for market.

(m) Public messenger service.

(n) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair); except such office work (including ticket office) or sales work in connection with paragraphs (n)(1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

**§ 570.34 Occupations that may be performed by minors 14 and 15 years of age.**

This subpart authorizes only the following occupations in which the employment of minors 14 and 15 years of age is permitted when performed for periods and under conditions authorized by § 570.35 and not involving occupations prohibited by § 570.33 or performed in areas or industries prohibited by § 570.33.

(a) Office and clerical work, including the operation of office machines.

(b) Work of an intellectual or artistically creative nature such as, but not limited to, computer programming, the writing of software, teaching or performing as a tutor, serving as a peer counselor or teacher's assistant, singing, the playing of a musical instrument, and drawing, as long as such employment complies with all the other provisions contained in §§ 570.33, 570.34, and 570.35. Artistically creative work is limited to work in a recognized field of artistic or creative endeavor.

(c) Cooking with electric or gas grills which does not involve cooking over an

open flame (Note: This provision does not authorize cooking with equipment such as rotisseries, broilers, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as "Neico broilers"). Cooking is also permitted with deep fryers that are equipped with and utilize a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease.

(d) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.

(e) Price marking and tagging by hand or machine, assembling orders, packing, and shelving.

(f) Bagging and carrying out customers' orders.

(g) Errand and delivery work by foot, bicycle, and public transportation.

(h) Clean up work, including the use of vacuum cleaners and floor waxers, and the maintenance of grounds, but not including the use of power-driven mowers, cutters, trimmers, edgers, or similar equipment.

(i) Kitchen work and other work involved in preparing and serving food and beverages, including operating machines and devices used in performing such work. Examples of permitted machines and devices include, but are not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee machines, devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps), and microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F. Minors are permitted to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers and liquids do not exceed a temperature of 100 °F. Minors are also permitted to occasionally enter freezers momentarily to retrieve items in conjunction with restocking or food preparation.

(j) Cleaning vegetables and fruits, and the wrapping, sealing, labeling, weighing, pricing, and stocking of items, including vegetables, fruits, and meats, when performed in areas physically separate from a freezer or meat cooler.

(k) The loading onto motor vehicles and the unloading from motor vehicles of the light, non-power-driven, hand tools and personal protective equipment that the minor will use as part of his or her employment at the work site; and the loading onto motor vehicles and the unloading from motor vehicles of personal items such as a back pack, a lunch box, or a coat that the minor is permitted to take to the work site. Such light tools would include, but are not limited to, rakes, hand-held clippers, shovels, and brooms. Such light tools would not include items like trash, sales kits, promotion items or items for sale, lawn mowers, or other power-driven lawn maintenance equipment. Such minors would not be permitted to load or unload safety equipment such as barriers, cones, or signage.

(l)(1) *Lifeguard.* The employment of 15-year-olds (but not 14-year-olds) to perform permitted lifeguard duties at traditional swimming pools and water amusement parks (including such water park facilities as wave pools, lazy rivers, specialized activity areas that may include water falls and sprinkler areas, and baby pools; but not including the elevated areas of power-driven water slides) when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety.

(2) *Definitions.* As used in this paragraph (l):

*Permitted lifeguard duties* include the rescuing of swimmers in danger of drowning, the monitoring of activities at poolside to prevent accidents, the teaching of water safety, and providing assistance to patrons. Lifeguards may also help to maintain order and cleanliness in the pool and pool areas, give swimming instructions (if, in addition to being certified as a lifeguard, the 15-year-old is also properly certified as a swimming instructor by the American Red Cross or some other recognized certifying organization), conduct or officiate at swimming meets, and administer first aid. Additional lifeguard duties may include checking in and out items such as towels and personal items such as rings, watches and apparel. Permitted duties for 15-year-olds include the use of a ladder to access and descend from the lifeguard chair; the use of hand tools to clean the pool and pool area; and the testing and recording of water quality for temperature and/or pH levels, using all of the tools of the testing process including adding chemicals to the test water sample. Fifteen-year-olds employed as lifeguards are, however, prohibited from entering or working in any mechanical room or chemical storage areas, including any areas where the filtration and chlorinating systems are housed. The term permitted lifeguard duties does not include the operation or tending of power-driven equipment including power-driven elevated water slides often found at water amusement parks and some swimming pools. Minors under 16 years of age may not be employed as dispatchers or attendants at the top of elevated water slides performing such tasks as maintaining order, directing patrons as to when to depart the top of the slide, and ensuring that patrons have begun their "ride" safely. Properly certified 15-year-old lifeguards may, however, be stationed at the "splashdown pools" located at the bottom of the elevated water slides to perform those permitted duties listed in this subsection.

*Traditional swimming pool* means a water tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith, excluding elevated "water slides." Not included in the definition of a traditional swimming pool would be such natural environment swimming facilities as rivers, streams, lakes, ponds, quarries, reservoirs, wharfs, piers, canals, or oceanside beaches.

*Water amusement park* means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Not included in the definition of a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches.

(m)(1) *Employment inside and outside of places of business where machinery is used to process wood products.* The employment of a 14- or 15-year-old who by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade inside or outside places of business where machinery is used to process wood products if:

(i) The youth is supervised by an adult relative of the youth or is supervised by an adult member of the same religious sect or division as the youth;

(ii) The youth does not operate or assist in the operation of power-driven woodworking machines;

(iii) The youth is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood

particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) The youth is required to use, and uses, personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(2) *Compliance.* Compliance with the provisions of paragraphs (m)(1)(iii) and (m)(1)(iv) of this section will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) or, in those areas where OSHA has authorized the state to operate its own Occupational Safety and Health Plan, the applicable standards issued by the Office charged with administering the State Occupational Safety and Health Plan. The employment of youth under this section must comply with the other sections of this subpart, including the hours and time of day standards established by § 570.35.

(3) *Definitions.* As used in this paragraph (m):

*Inside or outside places of business* shall mean the actual physical location of the establishment employing the youth, including the buildings and surrounding land necessary to the business operations of that establishment.

*Operate or assist in the operation of power-driven woodworking machines* shall mean the operating of such machines, including supervising or controlling the operation of such machines, feeding material into such machines, helping the operator feed material into such machines, unloading materials from such machines, and helping the operator unload materials from such machines. The term also includes the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines.

*Places of business where machinery is used to process wood products* shall mean such permanent workplaces as sawmills, lath mills, shingle mills, cooperage stock mills, furniture and cabinet making shops, gazebo and shed making shops, toy manufacturing shops, and pallet shops. The term shall not include construction sites, portable sawmills, areas where logging is being performed, or mining operations.

*Power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing, or printing wood, veneer, trees, logs, or lumber.

*Supervised by an adult relative or is supervised by an adult member of the same religious sect or division as the youth* has several components. *Supervised* means that the youth's on-the-job activities must be directed, monitored, overseen, and controlled by certain named adults. Such supervision must be close, direct, constant, and uninterrupted. An *adult* shall mean an individual who is at least eighteen years of age. A *relative* shall mean the parent (or someone standing in the place of a parent), grandparent, sibling, uncle, or aunt of the young worker. *A member of the same religious sect or division as the youth* refers to an individual who professes membership in the same religious sect or division to which the youth professes membership.

(n) Work in connection with cars and trucks if confined to the following: dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing by hand; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(o) Work in connection with riding inside passenger compartments of motor vehicles except as prohibited by § 570.33(f) or § 570.33(j), or when a significant reason for the minor being a passenger in the vehicle is for the purpose of performing work in connection with the transporting—or assisting in the transporting of—other persons or property. The transportation of the persons or property does not have to be the primary reason for the trip for this exception to apply. Each minor riding as a passenger in a motor vehicle must have his or her own seat in the passenger compartment; each seat must be equipped with a seat belt or similar restraining device; and the employer must instruct the minors that such belts or other devices must be used. In addition, each driver transporting the young workers must hold a State driver's license valid for the type of driving involved and, if the driver is under the age of 18, his or her employment must comply with the provisions of § 570.52.

**§ 570.35 Hours of work and conditions of employment permitted for minors 14 and 15 years of age.**

(a) *Hours standards.* Except as provided in paragraph (c) of this section, employment in any of the permissible occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside of school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session, including Fridays;

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(b) *Definitions.* As used in this section:

*Outside school hours* means such periods as before and after school hours, holidays, summer vacations, weekends, and any other day or part of a day when school is not in session as determined by the local public school district in which the minor resides when employed. Summer school sessions, held in addition to the regularly scheduled school year, are considered to be *outside of school hours.*

*School hours* refers to the hours that the local public school district where the minor resides while employed is in session during the regularly scheduled school year.

*Week* means a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods—that is identical to the workweek the employer establishes for the employee under § 778.105 of this title.

*Week when school is in session* refers to any week the local public school district where the minor resides while employed is in session and students are required to attend for at least one day or partial day.

(c) *Exceptions.* (1) School is not considered to be in session, and exceptions from the hours limitations standards listed in paragraphs (a)(1), (3), and (5) of this section are provided, for any youth 14 or 15 years of age who:

(i) Has graduated from high school;

(ii) Has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the requirements of the state school attendance law;

(iii) Has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for this minor;

(iv) Is subject to an order of a state or federal court prohibiting him or her from attending school; or

(v) Has been permanently expelled from the local public school he or she would normally attend, unless the youth is required, by state or local law

or ordinance, or by court order, to attend another school.

(2) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, *i.e.,* baseball, basketball, football, soccer, tennis, etc., the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, etc., during play; providing ice, drinks, towels, etc., to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

(3) Exceptions from certain of the hours standards contained in paragraphs (a)(1) and (a)(3) of this section are provided for the employment of minors who are enrolled in and employed pursuant to a school-supervised work-experience and career exploration program as detailed in § 570.36.

(4) Exceptions from certain of the hours standards contained in paragraphs (a)(1) and (a)(5) of this section are provided for the employment of minors who are participating in a work-study program designed as described in § 570.37.

**§§ 570.36 and 570.37 [Redesignated as §§ 570.38 and 570.39]**

■ 3. Redesignate §§ 570.36 and 570.37 as §§ 570.38 and 570.39, respectively.

**§ 570.35a [Redesignated as § 570.36]**

■ 4. Redesignate § 570.35a as § 570.36.

■ 5. Revise paragraph (c)(3) introductory text of newly redesignated § 570.36 to read as follows:

**§ 570.36 Work experience and career exploration program.**

* * * * *

(c) * * *

(3) Occupations other than those permitted under § 570.34, except upon approval of a variation by the Administrator of the Wage and Hour Division in acting on the program application of the State Educational Agency. The Administrator shall have discretion to grant requests for special variations if the applicant demonstrates that the activity will be performed under adequate supervision and training (including safety precautions) and that the terms and conditions of the proposed employment will not interfere with the health or well-being or schooling of the minor enrolled in an approved program. The granting of a special variation is determined on a case-by-case basis.

* * * * *

■ 6. Add a new § 570.37 to read as follows:

**§ 570.37 Work-study program.**

(a) This section varies the provisions contained in § 570.35(a)(1) and (a)(5) for the employment of minors 14 and 15 years of age who are enrolled in and employed pursuant to a school-supervised and school-administered work-study program that meets the requirements of paragraph (b) of this section, in the occupations permitted by § 570.34, and for the periods and under the conditions specified in paragraph (c) of this section. With these safeguards, such employment is found not to interfere with the schooling of the minors or with their health and well-being and therefore is not deemed to be oppressive child labor.

(b)(1) A school-supervised and school-administered work-study program shall meet the educational standards established and approved by the State Educational Agency in the respective state.

(2) The superintendent of the public or private school system supervising and administering the work-study program shall file with the Administrator of the Wage and Hour Division a letter of application for approval of the work-study program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. The application shall be filed at least sixty days before the start of the school year and must include information concerning the criteria listed in paragraph (b)(3) of this section. The Administrator of the Wage and Hour Division shall approve the application, or give prompt notice of any denial and the reasons therefor.

(3) The criteria to be used in consideration of applications under this section are the following:

(i) *Eligibility.* Any student 14 or 15 years of age, enrolled in a college preparatory curriculum, whom authoritative personnel from the school attended by the youth identify as being able to benefit from the program shall be able to participate.

(ii) *Instructional schedule.* Every youth shall receive, every school year he or she participates in the work-study program, at least the minimum number of hours of classroom instruction, as required by the State Educational Agency responsible for establishing such standards, to complete a fully-accredited college preparatory curriculum. Such classroom instruction shall include, every year the youth participates in the work-study program, training in workplace safety and state and federal child labor provisions and rules.

(iii) *Teacher-coordinator.* Each school participating in a work-study program shall designate a teacher-coordinator under whose supervision the program will operate. The teacher-coordinator shall generally supervise and coordinate the work and educational aspects of the program and make regularly scheduled visits to the workplaces of the participating students to confirm that minors participating in the work-study program are employed in compliance with all applicable provisions of this part and section 6 of the Fair Labor Standards Act. Such confirmation shall be noted in any letters of application filed by the superintendent of the public or private school system in accordance with paragraph (b)(2) of this section when seeking continuance of its work-study program.

(iv) *Written participation agreement.* No student shall participate in the work-study program until there has been made a written agreement signed by the teacher-coordinator, the employer, and the student. The agreement shall also be signed or otherwise consented to by the student's parent or guardian. The agreement shall detail the objectives of the work-study program; describe the specific job duties to be performed by the participating minor as well as the number of hours and times of day that the minor will be employed each week; affirm that the participant will receive the minimum number of hours of class-room instruction as required by the State Educational Agency for the completion of a fully-accredited college preparatory curriculum; and affirm that

the employment of the minor will be in compliance with the child labor provisions of both this part and the laws of the state where the work will be performed, and the applicable minimum wage provisions contained in section 6 of the FLSA.

(v) *Other provisions.* Any other provisions of the program providing safeguards ensuring that the employment permitted under this section will not interfere with the schooling of the minors or with their health and well-being may also be submitted for use in considering the application.

(4) Every public or private school district having students in a work-study program approved pursuant to these requirements, and every employer employing students in a work-study program approved pursuant to these requirements, shall comply with the following:

(i) *Permissible occupations.* No student shall be assigned to work in any occupation other than one permitted under § 570.34.

(ii) *Records and reports.* A copy of the written agreement for each student participating in the work-study program shall be kept by both the employer and the school supervising and administering the program for a period of three years from the date of the student's enrollment in the program. Such agreements shall be made available upon request to the representatives of the Administrator of the Wage and Hour Division for inspection, transcription, and/or photocopying.

(c) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours, in accordance with the following formula that is based upon a continuous four-week cycle. In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day. During the remaining week of the four-week cycle, such minor is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days. The employment of such minors would still be subject to the time of day and number of hours standards contained in §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). To the extent that these provisions are inconsistent with the provisions of § 570.35, this section shall be controlling.

(d) Programs shall be in force and effect for a period to be determined by the Administrator of the Wage and Hour Division, but in no case shall be in effect for longer than two school years from the date of their approval by the Administrator of the Wage and Hour Division. A new application for approval must be filed at the end of that period. Failure to meet the requirements of this section may result in withdrawal of the approval.

(The information collection requirements contained in § 570.37 were approved by the OMB under Control No. 1215–0208.)

## Subpart E—Occupations Particularly Hazardous for the Employment of Minors Between 16 and 18 Years of Age or Detrimental to Their Health or Well-Being

■ 7. The authority citation for subpart E continues to read as follows:

**Authority:** 29 U.S.C. 203(l), 212, 213(c).

■ 8. Section 570.54 is revised to read as follows:

### § 570.54 Forest fire fighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4).

(a) *Finding and declarations of fact.* All occupations in forest fire fighting and forest fire prevention, in timber tracts, in forestry services, logging, and the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill are particularly hazardous for the employment of minors between 16 and 18 years of age, except the following when not prohibited by any other section of this subpart:

(1) Work in offices or in repair or maintenance shops.

(2) Work in the construction, operation, repair, or maintenance of living and administrative quarters, including logging camps and fire fighting base camps.

(3) Work in the repair or maintenance of roads, railroads or flumes and work in construction and maintenance of telephone lines, but only if the minors are not engaged in the operation of power-driven machinery, the handling or use of explosives, the felling or bucking of timber, the collecting or transporting of logs, or work on trestles.

(4) The following tasks in forest fire prevention *provided* none of these tasks may be performed in conjunction with or in support of efforts to extinguish a forest fire: the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; the piling and burning of slash; the maintaining of fire fighting equipment; and acting as a fire lookout or fire patrolman.

(5) Work related to forest marketing and forest economics when performed away from the forest.

(6) Work in the feeding or care of animals.

(7) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section.

(8) The following additional exceptions apply to the operation of a permanent sawmill or the operation of any lath mill, shingle mill, or cooperage stock mill, but not to a portable sawmill. In addition, the following exceptions do not apply to work which entails entering the sawmill building, except for those minors whose employment meets the requirements of the limited exemptions discussed in §§ 570.34(m) and 570.54(c):

(i) Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.

(ii) Pulling lumber from the dry chain, *except* minors under 16 years of age may not pull lumber from the dry chain as such youth are prohibited from operating or tending power-driven machinery by § 570.33(e) of this part.

(iii) Clean-up in the lumberyard.

(iv) Piling, handling, or shipping of cooperage stock in yards or storage sheds other than operating or assisting in the operation of power-driven equipment; *except* minors under 16 years of age may not perform shipping duties as they are prohibited from employment in occupations in connection with the transportation of property by rail, highway, air, water, pipeline, or other means by § 570.33(n)(1) of this part.

(v) Clerical work in yards or shipping sheds, such as done by ordermen, tally-men, and shipping clerks.

(vi) Clean-up work outside shake and shingle mills, except when the mill is in operation.

(vii) Splitting shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover.

(viii) Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover.

(ix) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the

minor capable of performing this work without injury to himself, *except* minors under 16 years of age may not load bundles of shingles or shakes into trucks or railroad cars as they are prohibited from loading and unloading goods or property onto or from motor vehicles, railroad cars, or conveyors by § 570.33(k) of this part.

(b) *Definitions.* As used in this section:

*All occupations in forest fire fighting and forest fire prevention* shall include the controlling and extinguishing of fires, the wetting down of areas or extinguishing of spot fires, and the patrolling of burned areas to assure the fire has been extinguished. The term shall also include the following tasks when performed in conjunction with, or in support of, efforts to extinguish a forest fire: the piling and burning of slash; the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; acting as a fire lookout or fire patrolman; and the maintaining of fire fighting equipment. The prohibition concerning the employment of youth in forest fire fighting and fire prevention applies to all forest and timber tract locations, logging operations, and sawmill operations, including all buildings located within such areas.

*All occupations in forestry services* shall mean all work involved in the support of timber production, wood technology, forestry economics and marketing, and forest protection. The term includes such services as timber cruising, surveying, or logging-engineering parties; estimating timber; timber valuation; forest pest control; forest fire fighting and forest fire prevention as defined in this section; and reforestation. The term shall not include work in forest nurseries, establishments primarily engaged in growing trees for purposes of reforestation. The term shall not include the gathering of forest products such as balsam needles, ginseng, huckleberry greens, maple sap, moss, Spanish moss, sphagnum moss, teaberries, and tree seeds; the distillation of gum, turpentine, and rosin if carried on at the gum farm; and the extraction of pine gum.

*All occupations in logging* shall mean all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of such products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging.

*All occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill* shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, lathers, shingles, or cooperage stock; storing drying, and shipping lumber, laths, shingles, cooperage stock, or other products of such mills; and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill or remanufacturing plant not a part of a sawmill.

*All occupations in timber tracts* means all work performed in or about establishments that cultivate, manage or sell standing timber. The term includes work performed in timber culture, timber tracts, timber-stand improvement, and forest fire fighting and fire prevention. It includes work on tree farms, except those tree farm establishments that meet the definition of agriculture contained in 29 U.S.C. 203(f).

*Inside or outside places of business* shall mean the actual physical location of the establishment employing the youth, including the buildings and surrounding land necessary to the business operations of that establishment.

*Operate or assist in the operation of power-driven woodworking machines* includes operating such machines, including supervising or controlling the operation of such machines, feeding material into such machines, helping the operator feed material into such machines, unloading materials from such machines, and helping the operator unload materials from such machines. The term also includes the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines.

*Places of business where machinery is used to process wood products* shall mean such permanent workplaces as sawmills, lath mills, shingle mills, cooperage stock mills, furniture and cabinet making shops, gazebo and shed making shops, toy manufacturing shops, and pallet shops. The term shall not include construction sites, portable sawmills, areas where logging is being performed, or mining operations.

*Portable sawmill* shall mean a sawmilling operation where no office or repair or maintenance shop is ordinarily maintained, and any lumberyard operated in conjunction with the sawmill is used only for the temporary storage of green lumber.

*Power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood, veneer, trees, logs, or lumber.

*Remanufacturing department* shall mean those departments of a sawmill where lumber products such as boxes, lawn furniture, and the like are remanufactured from previously cut lumber. The kind of work performed in such departments is similar to that done in planing mill departments in that rough lumber is surfaced or made into other finished products. The term is not intended to denote those operations in sawmills where rough lumber is cut to dimensions.

*Supervised by an adult relative or is supervised by an adult member of the same religious sect or division as the youth,* as a term, has several components. *Supervised* refers to the requirement that the youth's on-the-job activities be directed, monitored, and controlled by certain named adults. Such supervision must be close, direct, constant and uninterrupted. An *adult* shall mean an individual who is at least eighteen years of age. A *relative* shall mean the parent (or someone standing in place of a parent), grandparent, sibling, uncle, or aunt of the young worker. A *member of the same religious sect or division as the youth* refers to an individual who professes membership in the same religious sect or division to which the youth professes membership.

(c) *Exemptions.* (1) The provisions contained in paragraph (a)(8) of this section that prohibit youth between 16 and 18 years of age from performing any work that entails entering the sawmill building do not apply to the employment of a youth who is at least 14 years of age and less than 18 years of age and who by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade, if:

(i) The youth is supervised by an adult relative or by an adult member of the same religious sect or division as the youth;

(ii) The youth does not operate or assist in the operation of power-driven woodworking machines;

(iii) The youth is protected from wood particles or other flying debris within the workplace by a barrier appropriate

to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) The youth is required to use, and uses, personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(2) Compliance with the provisions of paragraphs (c)(1)(iii) and (iv) of this section will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) or, in those areas where OSHA has authorized the state to operate its own Occupational Safety and Health Plan, the applicable standards issued by the Office charged with administering the State Occupational Safety and Health Plan.

■ 9. In § 570.55, paragraph (b) is revised to read as follows:

**§ 570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5).**

* * * * *

(b) *Definitions.* As used in this section:

*Off-bearing* shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include:

(i) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller; and

(ii) The following operations when they do not involve the removal of materials or refuse directly from a saw table or point of operation: The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

*Power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood, veneer, trees, logs, or lumber.

* * * * *

■ 10. In § 570.58, paragraphs (a) and (b) are revised to read as follows:

**§ 570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).**

(a) *Findings and declaration of fact.* The following occupations involved in the operation of power-driven hoisting apparatus are particularly hazardous for minors between 16 and 18 years of age:

(1) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling an elevator, crane, derrick, hoist, or high-lift truck, except operating or riding inside an unattended automatic operation passenger elevator. Tending such equipment includes assisting in the hoisting tasks being performed by the equipment.

(2) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling a manlift or freight elevator, except 16- and 17-year-olds may ride upon a freight elevator operated by an assigned operator. Tending such equipment includes assisting in the hoisting tasks being performed by the equipment.

(b) *Definitions.* As used in this section:

*Crane* shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

*Derrick* shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy, and stiff-leg derrick.

*Elevator* shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

*High-lift truck* shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or a platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include highlift trucks known under such names as fork lifts, fork trucks, fork lift trucks, tiering trucks, backhoes, front-end loaders, skid loaders, skid-steer loaders, Bobcat loaders, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of materials.

*Hoist* shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.

*Manlift* shall mean a device intended for the conveyance of persons that consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; with such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom. The term shall also include truck- or equipment-mounted aerial platforms commonly referred to as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

* * * * *

■ 11. In § 570.59, the section heading is revised to read as follows:

**§ 570.59 Occupations involved in the operation of power-driven metal forming, punching, and shearing machines (Order 8).**

* * * * *

■ 12. In § 570.61, the section heading and paragraphs (a)(4), (a)(7), (b), and (c)(1) are revised to read as follows:

**§ 570.61 Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering (Order 10).**

(a) * * *

(4) All occupations involved in the operation or feeding of the following power-driven machines, including setting-up, adjusting, repairing, or oiling such machines or the cleaning of such machines or the individual parts or attachments of such machines, regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.): meat patty forming machines, meat and bone

cutting saws, poultry scissors or shears; meat slicers, knives (except bacon-slicing machines), headsplitters, and guillotine cutters; snoutpullers and jawpullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (except belly-rolling machines). *Except,* the provisions of this subsection shall not apply to the operation of those lightweight, small capacity, portable, countertop mixers discussed in § 570.62(b)(1) of this chapter when used as a mixer to process materials other than meat or poultry.

* * * * *

(7) All occupations involving the handlifting or handcarrying any carcass or half carcass of beef, pork, horse, deer, or buffalo, or any quarter carcass of beef, horse, or buffalo.

(b) *Definitions.* As used in this section:

*Boning occupations* means the removal of bones from meat cuts. It does not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

*Curing cellar* includes a workroom or workplace which is primarily devoted to the preservation and flavoring of meat, including poultry, by curing materials. It does not include a workroom or workplace solely where meats are smoked.

*Hide cellar* includes a workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

*Killing floor* includes a workroom, workplace where such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

*Retail/wholesale or service establishments* include establishments where meat or meat products, including poultry, are processed or handled, such as butcher shops, grocery stores, restaurants and quick service food establishments, hotels, delicatessens, and meat locker (freezer-locker) companies, and establishments where any food product is prepared or processed for serving to customers using machines prohibited by paragraph (a) of this section.

*Rendering plants* means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

*Slaughtering and meat packing establishments* means places in or about which such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are killed, butchered, or processed. The term also includes establishments which manufacture or process meat or poultry products, including sausage or sausage casings from such animals.

(c) * * *

(1) The killing and processing of rabbits or small game in areas physically separated from the killing floor.

* * * * *

■ 13. In § 570.62, paragraph (a)(2) is revised, and a new paragraph (b) is added, to read as follows:

**§ 570.62 Occupations involved in the operation of bakery machines (Order 11).**

(a) * * *

(2) The occupation of setting up or adjusting a cookie or cracker machine.

(b) *Exceptions.* (1) This section shall not apply to the operation, including the setting up, adjusting, repairing, oiling and cleaning, of lightweight, small capacity, portable counter-top power-driven food mixers that are, or are comparable to, models intended for household use. For purposes of this exemption, a lightweight, small capacity mixer is one that is not hardwired into the establishment's power source, is equipped with a motor that operates at no more than ½ horsepower, and is equipped with a bowl with a capacity of no more than five quarts. *Except,* this exception shall not apply when the mixer is used, with or without attachments, to process meat or poultry products as prohibited by § 570.61(a)(4).

(2) This section shall not apply to the operation of pizza-dough rollers, a type of dough sheeter, that: have been constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; have gears that are completely enclosed; and have microswitches that disengage the machinery if the backs or sides of the rollers are removed. This exception applies only when all the safeguards detailed in this paragraph are present on the machine, are operational, and have not been overridden. This exception does not apply to the setting up, adjusting, repairing, oiling or cleaning of such pizza-dough rollers.

■ 14. In § 570.63, the section heading and paragraphs (a)(2), (b) are revised, paragraphs (a)(3) and (4) are added, and paragraph (c)(1)(iv)(A) is revised to read as follows:

**§ 570.63 Occupations involved in the operation of balers, compactors, and paper-products machines (Order 12).**

(a) * * *

(2) The occupations of operation or assisting to operate any baler that is designed or used to process materials other than paper.

(3) The occupations of operation or assisting to operate any compactor that is designed or used to process materials other than paper.

(4) The occupations of setting up, adjusting, repairing, oiling, or cleaning any of the machines listed in paragraphs (a)(1), (2), and (3) of this section.

(b) *Definitions.* As used in this section:

*Applicable ANSI Standard* means the American National Standard Institute's Standard ANSI Z245.5–1990 *American National Standard for Refuse Collection, Processing, and Disposal—Baling Equipment—Safety Requirements* (ANSI S245.5–1990) for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2–1992 *American National Standard for Refuse Collection, Processing, and Disposal Equipment—Stationary Compactors—Safety Requirements* (ANSI Z245.2–1992) for paper box compactors. Additional applicable standards are the American National Standard Institute's Standard ANSI Z245.5–1997 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements* (ANSI Z245.5–1997), the American National Standard Institute's Standard ANSI Z245.5–2004 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements for Installation, Maintenance and Operation* (ANSI Z245.5–2004), and the American National Standard Institute's Standard ANSI Z245.5–2008 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements* (ANSI Z245.5–2008) for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2–1997 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements* (ANSI Z245.2–1997), the American National Standard Institute's Standard ANSI Z245.2–2004 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements for Installation, Maintenance and*

*Operation* (ANSI Z245.2–2004), and the American National Standard Institute's Standard ANSI Z245.2–2008 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements for Installation, Maintenance and Operation* (ANSI Z245.2–2008) for paper box compactors, which the Secretary has certified to be at least as protective of the safety of minors as Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. These ANSI standards are incorporated by reference in this paragraph and have the same force and effect as other standards in this part. Only the mandatory provisions (*i.e.,* provisions containing the word "shall" or other mandatory language) of these standards are adopted as standards under this part. These standards are incorporated by reference as they exist on the date of the approval; if any changes are made in these standards which the Secretary finds to be as protective of the safety of minors as the current standards, the Secretary will publish a Notice of the change of standards in the **Federal Register.** These incorporations by reference were 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 are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd St., Fourth Floor, New York, NY 10036. The telephone number for ANSI is (212) 642–4900 and its Web site is located at *http://www.ansi.org.* In addition, these standards are available for inspection 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.* These standards are also available for inspection at the Occupational Safety and Health Administration's Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or any of its regional offices. The telephone number for the Occupational Safety and Health Administration's Docket Office is (202) 693–2350 and its Web site is located at *http://dockets.osha.gov.*

*Baler that is designed or used to process materials other than paper* means a powered machine designed or used to compress materials other than paper and cardboard boxes, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

*Compactor that is designed or used to process materials other than paper* means a powered machine that remains stationary during operation, designed or used to compact refuse other than paper or cardboard boxes into a detachable or integral container or into a transfer vehicle.

*Operating or assisting to operate* means all work that involves starting or stopping a machine covered by this section, placing materials into or removing materials from a machine, including clearing a machine of jammed materials, paper, or cardboard, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

*Paper box compactor* means a powered machine that remains stationary during operation, used to compact refuse, including paper boxes, into a detachable or integral container or into a transfer vehicle.

*Paper products machine* means all power-driven machines used in remanufacturing or converting paper or pulp into a finished product, including preparing such materials for recycling; or preparing such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment. The term also applies to those machines which, in addition to paper products, process other material for disposal.

*Scrap paper baler* means a powered machine used to compress paper and possibly other solid waste, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

(c)(1) * * *

(iv) * * *

(A)(*1*) That the scrap paper baler or compactor meets the industry safety standard applicable to the machine, as specified in paragraph (b) of this section and displayed in the following table.

| In order for employers to take advantage of the limited exception discussed in this section, the *scrap paper baler* must meet one of the following ANSI Standards: | In order for employers to take advantage of the limited exception discussed in this section, the *paper box compactor* must meet one of the following ANSI Standards: |
|---|---|
| ANSI Standard Z245.5–1990 | ANSI Standard Z245.2–1992. |
| ANSI Standard Z245.5–1997 | ANSI Standard Z245.2–1997. |
| ANSI Standard Z245.5–2004 | ANSI Standard Z245.2–2004. |
| ANSI Standard Z245.5–2008 | ANSI Standard Z245.2–2008. |

(*2*) The notice shall completely identify the appropriate ANSI standard.

* * * * *

■ 15. In § 570.65, the section heading and paragraph (a)(2) are revised, paragraph (a)(3) is added, and paragraph (b) is revised to read as follows:

**§ 570.65 Occupations involving the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs (Order 14).**

(a) * * *

(2) The occupations of operator of or helper on the following power-driven fixed or portable machines:

(i) Chain saws.

(ii) Reciprocating saws.

(iii) Wood chippers.

(iv) Abrasive cutting discs.

(3) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.

(b) *Definitions.* As used in this section:

*Abrasive cutting disc* shall mean a machine equipped with a disc embedded with abrasive materials used for cutting materials.

*Band saw* shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

*Chain saw* shall mean a machine that has teeth linked together to form an endless chain used for cutting materials.

*Circular saw* shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

*Guillotine shear* shall mean a machine equipped with a moveable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

*Helper* shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

*Operator* shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

*Reciprocating saw* shall mean a machine equipped with a moving blade that alternately changes direction on a linear cutting axis used for sawing materials.

*Wood chipper* shall mean a machine equipped with a feed mechanism, knives mounted on a rotating chipper disc or drum, and a power plant used to reduce to chips or shred such materials as tree branches, trunk segments, landscape waste, and other materials.

* * * * *

## Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended

■ 16. The authority citation for subpart G continues to read as follows:

**Authority:** 52 Stat. 1060–1069 as amended; 29 U.S.C. 201–219.

■ 17. Section 570.102 is revised to read as follows:

### § 570.102. General scope of statutory provisions.

The most important of the child labor provisions are contained in sections 12(a), 12(c), and 3(l) of the Act. Section 12(a) provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any goods produced in an establishment in or about which oppressive child labor was employed within 30 days before removal of the goods. The full text of this subsection is set forth in § 570.104 and its terms are discussed in §§ 570.105 to 570.111, inclusive. Section 12(c) prohibits any employer from employing oppressive child labor in interstate or foreign commerce or in the production of goods for such commerce. The text and discussion of this provision appear in §§ 570.112 and 570.113. Section 3(l) of the Act, which defines the term "oppressive child labor," is set forth in § 570.117 and its provisions are discussed in §§ 570.118 to 570.121, inclusive. It will further be noted that the Act provides various specific exemptions from the foregoing provisions which are set forth and discussed in §§ 570.122 to 570.130, inclusive.

■ 18. In § 570.103, paragraph (c) is revised to read as follows:

### § 570.103 Comparison with wage and hour provisions.

* * * * *

(c) Another distinction is that the exemptions provided by the Act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only eight specific child labor exemptions of which only two apply to the minimum wage and overtime pay requirements as well. These are the exemptions for employees engaged in the delivery of newspapers to the consumer and homeworkers engaged in the making of wreaths composed principally of evergreens.[3] Apart from these two exceptions, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the exclusion of certain employers by section 3(d)[4] of the Act applies to the child labor provisions as well as the wage and hours provisions.

### § 570.111 [Amended]

■ 19. In § 570.111, footnote 21 is revised to read "However, section 12(a) contains a provision relieving innocent purchasers from liability thereunder provided certain conditions are met. For a discussion of this provision, *see* § 570.141."

■ 20. Sections 570.118 through 570.120 are revised to read as follows:

* * * * *

### § 570.118 Sixteen-year minimum.

### § 570.119 Fourteen-year minimum.

### § 570.120 Eighteen-year minimum.

* * * * *

### § 570.118 Sixteen-year minimum.

The Act sets a 16-year-age minimum for employment in manufacturing or mining occupations, although under FLSA section 13(c)(7), certain youth between the ages of 14 and 18 may, under specific conditions, be employed inside and outside of places of business that use power-driven machinery to process wood products. Furthermore, the 16-year-age minimum for employment is applicable to employment in all other occupations unless otherwise provided by regulation or order issued by the Secretary.

### § 570.119 Fourteen-year minimum.

With respect to employment in occupations other than manufacturing and mining and in accordance with the provisions of FLSA section 13(c)(7), the Secretary is authorized to issue regulations or orders lowering the age minimum to 14 years where he or she finds that such employment is confined to periods that will not interfere with the minors' schooling and to conditions that will not interfere with their health and well-being. Pursuant to this authority, the Secretary has detailed in § 570.34 all those occupations in which 14- and 15-year-olds may be employed when the work is performed outside school hours and is confined to other specified limits. The Secretary, in order to provide clarity and assist employers in attaining compliance, has listed in § 570.33 certain prohibited occupations that, over the years, have been the frequent subject of questions or violations. The list of occupations in § 570.33 is not exhaustive. The Secretary has also set forth, in § 570.35, additional conditions that limit the periods during which 14- and 15-year-olds may be employed. The employment of minors under 14 years of age is not permissible under any circumstances if the employment is covered by the child labor provisions and not specifically exempt.

[3] Both of these exemptions are contained in section 13(d) of the FLSA.

[4] Section 3(d) defines 'employer' as including "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

**§ 570.120 Eighteen-year minimum.**

To protect young workers from hazardous employment, the FLSA provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to the health or well-being for minors 16 and 17 years of age. Hazardous occupations orders are the means through which occupations are declared to be particularly hazardous for minors. Since 1995, the promulgation and amendment of the hazardous occupations orders have been effectuated under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The effect of these orders is to raise the minimum age for employment to 18 years in the occupations covered. Seventeen orders, published in subpart E of this part, have thus far been issued under the FLSA and are now in effect.

■ 21. Section 570.122 is revised to read as follows:

**§ 570.122 General.**

(a) Specific exemptions from the child labor requirements of the Act are provided for:

(1) Employment of children in agriculture outside of school hours for the school district where they live while so employed;

(2) Employment of employees engaged in the delivery of newspapers to the consumer;

(3) Employment of children as actors or performers in motion pictures or in theatrical, radio, or television productions;

(4) Employment by a parent or a person standing in a parent's place of his own child or a child in his custody under the age of sixteen years in any occupation other than manufacturing, mining, or an occupation found by the Secretary to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being.

(5) Employment of homeworkers engaged in the making of evergreen wreaths, including the harvesting of the evergreens or other forest products used in making such wreaths.

(6) Employment of 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors under specified conditions.

(7) Employment of 17-year-olds to perform limited driving of cars and trucks during daylight hours under specified conditions.

(8) Employment of youths between the ages of 14 and 18 years who, by statute or judicial order, are excused from compulsory school attendance beyond the eighth grade, under specified conditions, in places of business that use power-driven machinery to process wood products.

(b) When interpreting these provisions, the Secretary will be guided by the principle that such exemptions should be narrowly construed and their application limited to those employees who are plainly and unmistakably within their terms. Thus, the fact that a child's occupation involves the performance of work which is considered exempt from the child labor provisions will not relieve his employer from the requirements of section 12(c) or the producer, manufacturer, or dealer from the requirements of section 12(a) if, during the course of his employment, the child spends any part of his time doing work which is covered but not so exempt.

■ 22. The undesignated center heading preceding § 570.127 is removed.

■ 23. Section 570.127 is revised to read as follows:

**§ 570.127 Homeworkers engaged in the making of evergreen wreaths.**

FLSA section 13(d) provides an exemption from the child labor provisions, as well as the minimum wage and overtime provisions, for homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

**§ 570.128 [Redesignated as § 570.141]**

■ 24. Section 570.128 is redesignated as § 570.141 and a new § 570.128 is added to read as follows:

**§ 570.128 Loading of certain scrap paper balers and paper box compactors.**

(a) Section 13(c)(5) of the FLSA provides for an exemption from the child labor provisions for the employment of 16- and 17-year-olds to load, but not operate or unload, certain power-driven scrap paper balers and paper box compactors under certain conditions. The provisions of this exemption, which are contained in HO 12 (§ 570.63) include that the scrap paper baler or compactor meet an applicable standard established by the American National Standards Institute (ANSI) and identified in the statute, or a more recent ANSI standard that the Secretary of Labor has found, incorporated by reference (*see* § 570.63), and declared to be as protective of the safety of young workers as the ANSI standard named in the statute.

(b) These standards have been incorporated into these regulations by reference by the **Federal Register** as discussed in § 570.63. In addition, the scrap paper baler or paper box compactor must include an on-off switch incorporating a key-lock or other system and the control of the system must be maintained in the custody of employees who are at least 18 years of age. The on-off switch of the scrap paper baler or paper box compactor must be maintained in an off position when the machine is not in operation. Furthermore, the employer must also post a notice on the scrap paper baler or paper box compactor that conveys certain information, including the identification of the applicable ANSI standard that the equipment meets, that 16- and 17-year-old employees may only load the scrap paper baler or paper box compactor, and that no employee under the age of 18 may operate or unload the scrap paper baler or paper box compactor.

**§ 570.129 [Redesignated as § 570.142]**

■ 25. Section 570.129 is redesignated as § 570.142

■ 26. A new § 570.129 is added to read as follows:

**§ 570.129 Limited driving of automobiles and trucks by 17-year-olds.**

Section 13(c)(6) of the FLSA provides an exemption for 17-year-olds, but not 16-year-olds, who, as part of their employment, perform the occasional and incidental driving of automobiles and trucks on public highways under specified conditions. These specific conditions, which are contained in HO 2 (§ 570.52), include that the automobile or truck may not exceed 6,000 pounds gross vehicle weight, the driving must be restricted to daylight hours, the vehicle must be equipped with a seat belt or similar restraining device for the driver and for any passengers, and the employer must instruct the employee that such belts or other devices must be used. In addition, the 17-year-old must hold a State license valid for the type of driving involved in the job, have successfully completed a State-approved driver education course, and have no records of any moving violations at the time of his or her hire. The exemption also prohibits the minor from performing any driving involving the towing of vehicles; route deliveries or route sales; the transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; or the transporting of more than three passengers at any one time. The exemption also places limitations on the number of trips the 17-year-old may make each day and restricts the driving

to a 30-mile radius of the minor's place of employment.

■ 27. A new § 570.130 is added to read as follows:

**§ 570.130 Employment of certain youth inside and outside of places of business that use power-driven machinery to process wood products.**

Section 13(c)(7) of the FLSA provides a limited exemption from the child labor provisions for certain youths between the ages of 14 and 18 years who, by statute or judicial order, are excused from compulsory school attendance beyond the eighth grade, that permits their employment inside and outside of places of business that use power-driven machinery to process wood products. The provisions of this exemption are contained in subpart C of this part (§ 570.34(m)) and HO 4 (§ 570.54). Although the exemption allows certain youths between the ages of 14 and 18 years to be employed inside and outside of places of business that use power-driven machines to process wood products, it does so only if such youths do not operate or assist in the operation of power-driven woodworking machines. The exemption also requires that the youth be supervised by an adult relative or by an adult member of the same religious sect as the youth. The youth must also be protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. For the exemption to apply, the youth must also be required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust.

■ 28. A new center heading and a new § 570.140 are added to read as follows:

**Enforcement**

**§ 570.140 General.**

(a) Section 15(a)(4) of the Act makes any violation of the provisions of sections 12(a) or 12(c) unlawful. Any such unlawful act or practice may be enjoined by the United States District Courts under section 17 upon court action, filed by the Secretary pursuant to section 12(b) and, if willful will subject the offender to the criminal penalties provided in section 16(a) of the Act. Section 16(a) provides that any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) In addition, FLSA section 16(e) states that any person who violates the provisions of FLSA sections 12 or 13(c), relating to child labor, or any regulations issued under those sections, shall be subject to a civil penalty, not to exceed:

(1) $11,000, for each employee who was the subject of such a violation; or

(2) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is repeated or willful.

(c) Part 579 of this chapter, *Child Labor Violations—Civil Money Penalties,* provides for the issuance of the notice of civil money penalties for any violation of FLSA sections 12 or 13(c) relating to child labor. Part 580 of this chapter, *Civil Money Penalties—Procedures for Assessing and Contesting Penalties,* describes the administrative process for assessment and resolution of the civil money penalties. When a civil money penalty is assessed against an employer for a child labor violation, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations occurred. When such an exception is filed with the office making the assessment, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such a hearing, the employer or an attorney retained by the employer may present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if no exception is filed to the decision and order of the administrative law judge.

## PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 29. The authority citation for part 579 is revised to read as follows:

**Authority:** 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 09–2009 (Nov. 16, 2009): Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division, 74 FR 58836; 104 Stat. 890 (28 U.S.C. 2461 note), as amended by 110 Stat. 1321–373 and 112 Stat. 3293.

■ 30. In § 579.1, paragraph (a) is revised to read as follows:

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, the Compactor and Balers Safety Standards Modernization Act of 1996, and the Genetic Information Nondiscrimination Act of 2008, provides for the imposition of civil money penalties in the following manner:

(1)(i) Any person who violates the provisions of sections 212 or 213(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed:

(A) $11,000 for each employee who was the subject of such a violation; or

(B) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(ii) For purposes of paragraph (a)(1)(i)(B) of this section, the term "serious injury" means:

(A) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(B) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(C) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 of the FLSA, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation.

(3) In determining the amount of any penalty under section 216(e) of the FLSA, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under section 216(e) of the FLSA, when finally determined, may be:

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 215(a)(4) or a repeated or willful

violation of section 215(a)(2) of the FLSA, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under section 216(e) of the FLSA shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of the FLSA, sums collected as penalties pursuant to section 216(e) of the FLSA shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 202 of the Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 212 shall be deposited in the general fund of the Treasury.

* * * * *

■ 31. Section 579.2 is revised to read as follows:

**§ 579.2 Definitions.**

As used in this part and part 580 of this chapter:

*Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.).*

*Administrative law judge* means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554–557.

*Administrator* means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part and part 580 of this chapter.

*Agency* has the meaning given it by 5 U.S.C. 551.

*Chief Administrative Law Judge* means the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001–8002.

*Department* means the U.S. Department of Labor.

*Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

*Repeated violations* has two components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *repeated* for purposes of this section:

(1) Where the employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or,

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or an authorized representative of the Secretary.

*Serious injury* means:

(1) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(2) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or,

(3) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

*Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part and part 780 of this chapter.

*Willful violations* under this section has several components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, shall be deemed to be *willful* for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful. For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

■ 32. In § 579.5, paragraphs (a) and (e) are revised to read as follows:

**§ 579.5 Determining the amount of the penalty and assessing the penalty.**

(a) The administrative determination of the amount of the civil penalty for each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violations as provided in paragraphs (b) through (d) of this section. The provisions of section 16(e)(1)(A)(ii) of the Fair Labor Standards Act, regarding the assessment of civil penalties not to exceed $50,000 with regard to each violation that causes the death or serious injury of any employee under the age of 18 years, apply only to those violations that occur on or after May 21, 2008.

* * * * *

(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 or section 13(c) relating to child labor or any regulation issued under those sections shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to § 580.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

* * * * *

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