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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1291

RIN 2590–AA04

Affordable Housing Program Amendments: Federal Home Loan Bank Mortgage Refinancing Authority

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: Section 1218 of the Housing and Economic Recovery Act of 2008 (HERA) requires the Federal Housing Finance Agency (FHFA) to permit the Federal Home Loan Banks (Banks) until July 30, 2010, to use Affordable Housing Program (AHP) homeownership set-aside funds to refinance low- or moderate-income households' mortgage loans. On August 4, 2009, FHFA adopted an interim final rule that amended its AHP regulation to authorize the Banks to provide AHP direct subsidies through their members under their homeownership set-aside programs to assist low- or moderate-income households who qualify for refinancing assistance under eligible federal, state and local targeted refinancing programs, including the Hope for Homeowners Program and the Administration's Making Home Affordable Refinancing Program. The interim final rule also enhanced the ability of the Banks to respond to the mortgage crisis by providing greater flexibility to accelerate their future annual statutory AHP contributions for use in their AHP homeownership set-aside programs in the current year, and by permitting the Banks to adopt multiple housing needs under their Second District Priority scoring criterion under the AHP competitive application program.

FHFA invited comments on the interim final rule and has taken all comments into consideration. Based on the comments received and the considerations discussed in the 2009 interim final rule, FHFA is adopting the interim final rule as a final rule, with the following changes. The final rule provides the Banks with greater flexibility to manage the timing of the counseling required for households, and gives the Banks discretion to permit members to determine, prior to counseling, whether a household could qualify, in conjunction with AHP subsidy, for refinancing under an eligible targeted refinancing program, or to refer households directly to eligible targeted refinancing programs for such determinations. The final rule also permits a Bank, in its discretion, to allow members to enroll households in the AHP refinancing set-aside program prior to counseling. In all cases, the household must obtain the counseling prior to disbursement of the AHP subsidy on behalf of the household. The final rule also permits a Bank to commit AHP subsidies under its set-aside refinancing program to members by the sunset date of July 30, 2010, where a Bank's set-aside operating procedure is to commit subsidies to members rather than directly to households. In order to accommodate this change as well as the earlier enrollment of, and commitment of AHP subsidy to, households, and determinations of whether households could qualify for an eligible targeted refinancing program, the final rule extends the date by which households must have submitted applications for refinancing to an eligible targeted refinancing program from July 30, 2010 to December 31, 2010, which are subsequently approved by the eligible targeted refinancing program. In addition, the final rule makes the payment of counseling costs for assisted households an eligible use of AHP subsidy under the set-aside refinancing program where the costs have not been covered by another source, including the counseling organization, a funding source, or the member.

DATES: The final rule is effective on May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, 202–408–2819, *Nelson.Hernandez@fhfa.gov*; Charles E. McLean, Jr., Associate Director, Housing Mission and Goals, 202–408–2537, *Charles.McLean@fhfa.gov*; or Melissa L. Allen, Senior Program Analyst, 202–408–2524, *Melissa.Allen@fhfa.gov*, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Sharon B. Like, Associate General Counsel, 202–414–8950, *Sharon.Like@fhfa.gov*, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HERA

Effective July 30, 2008, Division A of HERA, Public Law No. 110–289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal Government. HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the Banks, and the Bank System's Office of Finance, from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB), respectively, to FHFA. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including being capitalized adequately, and carry out their public policy missions, including fostering liquid, efficient, competitive, and resilient national housing finance markets. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are superseded by regulations issued by FHFA. *See* HERA at sections 1302, 1312, 122 Stat. 2795, 2798.

B. The Banks' Affordable Housing Program

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable a Bank's members to finance homeownership by households with incomes at or below 80 percent of the area median income (AMI) (low- or moderate-income households), and to finance the purchase, construction or rehabilitation of rental projects in which at least 20 percent of the units will be

occupied by and affordable for households earning 50 percent or less of AMI (very low-income households). *See* 12 U.S.C. 1430(j)(1) and (2). The Bank Act requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 12 Banks of $100 million. *See* 12 U.S.C. 1430(j)(5)(C). Section 1218 of HERA amended section 10(j) by adding a new section 10(j)(2)(C) which requires FHFA to allow the Banks until July 30, 2010, to use AHP homeownership set-aside funds to refinance low- or moderate-income households' first mortgage loans on their primary residences. *See* 12 U.S.C. 1430(j)(2)(C). The Director of FHFA must establish the percentage of set-aside funds eligible for this use by regulation.

The AHP regulation authorizes a Bank, in its discretion, to set aside a portion of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households. *See* 12 CFR 1291.6. Under the homeownership set-aside programs, a Bank may provide AHP direct subsidy (grants) to members to pay for down payment assistance, closing costs, and counseling costs in connection with a household's purchase of its primary residence, and for rehabilitation assistance in connection with a household's rehabilitation of an owner-occupied residence. *See* 12 CFR 1291.6(c)(4). Currently, a Bank may allocate up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to homeownership set-aside programs in that year.

C. AHP Refinancing Initiative, Proposed Rule and October 2008 Interim Final Rule

In January 2008, FHFB waived certain homeownership set-aside program provisions of the AHP regulation to allow the Federal Home Loan Bank of San Francisco (San Francisco Bank) to establish a temporary pilot program to provide AHP direct subsidy to enable eligible households with subprime or nontraditional loans held by a San Francisco Bank member or its affiliate to refinance or restructure the loans into affordable, long-term fixed-rate mortgages. *See* FHFB Resolution No. 2008–01 (Jan. 15, 2008). The authority expired on December 31, 2009, without funds being committed.

In April 2008, FHFB published a proposed rule that would have extended the temporary authority to use AHP set-aside funds for mortgage refinancing or restructuring to all 12 Banks. *See* 73 FR 20552 (Apr. 16, 2008). FHFB received 36 comments on the proposal. Commenters who supported use of AHP funds for refinancing recommended flexibility in the rules governing use of the funds so that the Banks and their members would be able to assist a greater number of borrowers in distress, including allowing the use of AHP set-aside funds in conjunction with other federal, state or local mortgage refinancing programs.

Before FHFB took final action on the proposed amendments to the AHP regulation, section 1218 of HERA added section 10(j)(2)(C) to the Bank Act. Title IV of Division A of HERA also required establishment of the Hope for Homeowners Program, a temporary mortgage refinancing program under the Federal Housing Administration (FHA), which will expire on September 30, 2011. To implement the requirements of section 1218 of HERA, on October 17, 2008, FHFA published an interim final rule (2008 interim final rule), which added new § 1291.6(f) to the AHP homeownership set-aside regulation authorizing the Banks, in their discretion, to temporarily establish an AHP set-aside refinancing program. *See* 73 FR 61660 (Oct. 17, 2008). Specifically, § 1291.6(f) authorized the Banks to provide AHP direct subsidy to their members to assist in the refinancing of low- or moderate-income homeowners' mortgage loans under the Hope for Homeowners Program through the use of AHP subsidy to reduce loan principal and pay FHA-approved closing costs. By linking the use of the AHP subsidy with the Hope for Homeowners Program, FHFA intended to leverage and enhance the effectiveness of each program, ensure that the full range of federal assistance to affected homeowners was available quickly, and provide the flexibility that the Banks and their members need to make the AHP refinancing program successful.

FHFA received 40 comments on the 2008 interim final rule. Thirteen commenters generally supported the use of AHP subsidies for refinancing households with unaffordable mortgages, but recommended a number of changes to the rule. The other 27 commenters opposed the use of AHP subsidies for refinancing, citing the ongoing, critical need for AHP homeownership set-aside subsidies to assist home purchases.

D. August 2009 Interim Final Rule

Based on public comments received on the 2008 interim final rule, and in light of continuing adverse conditions of the mortgage market, FHFA determined that in order for the AHP set-aside refinancing program to be implemented successfully for the benefit of the intended households, the scope of the program authority should be broadened and the Banks should have greater flexibility in implementing the program. Accordingly, on August 4, 2009, FHFA published an interim final rule (2009 interim final rule) that authorized the Banks to provide AHP direct subsidy to their members to assist in the refinancing of low- or moderate-income homeowners' mortgage loans under eligible targeted refinancing programs through the use of AHP subsidy to reduce loan principal and pay closing costs. *See* 74 FR 38514 (Aug. 4, 2009). By linking the use of the AHP subsidy with eligible targeted refinancing programs, including the Hope for Homeowners Program and the Administration's Home Affordable Refinance Program (HARP), FHFA intended to leverage and enhance the effectiveness of each program, ensure that the full range of federal, state and local government assistance to affected homeowners was available quickly, and provide the flexibility that the Banks and their members need to make the AHP refinancing program successful. Five Banks are offering refinancing set-aside programs as authorized under the 2009 interim final rule.

FHFA received 11 comment letters on the 2009 interim final rule, representing 12 commenters.[1] Commenters included: seven Banks; one Bank Advisory Council; and four trade associations. All 12 commenters supported the expanded use of AHP subsidies provided under the rule. All five Banks that are offering refinancing set-aside programs commented on the 2009 interim final rule. FHFA did not receive any comments that generally opposed the rule. The **Analysis of the Final Rule** section, below, discusses the comments expressed on particular subjects.

E. HERA Section 1201

Section 1201 of HERA requires the FHFA Director to consider the differences between the Banks and the Enterprises in rulemakings that affect the Banks with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure and joint and several liability. *See* 12 U.S.C. 4513(f). In preparing the final rule, the Director considered these factors and determined

[1] One letter represented the comments of both a Bank and that Bank's Advisory Council.

that the rule is appropriate, particularly because the rule implements a statutory provision of the Bank Act that applies only to the Banks. *See* 12 U.S.C. 1430(j). FHFA did not receive any comments on whether these factors should result in a revision of the rule as it relates to the Banks.

II. Analysis of the Final Rule

A. Definition of Eligible Targeted Refinancing Program: § 1291.1

The 2009 interim final rule provided that a household's loan is eligible to be refinanced with AHP direct subsidy if the loan is secured by a first mortgage on an owner-occupied unit that is the primary residence of the household, and the loan is refinanced under an "eligible targeted refinancing program." An "eligible targeted refinancing program" is defined in § 1291.1 as a program offered by the Department of Housing and Urban Development (HUD), U.S. Department of Agriculture (USDA), Fannie Mae, Freddie Mac, a state or local government, or a state or local housing finance agency (HFA) for the limited purpose of refinancing first mortgages on primary residences for households that cannot afford or are at risk of not being able to afford their monthly payments, as defined by the program, in order to prevent foreclosure. This provision expanded the eligible targeted refinancing programs to include these other eligible targeted refinancing programs, in addition to the Hope for Homeowners Program included in the 2008 interim final rule.

Ten commenters specifically supported expanding the refinance set-aside eligibility to include these additional eligible targeted refinancing programs. No commenters opposed the expansion of the refinance set-aside authority to include these additional eligible targeted refinancing programs, and no commenters addressed the definition of "eligible targeted refinancing program." Three commenters reiterated their comments on the 2008 interim final rule that FHFA should allow AHP subsidy to be used to restructure or refinance mortgages originated by members and purchased by the Banks for their Mortgage Partnership Finance and Mortgage Purchase Program portfolios. One commenter reiterated its previous comment on the 2008 interim final rule that members should also be able to use AHP subsidies to refinance loans in their portfolios with their own funds, within guidelines to be set by the Bank. Like the 2008 and 2009 interim final rules, the final rule does not authorize the use of AHP subsidy in conjunction with such private refinancing outside of eligible targeted refinancing programs for the reasons discussed in the 2009 interim final rule. One commenter suggested that the authority should be expanded to assist other troubled loan restructuring and modification initiatives; however, HERA authorizes AHP subsidies to be used for refinancing only. This temporary authority does not extend to use of the subsidies to assist in restructuring or modifying troubled loans without refinancing them into a new loan.

One commenter expressed concern that the regulation does not permit a Bank member to refinance its own mortgages that it has originated, even though it permits a member to refinance another member's mortgages. The 2009 interim final rule did not preclude a member from using AHP subsidy to assist households that have mortgages in the member's portfolio to be refinanced through an eligible targeted refinancing program. For example, a member that is a participating lender in a state HFA's bond program that is an eligible targeted refinancing program would be able to originate a mortgage under that bond program to refinance a mortgage in its own portfolio. However, as discussed in the 2009 interim final rule, FHFA rejected using AHP subsidy to assist members that are privately refinancing loans, whether in their portfolios or not, because of the regulatory, administrative and operational burdens of safeguarding the households and the AHP subsidies in such transactions.

B. Funding Allocation: § 1291.2(b)(2)(i)

The AHP regulation permits a Bank, in its discretion, to set aside annually, in the aggregate, a maximum of the greater of $4.5 million or 35 percent of its annual required AHP contribution to provide funds to members participating in homeownership set-aside programs, including mortgage refinancing programs established under § 1291.6(f). *See* 12 CFR 1291.2(b)(2)(i). The 2009 interim final rule amended the 2008 interim final rule to require that at least one-third of a Bank's aggregate annual set-aside allocation, including any set-aside allocation for a mortgage refinancing program, be targeted for first-time homebuyers. *See id.* As discussed in the 2009 interim final rule, in the current market where many existing homeowners are unable to sell their homes and purchase move-up homes because their mortgages exceed their homes' value, efforts to promote new home purchases could contribute to recovery and stabilization of the housing market. Ensuring that at least some portion of AHP set-aside subsidies are available for home purchase assistance is also consistent with HERA's establishment of Federal funding for the Neighborhood Stabilization Program (NSP), which provides funding to state and local government programs for purchasing, rehabilitating and renting or selling foreclosed properties. *See* HERA sections 2301 through 2305. A number of state HFAs are using NSP and mortgage-revenue bond funds to assist first-time homebuyers in purchasing these foreclosed properties.

Three commenters specifically supported applying the first-time homebuyers allocation requirement to a Bank's aggregate set-aside allocation, including allocations for both homeownership and set-aside refinancing programs. No commenters opposed this provision. The final rule does not change this provision.

C. Acceleration of Future AHP Contributions: § 1291.2(b)(3)

Under the Bank Act, a Bank must contribute at least 10 percent of its prior year's net earnings to its current year's AHP. *See* 12 U.S.C. 1430(j)(5)(C). The 2009 interim final rule increased the maximum amount that a Bank, in its discretion, may reallot (*i.e.,* accelerate) from the subsequent year's required annual AHP contribution for use in the current year, to the greater of $5 million or 20 percent of the Bank's required annual AHP contribution for the current year. *See* 12 CFR 1291.2(b)(3). As discussed in the 2009 interim final rule, this provision was intended to address the fact that the Banks' earnings potential in the near future is uncertain and more unpredictable than in previous years because of market instability. The enhanced ability to account for accelerated funds from future required AHP contributions would facilitate the Banks making some amount of AHP funding available in the current year during the housing market and economic crisis even when they are uncertain about the amount of the subsequent year's earnings. In addition, because of the uncertainty of future earnings and the possibility that a Bank may find itself in the same situation of having little or no required AHP contribution in the subsequent year, the 2009 interim final rule allowed a Bank to credit the amount of the accelerated contribution against required AHP contributions over one or more of the subsequent five years. Four commenters specifically supported the amendments to the provision for accelerating future AHP contributions for use in the current year. No commenters opposed the

amendments. This provision is unchanged in the final rule.

D. General AHP Refinancing Program Authority; Retention Agreements: § 1291.6(f)(1)

Section 1291.6(f)(1) authorizes a Bank, in its discretion, to establish a homeownership set-aside program for the use of AHP direct subsidy by its members to assist in the refinancing of a household's mortgage loan that meets the requirements in § 1291.6, except for certain specified provisions, as well as with the requirements of part 1291. The 2009 interim final rule required that a household assisted under the AHP set-aside refinancing program be subject to an AHP five-year retention agreement in accordance with § 1291.6(c)(5). As discussed in the 2009 interim final rule, under the Banks' current AHP competitive application and home purchase set-aside programs, AHP retention agreements, which may be subordinate liens or other forms of legally enforceable agreements, are used in conjunction with all types of mortgage financing provided by all federal, state and local agencies, including other FHA programs. Because the AHP regulation requires that AHP subsidy be repaid only from any net gain from the sale or refinancing of the home, the AHP repayment requirement should not interfere with any appreciation or equity sharing requirements of the eligible targeted refinancing programs. Requiring AHP retention agreements for the AHP set-aside refinancing program also maintains consistency between the refinancing program and all other AHP programs, which are subject to the retention agreement requirement.

Six commenters specifically supported the requirement for AHP retention agreements under the AHP set-aside refinancing program. One commenter opposed the retention agreement requirement for the AHP set-aside refinancing program because the retention agreement, which also applies to the AHP homeownership set-aside and competitive application programs, allows a household, under certain circumstances, to subsequently refinance and take out equity without repaying the AHP subsidy. FHFA does not see a reason to treat households obtaining AHP assistance under the set-aside refinancing program differently from households obtaining AHP assistance under the homeownership set-aside or competitive application programs with respect to the retention agreement requirements.

Accordingly, the final rule retains the AHP retention agreement requirement for the set-aside refinancing program.

E. Eligible Loans: § 1291.6(f)(2)

As discussed above, the 2009 interim final rule amended § 1291.6(f)(2) to permit the use of AHP subsidy to assist households that need the subsidy in order to refinance their mortgages under eligible targeted refinancing programs. To be eligible for AHP refinancing assistance, a household must meet the terms of refinancing established by the eligible targeted refinancing program, such as the mortgage debt-to-income ratio, loan-to-value ratio, payment history, type of original loan (*e.g.,* subprime or nontraditional), and reasons for delinquency.[2] The requirements and standards of the other eligible targeted refinancing programs included in the 2009 interim final rule protect borrowers and the integrity of the AHP. Three commenters specifically supported this approach, which is unchanged in the final rule.

Section 1291.6(c)(2)(i) of the existing AHP regulation requires a Bank or member to determine a household's income eligibility at the time the member enrolls the household in the AHP homeownership set-aside program. Consistent with this requirement, the 2009 interim final rule provided that the Bank or member must determine that the household is at or below 80 percent of AMI at the time of enrollment in the AHP set-aside refinancing program. In addition, consistent with the AHP homeownership set-aside and competitive application programs, the 2009 interim final rule did not establish specific requirements for how a Bank should calculate a household's income. Thus, a Bank may make its own calculation of total household income, or may use the eligible targeted refinancing program's calculation of total household income. In this way, a Bank or member may rely on the total household income provided by the eligible targeted refinancing program regardless of when that program calculated the amount.

Four commenters specifically supported the provisions on calculation of household income, and no commenters opposed them. The final rule does not change these provisions.

[2] In addition, pursuant to HERA, the household must have an income at or below 80 percent of AMI, and the household's loan being refinanced must be a first mortgage on an owner-occupied unit that is the household's primary residence.

F. Eligible Uses of AHP Subsidy: § 1291.6(f)(3)

1. Reduction in Outstanding Loan Principal Balance

The 2009 interim final rule permitted use of the AHP subsidy to reduce the outstanding loan principal balance to the eligible targeted refinancing program's maximum loan-to-value ratio even if this results in the household having a mortgage debt-to-income ratio below the program's maximum mortgage debt-to-income ratio. The maximum amount of AHP subsidy that may be provided for the refinancing is the least amount that results in the loan meeting both the program's maximum loan-to-value ratio and maximum mortgage debt-to-income ratio. *See* 12 CFR 1291.6(f)(3). The 2009 interim final rule also made a technical change to clarify that the applicable program underwriting debt-to-income ratio is the mortgage debt-to-income ratio. Three commenters specifically supported the amendment, which is unchanged in the final rule.

2. Loan Closing Costs

To maintain consistency with the AHP home purchase set-aside program, the 2009 interim final rule removed language in the 2008 interim final rule that restricted eligible closing costs under the set-aside refinancing program to FHA-approved closing costs. Two commenters specifically supported this change, and no commenters opposed it. The provision is unchanged in the final rule.

In addition, to maintain consistency with the AHP home purchase set-aside program, the 2009 interim final rule made applicable to the set-aside refinancing program the current requirement of the AHP home purchase set-aside program that the rate of interest, points, fees and any other charges for all loans made in conjunction with the AHP subsidy cannot exceed a reasonable market rate of interest, points, fees and other charges for loans of similar maturity, terms and risk. *See* 12 CFR 1291.6(c)(7). FHFA received no comments specifically addressing this provision, which is unchanged in the final rule.

3. Counseling Costs

The final rule includes a new provision that makes the payment of counseling costs for assisted households an eligible use of AHP subsidy under the set-aside refinancing program. In requiring counseling under the National Foreclosure Mitigation Counseling (NFMC) program, the 2009 interim final rule did not also authorize the use of

AHP subsidies to pay for these counseling costs because counseling under the NFMC program is free to the households and, therefore, AHP subsidy is not needed to pay for the counseling. However, NFMC counselors may charge a household for the cost of obtaining its credit report from a third party. Because the household's credit report is an integral part of foreclosure mitigation counseling and qualification of the household for an eligible targeted refinancing program, the cost of the credit report would be an eligible counseling cost under the AHP. In addition, it is possible that other counseling services used by state and local governments or HFAs for their eligible targeted refinancing programs, as authorized by this regulation, may charge the households for counseling. Consequently, in order to accommodate such cases, the final rule permits the use of AHP subsidy to pay for such counseling costs. This provision is also consistent with similar authorization under the AHP home purchase set-aside and competitive application programs.

Accordingly, § 1291.6(f)(3)(iii) of the final rule permits the use of AHP subsidy to pay for counseling costs to the household under the refinancing set-aside program where the costs are incurred in connection with counseling of homeowners that actually refinance their homes with AHP assistance under the AHP set-aside refinancing program, and the cost of the counseling has not been covered by another source, including the counseling organization, a funding source, or the member.

G. Eligible Lender Participants: § 1291.6(f)(4)

The 2009 interim final rule permitted any member, rather than only members that are FHA-approved lenders, to obtain AHP direct subsidy for the purpose of refinancing an eligible loan. As discussed in the 2009 interim final rule, relatively few Bank members are FHA-approved lenders and many Bank members participate in HFA mortgage-revenue bond programs and are Fannie Mae- and Freddie Mac-approved sellers/servicers. AHP assistance should be available to households based on their qualifications, regardless of whether the member providing the AHP subsidy is FHA-approved. In addition, requiring members to be FHA-approved is too restrictive since the rule permits the use of the AHP subsidy with other eligible targeted refinancing programs in addition to FHA's Hope for Homeowners Program. One commenter specifically supported this change, and no commenters were opposed. The final rule does not change this provision.

The 2009 interim final rule also removed the requirement in the 2008 interim final rule that a Bank must consult with its Advisory Council before determining that a household may use a lender other than a member of the Bank. In addition, § 1291.6(f)(4) of the 2009 interim final rule permitted the Banks the discretionary authority to require a household to obtain its refinancing loan through a member participating as a lender in the eligible targeted refinancing program that is providing the new mortgage to the household.[3] Three commenters specifically supported these changes, and no commenters opposed them. These changes are retained in the final rule.

H. Household Counseling: § 1291.6(f)(5)

Section 1291.6(f)(5) of the 2009 interim final rule required that, prior to enrollment in an AHP set-aside refinancing program, a household seeking AHP assistance must obtain counseling for foreclosure mitigation which would include whether the household qualifies for refinancing by an eligible targeted refinancing program, through the NFMC program or other counseling program used by a state or local government or HFA.[4] By using the counseling requirement as a gateway, Bank members would be able to manage enrollments and commitments of AHP subsidies to households that would be able to use the subsidies. Households determined by a counseling organization to qualify for refinancing under an eligible targeted refinancing program would then be referred to participating Bank members, who would enroll the households in the AHP set-aside refinancing program upon determination of their AHP income eligibility at the time of enrollment. If households contacted a Bank member directly, the member would refer the households to an NFMC program participant, or to a state or local government or HFA counseling program, which would determine whether the households were eligible to have their loans refinanced through an eligible targeted refinancing program before the member would enroll the households in the AHP refinancing set-aside program and commit AHP subsidy.

Much of the NFMC counseling is one-on-one, during which a counselor can determine if a household's loan can be refinanced by one of the eligible targeted refinancing programs and whether AHP subsidy will be needed in order for the household to obtain the refinancing. A primary purpose of the 2009 interim final rule amendment was to ensure that the household receives counseling on a variety of available refinancing options that are suitable for that household. For example, a lender, such as an FHA lender or Fannie Mae/Freddie Mac seller/servicer, may be able to determine if a household is eligible for refinancing under HARP, but is not likely to know if the household has other options if it is not eligible for HARP. Even if the household could not qualify for an eligible targeted refinancing program or would not be eligible for AHP assistance, the NFMC program participant would be able to review the household's individual circumstances and identify other refinancing options that could assist the household. Consequently, under the 2009 interim final rule, when a household contacts a member directly, the member would refer the household to the NFMC program participant or other state or local government or HFA counseling program participant, to determine the household's eligibility for refinancing.

In the 2009 interim final rule, FHFA specifically requested comment on whether a household should be required to obtain counseling for foreclosure mitigation including counseling on whether the household qualifies for refinancing by an eligible targeted refinancing program, prior to enrollment in the AHP set-aside refinancing program. Six commenters specifically supported the counseling requirement, but three of these commenters expressed concern about the requirement that the household obtain the counseling and a determination of whether the household can qualify for an eligible targeted refinancing program prior to being enrolled by a member in the AHP set-aside refinancing program. One of these commenters recommended that counseling be required prior to the transfer of AHP subsidies committed to the household, rather than prior to enrollment. Two of the commenters also expressed concerns about access to in-person counseling for rural households.

[3] Requiring a household to obtain a new mortgage through the member is one of several types of optional household eligibility requirements that a Bank may establish under the AHP home purchase set-aside program. *See* 12 CFR 1291.6(c)(2)(iii).

[4] The 2008 Consolidated Appropriations Bill established and funded the NFMC program to assist households seeking refinancing or restructuring of their mortgages in order to avoid foreclosure. *See* Public Law No. 110–161. The NFMC program, under the auspices of the Congressionally chartered NeighborWorks America, comprises an array of counseling groups including NeighborWorks' partner organizations, the Homeownership Preservation Foundation, HUD's HOPE NOW counseling coalition, the National Urban League, USA Cares (military assistance), and state and local housing finance agency counseling programs.

One commenter recommended that rural households or households with limited access to counseling be referred by members directly to eligible targeted refinancing programs for eligibility determinations until such counseling can be made available to the household. The 2009 interim final rule did not require in-person counseling because the NFMC program provides one-on-one counseling, often by telephone through a toll-free number accessible to rural households, which FHFA deemed to be sufficient in lieu of in-person counseling.

One commenter opposed the requirement that a household obtain the counseling and determination of whether the household qualifies for an eligible targeted refinancing program through the NFMC program. This commenter supported allowing Bank members to provide the counseling to determine if a household could qualify for refinancing under an eligible targeted refinancing program. In establishing the counseling requirement in the 2009 interim final rule, FHFA was concerned that it would be administratively unworkable for members to enroll, and commit AHP subsidy to, any number of households seeking assistance from the AHP set-aside refinancing program without knowing whether such households could obtain refinancing through an eligible targeted refinancing program. FHFA also recognized that the AHP set-aside refinancing program is designed to assist households that could not otherwise qualify for an eligible targeted refinancing program on their own without some amount of AHP subsidy. The nature of the AHP set-aside refinancing program, where AHP subsidy would be used for principal reduction, is such that a household needing AHP subsidy cannot qualify for refinancing under an eligible targeted refinancing program without the AHP subsidy. Consequently, where a household is seeking refinancing eligibility information directly from an eligible targeted refinancing program, a representative of that eligible targeted refinancing program, if unaware of the potential assistance of the AHP refinancing set-aside program, would likely tell the household that it does not qualify for refinancing under that program, thereby ending the household's efforts to refinance. An NFMC program counselor would be aware of the availability of the AHP set-aside refinancing program and have the capacity to sit down with an individual household to determine whether and how the household would be able to qualify under an eligible targeted refinancing program's eligibility and underwriting requirements if it had AHP or other subsidy assistance.

Nevertheless, FHFA recognizes that members may be prepared to accept the responsibility of working with individual households to identify available alternative eligible targeted refinancing programs and their respective eligibility and underwriting requirements, and to go through the process of calculating whether AHP subsidy assistance would allow the households to qualify for one of these eligible targeted refinancing programs. Consequently, § 1291.6(f)(5)(ii) of the final rule permits a Bank, in its discretion, to allow its members to refer potential household applicants for AHP assistance directly to an eligible targeted refinancing program for a determination on the households' eligibility for refinancing under that program, or to allow its members to determine, prior to counseling, whether household applicants for AHP assistance could qualify, in conjunction with AHP subsidy, for refinancing under available eligible targeted refinancing programs. At the same time, the final rule continues to require that the household obtain foreclosure mitigation counseling through an NFMC program or other counseling program used by a state or local government or HFA. Nevertheless, the final rule permits a Bank, in its discretion, to allow members to enroll households in the AHP set-aside refinancing program prior to counseling. In all cases, the household must obtain the counseling prior to disbursement of the AHP subsidy on behalf of the household.

I. Sunset Date: § 1291.6(f)(6)

The 2009 interim final rule provided that the Banks' authority to commit AHP subsidy for refinancing terminates after July 30, 2010, which is the expiration date of the two-year period in section 1218 of HERA. FHFA further stated that it may consider an extension of the sunset date in the future should program experience appear to justify such an extension.

Three commenters supported an extension of the sunset date, with one commenter suggesting September 30, 2011 to coincide with the sunset date for the Hope for Homeowners Program (*see* HERA, section 1402(a) (National Housing Act sec. 257(r))), one commenter suggesting at least December 31, 2010, and one commenter suggesting no specific date. Of the five Banks that are offering a refinancing set-aside program, two did not address the sunset date, two supported FHFA's leaving open the possibility of an extension, and one supported an extension to December 31, 2010.

The final rule retains the sunset date of July 30, 2010 in § 1291.6(f)(6). However, the final rule makes two changes in order to accommodate operational procedures. First, under the homeownership set-aside program, Banks may commit available AHP subsidies in one of two ways. Some Banks commit AHP subsidies under their set-aside programs on an individual household basis as each household is enrolled by a member. Other Banks operate their homeownership set-aside programs using a model in which the Bank commits AHP subsidies on a member-basis, with the Bank committing a specified amount of AHP subsidies to an individual member which that member then uses to commit to individual households as the member enrolls them. The final rule amends § 1291.6(f)(6) to recognize both operational models for set-aside commitments by providing that a Bank may commit AHP subsidy to members or households under its AHP set-aside refinancing program until July 30, 2010.

Second, in light of the amendment permitting Banks to commit AHP subsidies to specific members up until the sunset date and in order to accommodate amendments in the final rule that allow the Banks more flexibility in permitting their members to enroll, and commit AHP subsidies to, households prior to counseling, or to determine whether households could qualify for an eligible targeted refinancing program, the final rule extends the date by which households must have submitted applications for refinancing to an eligible targeted refinancing program from July 30, 2010 to December 31, 2010. The final rule also clarifies that a member may use committed subsidy for a loan submitted to an eligible targeted refinancing program prior to December 31, 2010, that is approved subsequent to December 31, 2010.

J. Competitive Application Program—Second District Priority Scoring Criterion: § 1291.5(d)(5)(vii)

The 2009 interim final rule amended § 1291.5(d)(5)(vii) of the AHP regulation to permit a Bank to establish one or more housing needs in the Bank's district under the Second District Priority scoring criterion, which is used in scoring applications under the AHP competitive application program. The amendment was intended primarily to provide more flexibility in the Banks' capacity to respond to the current

housing crisis by allowing the AHP competitive application program to complement the efforts of the AHP set-aside refinancing program and other targeted refinancing programs for foreclosure prevention and HERA's NSP for the disposition of foreclosed properties. FHFA specifically requested comments on whether this scoring change benefits the AHP competitive application program.

Eight commenters specifically supported this amendment, citing the importance of the additional flexibility for the Banks to use their competitive application programs to address a variety of housing needs in their respective districts. FHFA received no comments opposing this amendment, which is unchanged in the final rule.

III. Effective Date

Pursuant to the Administrative Procedures Act, FHFA for good cause finds that the effective date of the final rule should not be delayed for 30 days and that the final rule should become effective on May 28, 2010. *See* 5 U.S.C. 553(d)(3). Section 1218 of HERA requires that FHFA's regulations authorize the use of AHP set-aside subsidy for mortgage refinancing for a two-year period commencing on July 30, 2008, with a resulting sunset date of July 30, 2010. The final rule retains the substance of FHFA's August 4, 2009 interim final rule currently in effect, while amending the regulation to allow the Banks to make administrative changes to the AHP set-aside refinancing program designed to facilitate household participation in the program. Making the final rule effective immediately will enable the Banks to expedite implementation of these program administrative changes. A 30-day delayed effective date could adversely impact households who, as a result of the flexibility of the program administrative changes, could have received the AHP subsidy commitment needed to qualify for an eligible targeted refinancing program or closed on their refinancing mortgage during the 30-day period.

IV. Paperwork Reduction Act

The final rule does not substantively or materially modify the approved information collection entitled "Affordable Housing Program (AHP)," which is assigned control number 2590–0007 by the Office of Management and Budget (OMB). *See http://www.fhfa.gov/webfiles/13095/AHP_Data_Reporting_Instructions.pdf.*

Consequently, FHFA has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.*

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a). Moreover, the final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act. *See id.* sec. 601(6).

List of Subjects in 12 CFR Part 1291

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Interim Final Rule amending 12 CFR part 1291, published at 74 FR 38514 (Aug. 4, 2009), is adopted as final with the following changes:

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 1. The authority citation for part 1291 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§ 1291.2 [Amended]

■ 2. Amend § 1291.2(b)(2)(i) by removing the phrase "paragraph (f) of this section," and adding in its place "§ 1291.6(f),".

■ 3. Revise § 1291.6(f)(3), (f)(5), and (f)(6) to read as follows:

§ 1291.6 Homeownership set-aside programs.

* * * * *

(f) * * *

(3) *Eligible uses of AHP direct subsidy.* Members may provide the AHP direct subsidy to:

(i) Reduce the outstanding principal balance of the loan by no more than the amount necessary for the new loan to qualify under both the maximum loan-to-value ratio and the maximum household mortgage debt-to-income ratio required by the eligible targeted refinancing program;

(ii) Pay loan closing costs; or

(iii) Pay for counseling costs only where:

(A) Such costs, including the cost of the homeowner's credit report, are incurred in connection with counseling of homeowners that actually refinance their homes with AHP assistance under the AHP set-aside refinancing program; and

(B) The cost of the counseling has not been covered by another source including the counseling organization, a funding source, or the member.

* * * * *

(5) *Counseling.*—(i) Except as provided in paragraph (f)(5)(ii) of this section, prior to enrollment in an AHP set-aside refinancing program established under this paragraph (f), a household must obtain counseling through the National Foreclosure Mitigation Counseling program or other counseling program used by a state or local government or housing finance agency, for foreclosure mitigation including counseling on whether the household qualifies, in conjunction with AHP subsidy, for refinancing under an eligible targeted refinancing program.

(ii) *Optional requirements.* A Bank, in its discretion, may permit its members, prior to such counseling, to take any of the following actions in paragraphs (f)(5)(ii)(A) through (C) of this section, provided that, in all cases, the household obtains such counseling prior to disbursement of the AHP subsidy on behalf of the household:

(A) Enroll households in the AHP set-aside refinancing program;

(B) Refer households directly to an eligible targeted refinancing program to determine eligibility for refinancing under the eligible targeted refinancing program; or

(C) Determine whether a household could qualify, in conjunction with AHP subsidy, for refinancing under an eligible targeted refinancing program.

(6) *Sunset.*—(i) This paragraph (f) shall expire on July 30, 2010.

(ii) A Bank may commit AHP subsidy to members or households under its AHP set-aside refinancing program until July 30, 2010.

(iii) A member may use the AHP subsidy committed by a Bank pursuant to paragraph (f)(6)(ii) of this section for a loan submitted to an eligible targeted refinancing program on or before December 31, 2010 that is subsequently approved for refinancing under such program.

Dated: May 21, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–12793 Filed 5–27–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 100311137–0138–01]

RIN 0694–AE88

Implementation of Changes from the 2009 Annual Review of the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final Rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to implement changes to the Entity List (Supplement No. 4 to Part 744) on the basis of the 2009 annual review of the Entity List conducted by the End-User Review Committee. The changes from the annual review will be implemented in two rules. The first rule published today implements the results of the annual review for listed entities under eleven destinations on the Entity List: Canada, Egypt, Germany, Hong Kong, Israel, Kuwait, Lebanon, Malaysia, South Korea, Singapore, and the United Kingdom.

The second rule will implement the results of the annual review for entities listed under the remaining seven destinations that were included in the 2009 annual review: China, India, Iran, Pakistan, Russia, Syria, and the United Arab Emirates. Entities listed under the destinations of Armenia, Ireland or Taiwan were not included in the 2009 annual review because they were added to the Entity List in 2009 or 2010.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective May 28, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE88, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include "RIN 0694–AE88" in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE88. Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AE88)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Acting Chairman, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0117, Fax: (202) 482–4145, E-mail: *skramer@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions to make additions to, removals from and other changes to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

2009 Annual Review of the Entity List

This rule amends the Export Administration Regulations (EAR) to implement changes to the Entity List (Supplement No. 4 to part 744) on the basis of the 2009 annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions).

As of January 1, 2009, entities on the Entity List were listed under one or more of eighteen different destinations. The changes from the 2009 annual review of the Entity List that were approved by the ERC will be implemented in two rules. The first rule published today implements the results of the annual review for listed entities under eleven destinations on the Entity List: Canada, Egypt, Germany, Hong Kong, Israel, Kuwait, Lebanon, Malaysia, South Korea, Singapore, and the United Kingdom. The second rule will implement the results of the annual review for entities listed under the remaining seven destinations: China, India, Iran, Pakistan, Russia, Syria, and the United Arab Emirates. Entities listed under the destinations of Armenia, Ireland or Taiwan were not included in the 2009 annual review because they were added to the Entity List in 2009 or 2010.

ERC Entity List Decisions

This rule removes one entity from the Entity List under Hong Kong. This rule also makes two modifications to the Entity List: by making a correction to the address of one entity listed under Egypt, and by making a clarification to the license requirement for one entity listed under Israel. On the basis of the 2009 annual review, no additional changes will be made to listed entities under the following eight destinations: Canada, Germany, Kuwait, Lebanon, Malaysia, South Korea, Singapore, and the United Kingdom.

Removal From the Entity List

The entity being removed from the Entity List is located in Hong Kong:

Hong Kong

(1) *Speedy Electronics Ltd.,* 1206–7, 12/F New Victory House, Hong Kong.

The removal of Speedy Electronics Ltd. from the Entity List (from Hong Kong, as described above) eliminates the existing license requirement in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to this entity. However, the removal of Speedy Electronics Ltd. from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item

subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." Nor do such removals relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BIS's 'Know Your Customer' Guidance and Red Flags," when persons are involved in transactions that are subject to the EAR.

Modifications to the Entity List

(1) This rule amends one Egyptian entry currently on the Entity List by adding an additional address for the entity listed, as follows:

Egypt

H Logic, Behind 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt; and 11 Abd El-Hamid Shoman St., Nasser City, Cairo.

A BIS license is required for the export, reexport or transfer (in-country) of any item subject to the EAR to H Logic, including any transaction in which this listed entity will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. This listing of this entity also prohibits the use of license exceptions (*see* part 740 of the EAR) for exports, reexports and transfers (in-country) of items subject to the EAR involving this entity.

(2) Finally, this rule amends one Israeli entry currently on the Entity List (*i.e.,* Ben Gurion University) by revising the license requirement for the entity listed. This change was needed because the license requirement for this listed entity prior to publication of this rule was based on a section of the EAR that is no longer in the EAR (*i.e.,* Section 742.12 (High Performance Computers)). This section of the EAR was removed and reserved on April 24, 2006 (71 FR 20876). To conform to the April 2006 change and to clarify the Entity List based license requirement for this listed entity, this rule is revising the license requirement to indicate the license requirement applies to computers above the Tier 3 level described in Section 740.7(d) of License APP (Computers). The entity column and the revision to the license requirement column for this listed entity is, as follows:

Israel

Ben Gurion University, Israel.

License Requirement

For computers above the Tier 3 level described in Section 740.7(d) (*i.e.,* Tier 3 under APP).

A BIS license is required for the export, reexport or transfer (in-country) of any computers above the Tier 3 level described in Section 740.7(d) (*i.e.,* Tier 3 under APP) subject to the EAR to Ben Gurion University, including any transaction in which this listed entity will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. This listing of this entity also prohibits the use of license exceptions (see part 740 of the EAR) for exports, reexports and transfers (in-country) of these types of computers subject to the EAR involving this entity.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on May 28, 2010 pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before June 28, 2010. Any such items not actually exported or reexported before midnight, on June 28, 2010, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By removing under Hong Kong, one Hong Kong entity "Speedy Electronics Ltd., 1206–7, 12/F New Victory House, Hong Kong";

■ b. By revising under Egypt, in alphabetical order, one Egyptian entity; and

■ c. By revising under Israel, in alphabetical order, one Israeli entity;

The revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
EGYPT	H Logic, Behind 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt; and 11 Abd El-Hamid Shoman St., Nasser City, Cairo.	For all items subject to the EAR. (*See* § 744.11 of the EAR).	Presumption of denial	73 FR 54504, 9/22/08. 75 FR [Insert FR page number and 5/28/10.
*	*	*	*	*
ISRAEL	Ben Gurion University, Israel	For computers above the Tier 3 level described in Section 740.7(d) (i.e., Tier 3 under APP)..	Case-by-case basis	62 FR 4910, 2/3/97 65 FR 12919, 03/10/00. 75 FR [Insert FR page number and 5/28/10.
*	*	*	*	*

Dated: May 21, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–12956 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0307]

RIN 1625–AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will temporarily change the enforcement period of special local regulations for recurring marine events in the Fifth Coast Guard District. These regulations apply to only one recurring marine event that conducts various river boat races and a parade. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Southern Branch, Elizabeth River, VA during the event.

DATES: This rule is effective from June 11, 2010, through June 13, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0307 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0307 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Tiffany Duffy, Project Manager, Sector Hampton Roads, Waterways Management Division, Coast Guard; telephone 757–668–5580, email *Tiffany.A.Duffy@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

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 delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the public's safety during the 34th Annual Norfolk Harborfest Celebration.

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 since immediate action is needed to ensure the public's safety during 34th Annual Norfolk Harborfest Celebration.

Basis and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. The on water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday boat parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation temporarily changes the enforcement period of special local regulations for recurring marine events within the Fifth Coast Guard District. This regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

On June 11, 12, and 13, 2010, Norfolk Festevents Ltd. will sponsor the "34th Annual Norfolk Harborfest Celebration" on the waters of the Southern Branch of the Elizabeth River near Norfolk, Virginia. The regulation at 33 CFR 100.501 is effective annually for this marine event. The event will consist of several boat races and parades on the Southern Branch of the Elizabeth River in the vicinity of Town Point Reach, Norfolk, Virginia. A fleet of spectator vessels is expected to gather near the

event site to view the competition. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the river boat races and parade. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under provisions of 33 CFR 100.501, on June 11, 12, and 13, 2010, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation on specified waters of the Southern Branch, Elizabeth River, near Norfolk, Virginia. The regulated area will be established in the interest of public safety during the 34th Annual Norfolk Harborfest Celebration, and will be enforced on June 11, 12, and 13, 2010. Access to the regulated area will be restricted during the specified dates or until the river boat races and parades are complete, whichever is sooner. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, suspend line No. 37 in the Table to § 100.501 from June 11, 2010, through June 13, 2010.

■ 3. In § 100.501, from June 11, 2010, through June 13, 2010, add line No. 62 in Table to § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

No.	Date	Event	Sponsor	Location
*	*	*	*	* * *
62	June 11–June 13, 2010.	Norfolk Harborfest	Norfolk Festevents Ltd.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia, at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.

Dated: May 12, 2010.

M.S. Ogle,

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

[FR Doc. 2010–12846 Filed 5–27–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0363]

RIN 1625–AA08

Special Local Regulation for Marine Event; 2010 International Cup Regatta, Pasquotank River, Elizabeth City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period of special local regulations for a recurring marine event involving power boat races in the Fifth Coast Guard District. This action is intended to restrict vessel traffic in a portion of the Pasquotank River, near Elizabeth City, NC, during the *2010 International Cup Regatta.* Special local regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from June 4 through June 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0363 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0363 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 Petty Officer Kevin Ouyoumjian, Prevention Department, Coast Guard Sector North Carolina, Atlantic Beach, NC; telephone 252–247–4528, e-mail *Kevin.J.Ouyoumjian@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the potential dangers posed by vessel traffic operating in close proximity to high speed power boats makes special local regulations necessary to provide for the safety of participants, event support vessels, spectator craft and other vessels. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. For these reasons, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

For the same reasons, the Coast Guard also finds under 5 U.S.C. 553(d)(3) that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.**

Basis and Purpose

This regulation temporarily changes the enforcement period of special local regulations for a recurring marine event in 33 CFR 100.501 and 33 CFR Table to § 100.501, No. 54. On June 5 and 6, 2010, Carolina Cup Regatta, Inc. will sponsor the *2010 International Cup Regatta* hydroplane races on the waters of the Pasquotank River adjacent to Elizabeth City, North Carolina. The event will consist of approximately 75 hydroplane powerboats conducting high-speed competitive races on the Pasquotank River from shoreline to shoreline in the vicinity of the Elizabeth City Waterfront, Elizabeth City, North Carolina. A fleet of spectator vessels is expected to gather near the event site to view the competition.

The regulation at 33 CFR 100.501 and 33 CFR Table to 100.501 is effective annually for this marine event on the second Saturday and Sunday of June, which is June 12 and 13 this year. Because the dates of the event this year differ from the effective dates in the CFR, this rule temporarily changes the effective dates of the existing regulation. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the hydroplane races. The existing regulation in the CFR will be enforced for the duration of the event this year on June 5 and 6 instead of June 12 and 13.

Discussion of Rule

The Coast Guard is temporarily changing the effective dates of special local regulations, in 33 CFR Table to 100.501, No. 54, for the *2010 International Cup Regatta* from "June—2nd Saturday and Sunday" to "June—1st Saturday and Sunday" because the regatta will be held on the latter dates this year. The temporary special local regulations in 33 CFR 100.501 will be enforced from 9 a.m. to 6:30 p.m. on June 5 and June 6, 2010, and will restrict general navigation in the regulated area described in 33 CFR Table to 100.501, No. 54. The name of the event has also changed this year from the *Carolina Cup Regatta* to the *2010 International Cup Regatta,* and the event sponsor's name has changed from the Virginia Boat Racing Association to Carolina Cup Regatta, Inc. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

We developed this 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 rule prevents traffic from transiting a portion of the Pasquotank River during the event, the effect of this regulation will not be significant due to the limited duration

that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the Pasquotank River in the regulated area. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only in a limited area for a short duration. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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)(h), of the Instruction because the rule involves promulgation of special local regulations issued in conjunction with a regatta or marine parade.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Effective from June 4 through June 6, 2010, in § 100.501, Table to § 100.501, suspend line No. 54 and add Line No. 58 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table To § 100.501.—All Coordinates Listed in the Table to § 100.501 Reference Datum NAD 1983.

COAST GUARD SECTOR DELAWARE BAY—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	*
58	June 4–6, 2010	2010 International Cup Regatta.	Carolina Cup Regatta, Inc.	The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N, longitude 076°12′00″ W, thence southwesterly to latitude 36°17′35″ N, longitude 076°12′18″ W at Cottage Point.

Dated: May 11, 2010.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2010–12842 Filed 5–27–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0302]

RIN 1625–AA08

Special Local Regulation; Maggie Fischer Memorial Great South Bay Cross Bay Swim, Great South Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation on Great South Bay, NY between Gilbert Park, Brightwaters, NY and Fire Island Lighthouse Dock, Fire Island, NY due to the annual Maggie Fischer Memorial Great South Bay Cross Bay Swim. This special local regulation is necessary to protect swimmers, safety vessels and the boating public on the navigable waters of Great South Bay, NY. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, CT.

DATES: This rule is effective June 28, 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–2009–0302 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0302 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: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@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

On July 8, 2009 we published an Interim Rule with a request for comments entitled, Special Local Regulation, Maggie Fischer Memorial Great South Bay Cross Bay Swim, Great South Bay, NY, in the **Federal Register** (74 FR 32428). We did not receive any comments or requests for meetings in response to the Interim Rule.

Basis and Purpose

The Cross Bay Swim has been successfully held off and on from the early 1900's on the waters of Great South Bay, NY. This 5.25 mile swim has historically involved up to 100 swimmers and accompanying safety craft that travel along a course located directly north of the Fire Island Lighthouse Dock, NY and extending to Gilbert Park in Brightwaters, NY. Prior to this rule there was not a regulation in place to protect the swimmers or safety craft from the hazards imposed by marine traffic.

To ensure the continued safety of the swimmers, safety craft and the boating public, the Coast Guard is establishing a permanent special local regulation on the navigable waters of the Great South Bay, New York that would exclude all unauthorized persons and vessels from approaching within 100 yards of any swimmer or safety craft on the race course from 6:30 a.m. to 12:30 p.m. on the day of the race.

Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound or by designated on-scene patrol personnel. Any violation of the safety zone described herein is punishable by, among other things, civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast

Guard-issued merchant mariner credentials.

Discussion of Comments and Changes

A small number of changes are being made to minimize the size of the regulated area and reduce the burden on vessel traffic by minimizing the restrictions in the regulated area. Even though the bounds of the regulated area were discussed in the Small Entities section, and no comments were received, we are clarifying sections (a) and (c) to read as set forth in the regulatory text of this final rule.

The changes in the text redefined the regulated area from "within 100 yards of the swim event race course" to "within 100 yards from each swimmer or safety craft on the swim event race course" so the regulated area would not block the entire waterway. This will reduce the burden on vessels by allowing them to pass through the race course as long as they stay clear of the swimmers and safety craft.

Also, paragraph (d) has been revised to provide the public additional notice of enforcement dates and times through publication of an advance notice each year in the **Federal Register.**

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.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in those portions of Great South Bay, NY covered by the special local regulation. Although the safety zone would apply to the entire width of the bay, traffic would be allowed to pass through the zone, outside 100 yards of any swimmer or safety craft. Before the activation of the zone, we would issue maritime advisories widely available to users of the waterway. Additionally, the rule would only be in effect for a period of 6–7 hours for one day per year.

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)(h), of the Instruction. This rule finalizes the establishment of a special local regulation that was published as an Interim Rule with an invitation to comment on July 8, 2009. No comments were received that would affect the assessment of environmental impacts from this action. 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 100

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

■ Accordingly, the interim rule amending 33 CFR part 100, which was published at 74 FR 32428 on July 8, 2009, is adopted as a final rule with the following changes:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.124, revise paragraphs (a), (c)(1), (c)(4), and (d) to read as follows:

§ 100.124 Maggie Fischer Memorial Great South Bay Cross Bay Swim, Great South Bay, New York.

(a) *Regulated area.* All navigable waters of Great South Bay, NY within a 100 yard radius of each swimmer or safety craft on the swim event race course bounded by the following points: Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N 073°13′07″ W, northerly through approximate points 40°38′52″ N 073°13′09″ W, 40°39′40″ N 073°13′30″ W, 40°40′30″ N 073°14′00″ W, and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N 073°14′52″ W.

* * * * *

(c) *Special local regulation.* (1) No person or vessel may enter, transit, or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the Maggie Fischer Memorial Great South Bay Cross Bay Swim event or are otherwise authorized by the Captain of the Port Long Island Sound or by designated on-scene patrol personnel.

* * * * *

(4) Persons and vessels desiring to enter the regulated area within 100 yards of a swimmer or safety craft may request permission to enter from the designated on scene patrol personnel on VHF–16 or the Captain of the Port, Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This section will be enforced annually on a date to be determined each July. Public notification of the specific date and times of enforcement will be made each year via a Notice of Enforcement in the **Federal Register,** separate marine broadcasts and local notice to mariners.

Dated: May 3, 2010.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2010–12844 Filed 5–27–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Business Reply Mail Online Application Option

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service™ will revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 507.9.3.2 and 507.9.5.2 to eliminate the option to obtain a Business Reply Mail® (BRM) permit online. Additionally, the electronic version of PS Form 6805, *Qualified Business Reply Mail (QBRM) Application,* will also be removed.

DATES: Effective July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Jenny Kalthoff, 202–268–5466 or Yvonne Gifford, 202–268–8082.

SUPPLEMENTARY INFORMATION: Currently, customers can apply for BRM permits and QBRM authorization online or in person at any Post Office™ facility. The ability to obtain a BRM permit online has been available since 2004 and has not sustained the volume of users to support maintaining the system.

Procedures

Beginning May 2010, the ability to obtain a BRM permit online will be eliminated and customers will be required to visit a Post Office and submit a completed hardcopy PS Form 3615, *Mailing Permit Application and Customer Profile,* to obtain a BRM permit. In addition, customers requesting authorization for QBRM will also be required to visit a Post Office to complete a printed PS Form 6805.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

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

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

***Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM)**

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

9.0 Business Reply Mail (BRM)

* * * * *

9.3 Qualified Business Reply Mail (QBRM) Basic Standards

* * * * *

9.3.2 Authorization

[Delete item 9.3.2b in its entirety and incorporate item 9.3.2a into the introduction paragraph as follows:]

To participate in QBRM, a mailer must have a valid BRM permit, must pay the annual account maintenance fee, and must submit Form 6805 to the postmaster or manager, Business Mail Entry at the Post Office to which the QBRM pieces are to be returned. The USPS reviews Form 6805 and preproduction samples provided by the mailer for compliance with relevant standards. If the mailer's request is approved, the USPS issues the mailer an authorization via the approved Form 6805.

* * * * *

9.5 Permits

* * * * *

9.5.2 Application Process

[Delete item 9.5.2b in its entirety and incorporate item 9.5.2. into the introduction paragraph as follows:]

The mailer may apply for a BRM permit by submitting a completed Form 3615 to the Post Office issuing the permit and paying the annual permit fee. If a completed Form 3615 is already on file for the mailer for other permits at that office, then the mailer must submit the annual BRM permit fee and the USPS amends Form 3615 by adding the BRM authorization.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–11869 Filed 5–27–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0320; FRL–9156–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia State Implementation Plan (SIP). The revisions establish general and transportation conformity regulations for the District of Columbia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 27, 2010 without further notice, unless EPA receives adverse written comment by June 28, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0320 by one of the following methods:

A. *http://www.regulations.gov,* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0320, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0320. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia District Department of the Environment, Air Quality Division, 51 N Street, NE., Fifth Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

SUPPLEMENTARY INFORMATION:

I. What is transportation conformity?

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant

national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. What is the background for this action?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was signed into law. SAFETEA–LU revised certain provisions of section 176(c) of the Clean Air Act, related to transportation conformity. Prior to SAFETEA–LU, States were required to address all of the Federal conformity rule's provisions in their conformity SIPs. After SAFETEA–LU, State's SIPs were required to contain all or portions of only the following three sections of the Federal rule, modified as appropriate to each State's circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kind of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). States are no longer required to submit conformity SIP revisions that address the other sections of the Federal conformity rule.

III. What did the state submit and how did we evaluate it?

On January 26, 2010, the District of Columbia Department of the Environment submitted a revision to its SIP for general and transportation conformity regulations adopted on January 8, 2010. The portion of the SIP dealing with general conformity is strictly a recodification of its previously approved general conformity regulation from Chapter 4 of the District of Columbia Regulations (DCMR) to Chapter 15 and contains no substantial changes from its previous approval. The SIP revision section for transportation conformity addresses the three provisions of the EPA Conformity Rule required under SAFETEA–LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (control measures), and 40 CFR 93.125(c) (mitigation measures).

We reviewed the submittals to assure consistency with the February 14, 2006 "Interim Guidance for Implementing the Transportation Conformity provisions in the SAFETEA–LU." The guidance document can be found at *http://epa.gov/otaq/stateresources/transconf/policy.htm.* The guidance document states that each State is only required to address and tailor the afore-mentioned three sections of the Federal Conformity Rule to be included in their State conformity SIPs. EPA's review of the District of Columbia's proposed SIP revision indicates that it is consistent with EPA's guidance in that it includes the three elements specified by SAFETEA–LU. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), Title 20, DCRM Chapter 15, Sections 1503, 1504, and 1505 identifies the appropriate agencies, procedures and allocation of responsibilities. In addition, Title 20, DCMR Chapter 15, Section 1506 provides for appropriate, public consultation/public involvement consistent with 40 CFR 93.105. With respect to the requirements of 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), the Title 20, DCRM Chapter 15, Section 1509 of the regulation specifies that written commitments for control measures and mitigation measures for meeting these requirements will be provided as needed.

IV. Final Action

EPA is approving the District of Columbia SIP revisions for general and transportation conformity, without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 27, 2010 without further notice unless EPA receives adverse comment by June 28, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *July 27, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this final rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the District of Columbia transportation conformity regulations may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: May 17, 2010.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by removing the existing entry for Chapter 4, Section 403 and adding a new entry for Chapter 15. The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Chapter 15	**General and Transportation Conformity**			
Section 1500	General Conformity—Purpose.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1501	General Conformity—Requirements.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1502	Transportation Conformity—Purpose.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1503	Transportation Conformity—Consultation Process.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1504	Transportation Conformity—Interagency Consultation Requirements.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1505	Transportation Conformity—Conflict Resolution Associated With Conformity Determinations.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1506	Transportation Conformity—Public Consultation Procedures.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1507	Transportation Conformity—Interagency Consultation Procedures.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1508	Transportation Conformity—Procedures for Determining Regional Transportation-Related Emissions.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
Section 1509	Transportation Conformity—Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.

EPA–APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 1599	Definitions	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
*	*	*	*	*

* * * * *

[FR Doc. 2010–12929 Filed 5–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–0131, FRL–9146–4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 235, "Consumer Products" and Part 239, "Portable Fuel Container Spillage Control." The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standards for ozone.

DATES: *Effective Date:* This rule will be effective *June 28, 2010.*

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2010–0131. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. What is the history and time frame for State Implementation Plan (SIP) submissions?
II. What was included in New York's submittals?
III. What comments did EPA receive in response to its proposal?
IV. What is EPA's conclusion?
V. Statutory and Executive Order Reviews

I. What is the history and time frame for State Implementation Plan (SIP) submissions?

EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), referred to as the Phase 1 Rule, specifies that states must submit attainment demonstrations to EPA by no later than three years from the effective date of designation, that is, submit them by June 15, 2007.

On November 9, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612), referred to as the Phase 2 Rule, which addressed the control obligations that apply to areas designated nonattainment for the 8-hour national ambient air quality standard. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, reasonably available control technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)). The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measure (RACM) analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), and (c)).

II. What was included in New York's submittals?

On October 21, 2009 and November 23, 2009, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP which included State adopted revisions to two regulations which consist of, respectively, Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 235, "Consumer Products" with a State effective date of October 15, 2009 and 6 NYCRR Part 239, "Portable Fuel Container Spillage Control" with a State effective date of July 30, 2009. These revisions will provide volatile organic compound (VOC) emission reductions to address, in part, attainment of the 1997 8-hour ozone standard in the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area which is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. These revisions will also address, in part, the RACT and RACM requirements by providing VOC emission reductions statewide.

III. What comments did EPA receive in response to its proposal?

On March 2, 2010 (75 FR 9373), EPA proposed to approve the proposed revisions to the New York SIP for ozone concerning the amendments to 6 NYCRR Parts 235 and 239. The reader is referred to that proposal for a more detailed discussion of this action. No comments were received in response to that proposal.

IV. What is EPA's conclusion?

EPA has evaluated New York's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to Part 235 and Part 239 of Title 6 of the New York Codes, Rules and Regulations, entitled, "Consumer Products" and "Portable Fuel Container Spillage Control," respectively, meet the

SIP revision requirements of the Clean Air Act with the following exceptions.

The provisions related to innovative products exemptions in subpart 239–5, variances in subpart 239–7 and alternate test methods in subpart 239–8 do not explicitly require submission of an innovative product exemption, variance or alternative test method to EPA for approval into the SIP. Since the rule does not explicitly state that innovative product exemptions, variances or alternative test methods have to be submitted to EPA for approval in the SIP, there is the possibility that such exemptions, variances and alternatives will not be submitted for review and approval into the SIP and therefore will not, even though approved by the State, become federally enforceable. Failure to submit such exemptions, variances or alternatives to EPA for review and approval can lead to sources not understanding that the original rule still applies and can be enforced by the United States. In order to be federally enforceable, any exemption, variance or alternative test method approved by NYSDEC must be approved by EPA into the SIP.

Therefore, EPA is approving the proposed revisions to Part 239, "Portable Fuel Container Spillage Control" with a State effective date of July 30, 2009, as part of the New York SIP with the understanding that the specific application of provisions associated with innovative product exemptions, variances, and alternate test methods, pursuant to Part 239, must be submitted to EPA as SIP revisions. EPA is also approving the proposed revisions to Part 235, "Consumer Products" with a State effective date of October 15, 2009, as part of the New York SIP.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 27, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 27, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(114) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(114) On October 21, 2009 and November 23, 2009, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP concerning control strategies which will result in volatile organic compound emission reductions that will help achieve attainment of the national ambient air quality standards for ozone.

(i) Incorporation by reference:

(A) Title 6 of the New York Code of Rules and Regulations, Part 235, "Consumer Products," with an effective date of October 15, 2009 and Part 239, "Portable Fuel Container Spillage Control," with an effective date of July 30, 2009.

(ii) Additional information:

(A) Letters dated October 21, 2009 and November 23, 2009 from Assistant Commissioner J. Jared Snyder, NYSDEC, to George Pavlou, Acting Regional

Administrator, EPA Region 2, submitting the SIP revision for parts 235 and 239 respectively.

■ 3. In § 52.1679, the table is amended by revising the entries for Title 6, Part 235 and Part 239 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
* *	.....	...*.....*.....	* * *
Part 235, Consumer Products ..	10/15/09	5/28/10 [Insert FR page citation].	
* *	.....	...*.....*.....	* * *
Part 239, Portable Fuel Container Spillage Control.	7/30/09	5/28/10 [insert FR page citation].	The specific application of provisions associated with alternate test methods, variances and innovative products, must be submitted to EPA as SIP revisions.
* *	.....	...*.....*.....	* * *

[FR Doc. 2010–12917 Filed 5–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–93; FRL–9156–5]

RIN NA2040

Withdrawal of Federal Antidegradation Policy for all Waters of the United States Within the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is taking final action on a 2008 proposal to withdraw the Federal antidegradation policy for all waters of the United States within the Commonwealth of Pennsylvania. We are withdrawing the Federal antidegradation policy to allow Pennsylvania to implement its own antidegradation policy. Pennsylvania has adequately demonstrated that its antidegradation policy protects all waters of the United States at a level consistent with the Federal requirements under the Clean Water Act. Therefore, the Federal antidegradation policy is redundant.

DATES: This final rule is effective on June 28, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2007–93. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the OW Docket Center. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. 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.

FOR FURTHER INFORMATION CONTACT: Janita Aguirre at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 (telephone: 202–566–1149, fax: 202–566–0409 or e-mail: *aguirre.janita@epa.gov*) or Denise Hakowski at EPA Region 3 (3WP30), 1650 Arch Street, Philadelphia, Pennsylvania 19103 (telephone: 215–814–5726, fax: 215–814–2318 or e-mail: *hakowski.denise@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Entities

Citizens concerned with water quality in Pennsylvania may be interested in this rulemaking. Entities discharging pollutants to the surface waters of Pennsylvania could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Because this action withdraws a redundant Federal antidegradation policy, the effect of this rulemaking should be insignificant. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities.
Industry	Industries discharging pollutants to surface waters in Pennsylvania.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Pennsylvania.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

II. Background

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or Act) directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for their navigable waters, and Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the waters, water quality criteria sufficient to protect those uses, and an antidegradation policy. Under the CWA and EPA's regulations, States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards. Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that EPA has disapproved or in any case where the Administrator determines that a new or

revised standard is needed to meet the CWA's requirements.

In June 1994, EPA disapproved Pennsylvania's antidegradation regulation after determining the regulation was not consistent with the Federal antidegradation regulation found at 40 CFR 131.12. When the Pennsylvania Department of Environmental Protection (PADEP) did not act within the statutory timeframe to address EPA's findings, EPA promulgated a Federal antidegradation policy for all waters of the United States within the Commonwealth of Pennsylvania at 40 CFR 131.32 on December 9, 1996 (61 FR 64816). In August 1999, PADEP submitted to EPA revisions to its antidegradation policy found in 25 Pa. Code Chapter 93. On March 17, 2000, EPA approved most of the revisions to Pennsylvania's regulations as meeting the requirements of Federal regulations at 40 CFR 131.12(a)(1) and 131.12(a)(2), but withheld action on Section 93.4b, PADEP's Exceptional Value (EV) Waters designation, or Tier 3, until PADEP ensured that EV designated waters would be protected at the level consistent with Federal regulations at 40 CFR 131.12(a)(3). In 2003, PADEP published "Water Quality Antidegradation Implementation Guidance" (Document Number 391–0300–002). In it, PADEP provides guidance to its staff and information to help the regulated community and the public understand the implementation of the antidegradation policy in Pennsylvania. Based on a review of the document in combination with the PADEP's antidegradation regulation, EPA approved PADEP's antidegradation policy for Tier 3 waters on March 7, 2007. Because Pennsylvania now has an EPA-approved antidegradation policy meeting the Federal requirements at 40 CFR 131.12, the Federal antidegradation regulation promulgated by EPA for Pennsylvania is no longer needed and EPA is withdrawing it with this action.

III. Statutory and Executive Order Review

A. Executive Order 12866 (Regulatory Planning and Review)

This action withdraws Federal requirements applicable in Pennsylvania and imposes no regulatory requirements or costs on any person or entity. It does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing Federal requirements that no longer need to apply in Pennsylvania. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0049. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan.

Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

E. Executive Order 13132 (Federalism)

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

This rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution or Use)

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use

available and applicable voluntary consensus standards.

The requirements of section 12(d) of the NTTAA do not apply because this rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As explained above, EPA has approved Pennsylvania's antidegradation policy because it is consistent with 40 CFR 131.12. This rule withdraws a redundant antidegradation policy.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on June 28, 2010.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: May 21, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.32 [Removed and Reserved]

■ 2. Section 131.32 is removed and reserved.

[FR Doc. 2010–12933 Filed 5–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0268; FRL–8826–4]

Boscalid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of boscalid in or on multiple commodities which are identified and discussed later in this document. This regulation additionally revises established tolerances in or on fruit, stone, group 12; hog, fat; poultry, fat; and poultry, meat byproducts. Finally, this regulation deletes the time-limited tolerance on tangerine as it expired on December 31, 2008. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 28, 2010. Objections and requests for hearings must be received on or before July 27, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0268. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja Joyner, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *joyner.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *www.gpoaccess.gov/ecfr*.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0268 on the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 27, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0268, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 19, 2009 (74 FR 41898) (FRL–8426–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 9F7527 and PP 9F7529 by BASF Corporation, Research Triangle Park, NC 27709. PP 9F7527, which was incorrectly written as PP 9F7529 in the notice, requested that 40 CFR 180.589 be amended by establishing tolerances for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro[1,1′-biphenyl]-2-yl), in or on alfalfa, forage at 35 part per million (ppm); alfalfa, hay at 85 ppm; and citrus, crop group 10 at 2 ppm. PP 9F7529 requested to increase the existing tolerance in or on fruit, stone, group 12 from 1.7 ppm to 5 ppm. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised several proposed tolerances and has determined that separate tolerances are necessary for citrus, dried pulp and citrus, oil. The Agency has also revised several established livestock commodities. Finally, EPA has revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . "

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for boscalid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with boscalid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Boscalid has low acute toxicity via the oral, dermal, and inhalation routes of exposure, and it is not an eye or skin irritant. Following subchronic and chronic exposure to boscalid, the liver and thyroid appeared to be the target organs in several species. In mice, subchronic exposure to boscalid resulted in increased liver weights and an increased incidence of marked fatty changes in the liver. Subchronic and chronic studies in dogs resulted in increases in alkaline phosphatase levels as well as hepatic weights. In subchronic and chronic studies in rats, thyroid changes (including increases in weights and incidences of follicular cell hyperplasia and hypertrophy) were considered to have been the result of liver adaptive responses. Additionally, in three mechanistic rat studies, increases in liver microsomal activity, induction of total cytochrome P450 activity, and disruption of thyroid homeostasis (by decreasing circulating T3 and T4 and increasing TSH resulting from hepatic microsomal glucuronyltransferase) were noted. The liver and thyroid effects were reversed with the cessation of test article administration.

In the rabbit developmental toxicity study, abortions and early deliveries were observed in at the highest dose tested. Decreased pup body weights and/or body weight gains were noted in both the 2-generation reproductive toxicity study in rats and in the rat developmental neurotoxicity (DNT) study at a level that did not induce parental toxicity.

In two chronic/carcinogenicity studies in rats that were assessed together, statistically significant increases in thyroid follicular cell adenomas and significant differences in a pair-wise comparison with the controls were noted in males; thyroid hypertrophy and hyperplasia of follicular cells, as well as increased thyroid weights and mechanistic data were also noted. Female rats exhibited a slightly significant increase in thyroid follicular cell adenomas in these studies. A carcinogenicity study in mice

showed no evidence of tumor formation in either sex, and no evidence of malignancies or mutagenicity was found in the toxicity database for boscalid. Based on the overall weak evidence of carcinogenic effects, EPA has classified boscalid as having suggestive evidence of carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by boscalid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: "Boscalid. Human Health Risk Assessment for Proposed Use on Alfalfa and Citrus (Crop Group 10), and for Proposed Increase in Tolerance on Stone Fruits (Crop Group 12)." Pages 41–44 in docket ID number EPA–HQ–OPP–2009–0268.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level-generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for boscalid used for human risk assessment is shown in Table 1 of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BOSCALID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age; and general population including infants and children)	No appropriate endpoint attributable to a single dose was available in the current database, including the developmental toxicity studies. Therefore, an aRfD and aPAD were not established for any population.		
Chronic dietary (All populations)	NOAEL = 21.8 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.218 mg/kg/day cPAD = 0.218 mg/kg/day	Combined results of chronic rat, carcinogenicity rat, and 1–year dog studies LOAEL = 57 mg/kg/day based on liver and thyroid effects
Dermal short-term (1 to 30 days)	Dermal (or oral) study NOAEL = 21.8 mg/kg/day (dermal absorption rate = 15%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Combined results of chronic rat, carcinogenicity rat, and 1–year dog studies LOAEL = 57 mg/kg/day based on liver and thyroid effect.
Cancer (Oral, dermal, inhalation)	Classification: Suggestive evidence of carcinogenicity. The cRfD is protective of cancer effects. Quantification of human cancer risk is not necessary.		

UF_A = extrapolation from animal to human (interspecies).
UF_H = potential variation in sensitivity among members of the human population (intraspecies).
FQPA SF = Food Quality Protection Act Safety Factor.
PAD = population adjusted dose (a = acute, c = chronic).
RfD = reference dose.
MOE = margin of exposure.
LOC = level of concern.

Additional information regarding the toxicological endpoints for boscalid used for human risk assessment can be found at *http://www.regulations.gov* in docket ID numbers EPA–HQ–OPP–2009–0268 and EPA–HQ–OPP–2005–0145.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to boscalid, EPA considered exposure under the petitioned-for tolerances as well as all existing boscalid tolerances in 40 CFR 180.589. EPA assessed dietary exposures from boscalid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for boscalid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA utilized tolerance-level residues and assumed 100 percent crop treated (PCT) data for all commodities.

iii. *Cancer.* As discussed in Unit III.A., EPA has classified boscalid as having suggestive evidence of carcinogenicity due to some evidence of

thyroid follicular cell adenomas in male and female rats. Nonetheless, EPA concluded that the cPAD would be protective of these effects based on the following:

The adenomas occurred at dose levels above the level used to establish the cPAD, statistically significant increases were only seen for benign tumors (adenomas) and not for malignant ones (carcinomas), the increase in adenomas in females was slight, and there was no concern for mutagenicity. EPA's estimate of chronic exposure as described above is relied upon to evaluate whether any exposure could exceed the cPAD and thus pose a cancer risk.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue or PCT information in the dietary assessment for boscalid. Tolerance level residues or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for boscalid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of boscalid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of boscalid for chronic exposures for non-cancer assessments are estimated to be 29.6 parts per billion (ppb) for surface water and 0.63 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 29.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Boscalid is currently registered for use on turf at golf courses and for use on several fruit commodities at "pick-your-own" (PYO) farms and orchards; therefore, post-application exposure to golfers and people harvesting fruit at PYO farms and orchards is possible. EPA assessed residential exposure using the following assumptions: For adult and adolescent (12 years of age or older) golfers, short-term post-application dermal exposure to turf treated with boscalid was assessed. PYO activities may result in potential acute post-application exposure to boscalid; however, because no adverse effects were noted in the boscalid toxicity database resulting from a single exposure to the chemical, a post-application exposure and risk assessment is not necessary for this scenario. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

EPA also notes that while adolescents are likely to represent the vast majority of youth who play golf on a routine basis, it is possible for younger children (less than 12 years old) to be exposed to golf course turf that has been treated with boscalid. However, assessing risk for younger golfers is difficult because of the uncertainties associated with the extrapolation of adult dermal exposure data and because of the increased likelihood of other behaviors that might contribute to exposure, such as incidental oral exposure resulting from contact with treated turf. Therefore, younger golfers were assessed qualitatively for this exposure scenario after selecting an appropriate target age of 5 years old to assess risk. The surface area to body weight ratio (SA/BW) for male children, when calculated and compared to that of the average adult, was found to be approximately 70% greater. Based on this parameter alone, the exposure to children could be almost twice that of the adult golfer; however, younger golfers are not expected to use the golf course for the same length of time as an adult. The shorter duration on the golf course for younger golfers offsets the higher SA/BW; therefore, risks from short-term post-application exposures to young golfers are likely to be similar to risks for adult golfers.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found boscalid to share a common mechanism of toxicity with any other substances, and boscalid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that boscalid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for boscalid includes rat and rabbit prenatal developmental toxicity studies, a 2-generation reproductive toxicity study in rats, and a DNT study in rats. No qualitative or quantitative evidence of increased susceptibility was noted in the developmental toxicity study in rats. However, in the 2-generation reproduction study in rats, body weight effects were seen in the mid and high doses in the second generation male pups. However, the degree of concern is low for the quantitative evidence of susceptibility seen in this study, since the body weight effects were seen in only one sex and only after dosing for two generations. Also, there is a clear NOAEL for the body weight effects seen in the rat 2-generation reproduction study, and EPA is regulating based on a POD below where these effects were seen.

In the rat DNT study, transient body weight effects were seen in one sex at postnatal days 1–4 with the animals recovering by postnatal day 11. Body weight effects were also seen in the high dose, which was the limit dose. The degree of concern for these effects is low since the effects were either transient in nature or occurred at the limit dose, and EPA is regulating based on a POD below where these effects were seen. In the rabbit developmental study there was evidence of qualitative sensitivity;

however, fetal effects were seen only at the limit dose in the presence of maternal toxicity. Further, since EPA is regulating based on a POD which is an order of magnitude below where these effects were seen in the rabbit developmental study, EPA concludes that there is a low degree of concern for the qualitative sensitivity evidenced in the fetuses in the rabbit developmental study.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for boscalid is complete, except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. The available data for boscalid show no evidence of treatment-related effects on the immune system, and the Agency does not believe that conducting an immunotoxicity study will result in a lower point of departure than currently selected for overall risk assessment. Therefore, an additional database uncertainty factor to account for potential immunotoxicity does not need to be applied.

ii. A rat DNT study is available which provides no indication that boscalid is a neurotoxic chemical, and there is no evidence of reproductive or developmental neurotoxicity in the toxicity database.

iii. Data involving the testing of young animals did show increased quantitative sensitivity in the young with regard to body weight effects, and qualitative sensitivity was seen in one developmental study. However, clear NOAELs were identified for all of these effects. Moreover, the body weight effects at the LOAELs in these studies were either transient or inconsistent, and qualitative sensitivity occurred at the limit dose in the presence of maternal toxicity. Additionally, EPA is regulating based on a POD below where these effects are seen. EPA concludes that there are no residual uncertainties for prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to boscalid in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of adult golfers, which is expected to be similar to potential post-application exposure of children. These assessments will not underestimate the exposure and risks posed by boscalid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, boscalid is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to boscalid from food and water will utilize 37% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of boscalid is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Boscalid is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to boscalid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 840 for the general U.S. population and an aggregate MOE of 1,140 for youth (13–19 years old). As described above, the level of risk to younger golfers is expected to be similar. Because EPA's level of concern for boscalid is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, boscalid is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for boscalid.

5. *Aggregate cancer risk for U.S. population*. Based on the discussion in Unit III.A., EPA has concluded that the cPAD is protective of possible cancer effects. Given the results of the chronic risk assessment above, cancer risk resulting from exposure to boscalid is not of concern.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to boscalid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate gas chromatography with mass spectrometric detection (GC/MS) and GC with electron capture (EC) methods are available to enforce boscalid tolerances in or on plant and livestock commodities, respectively. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as

required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no Codex, Canadian, or Mexican MRLs for residues of boscalid in or on alfalfa forage, alfalfa hay, or citrus fruits. However, there is a Codex MRL for stone fruits at 3 ppm and a Canadian MRL for stone fruits at 1.7 ppm. At this time, the revised U.S. tolerance on fruit, stone, group 12 at 3.5 ppm cannot be harmonized because residue field trial data support a tolerance that is higher than the Codex and Canadian MRLs. Codex and Canadian MRLs for boscalid also exist for various livestock commodities. However, because Codex and Canadian MRLs on boscalid do not exist for some animal feed commodities which have U.S. tolerances, the dietary burden of boscalid is higher for animals in the U.S., and U.S. livestock tolerances cannot be harmonized with equivalent Codex or Canadian MRLs at this time.

C. Revisions to Petitioned-For Tolerances

Based on analysis of the data supporting the petition, EPA has revised the proposed tolerances on alfalfa, forage from 35 ppm to 30 ppm; alfalfa, hay from 85 ppm to 65 ppm; fruit, citrus, group 10 from 2.0 to 1.6 ppm; and fruit, stone, group 12 from 5.0 to 3.5 ppm. The Agency has also determined that individual tolerances are necessary for citrus, dried pulp at 4.5 ppm; and citrus, oil at 85 ppm because boscalid residues concentrate in these commodities. EPA revised these tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data.* Because tolerances are being established on alfalfa forage and alfalfa hay under 40 CFR 180.589(a)(1), which applies to residues resulting from intentional or inadvertent use, EPA has also revised current inadvertent residue tolerance entries so that they exclude alfalfa, as follows: animal feed, nongrass, group 18, forage, except alfalfa and animal feed, nongrass, group 18, hay, except alfalfa.

Additionally, EPA is modifying several tolerances for secondary residues in animal commodities. In conjunction with assessing potential residues in animal commodities from the proposed and established uses of boscalid, EPA has determined that the established tolerances for secondary residues in or on poultry and hog commodities need to be raised. Therefore, the Agency is increasing the established tolerances for hog, fat from 0.10 ppm to 0.20 ppm; poultry, fat from 0.05 ppm to 0.20 ppm; and poultry, meat byproducts from 0.10 to 0.20 ppm. Finally, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of boscalid not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl), in or on alfalfa, forage at 30 ppm; alfalfa, hay at 65 ppm; fruit, citrus, group 10 at 1.6 ppm; citrus, dried pulp at 4.5 ppm; and citrus, oil at 85 ppm. Additionally, previously established tolerances are revised for fruit, stone, group 12 at 3.5 ppm; hog, fat at 0.20 ppm; poultry, fat at 0.20 ppm; and poultry, meat byproducts at 0.20 ppm. Finally, this regulation deletes a time-limited tolerance on tangerine at 2.0 ppm, as it expired on December 31, 2008.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2010

Daniel J. Rosenblatt

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.589 is amended by:

i. Revising the introductory text for paragraphs (a)(1) and (a)(2);

ii. Revising the entry for "Fruit, stone, group 12" and alphabetically adding "Alfalfa, forage"; "Alfalfa, hay"; "Citrus, dried pulp"; "Citrus, oil"; and "Fruit, citrus, group 10"; to the table in paragraph (a)(1);

iii. Revising the entries for "Hog, fat"; "Poultry, fat"; and "Poultry, meat byproducts" in the table in paragraph (a)(2);

iv. Revising paragraph (b);

v. Revising paragraph (d) introductory text and revising the entries for "Animal feed, nongrass, group 18, forage" and "Animal feed, nongrass, group 18, hay" in the table in paragraph (d) to read as follows:

§ 180.589 Boscalid; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide boscalid, including its metabolites and degradates, in or on the commodities listed below. Compliance with the tolerance levels specified below is to be determined by measuring only boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1'-biphenyl]-2-yl), in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa, forage	30.0
Alfalfa, hay	65.0
* * * * *	
Citrus, dried pulp	4.5
Citrus, oil	85.0
* * * * *	
Fruit, citrus, group 10	1.6
* * * * *	
Fruit, stone, group 12	3.5
* * * * *	

(2) Tolerances are established for residues of the fungicide boscalid, including its metabolites and degradates, in or on the commodities listed below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro[1,1'-biphenyl]-2-yl), and metabolites 2-chloro-*N*-(4'-chloro-5-hydroxy-biphenyl-2-yl) nicotinamide and glucuronic acid conjugate of 2-chloro-*N*-(4′-chloro-5-hydroxy-biphenyl-2-yl) nicotinamide, calculated as the stoichiometric equivalent of boscalid in or on the following food commodities:

Commodity	Parts per million
* * * * *	
Hog, fat	0.20
* * * * *	
Poultry, fat	0.20
* * * * *	
Poultry, meat byproducts	0.20
* * * * *	

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide boscalid, including its metabolites and degradates, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. Compliance with the tolerance level specified below is to be determined by measuring only boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1'-biphenyl]-2-yl). This tolerance will expire and is revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Endive, Belgian	16	12/31/10

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of the fungicide boscalid, including its metabolites and degradates, in or on the commodities listed below. Compliance with the tolerance levels specified below is to be determined by measuring only boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1'-biphenyl]-2-yl), in or on the following commodities:

Commodity	Parts per million
Animal feed, nongrass, group 18, forage, except alfalfa	1.0
Animal feed, nongrass, group 18, hay, except alfalfa	2.0

* * * * *

[FR Doc. 2010–12921 Filed 5–27–10; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0279; FRL–8828–6]

Prothioconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of prothioconazole and prothioconazole-desthio, calculated as parent in or on grain, cereal, group 15 (except sweet corn, sorghum, and rice), and grain, cereal, forage, fodder and straw, group 16 (except sweet corn, sorghum, and rice) and sweet corn. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 28, 2010. Objections and requests for hearings must be received on or before July 27, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0279. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; e-mail address: *maignan.tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0279 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 27, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0279, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 19, 2009 (74 FR 41898) (FRL–8426–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7485) by Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.626 be amended by establishing tolerances for residues of the fungicide prothioconazole, 2-[2-(1-chlorocyclopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thion, in or on grain, cereal, group 15, except sweet corn, sorghum and rice at 0.35 parts per million (ppm); forage, cereal, group 16, except sweet corn, sorghum and rice at 8.0 ppm; stover, cereal, group 16, except sweet corn, sorghum and rice at 10 ppm; hay, cereal, group 16, except sweet corn, sorghum and rice at 7.0 ppm; straw, cereal, group 16, except sweet corn, sorghum and rice at 5.0 ppm; corn, sweet, forage at 7.0 ppm; corn, sweet, stover at 8.0 ppm; and corn, sweet, kernel plus cob with husks removed at 0.02 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov*. A comment was received on the notice of filing. EPA's response to the comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has established and increased the proposed tolerance of 0.02 ppm for combined residues in/on sweet corn to a higher tolerance of 0.04 ppm. Further, EPA has modified crop group terminology and established tolerances for grain, cereal, group 15, except sweet corn, sorghum, and rice at 0.35 ppm; grain, cereal, group 16, except sorghum and rice; forage at 8.0 ppm; grain, cereal, group 16, except sorghum and rice; stover at 10 ppm; grain, cereal, group 16, except sorghum and rice; hay at 7.0 ppm; grain, cereal, group 16, except sorghum and rice; straw at 5.0 ppm. With the establishment of the above tolerances, EPA has revoked the following tolerances: barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw. EPA is also not establishing the proposed tolerances for sweet corn forage at 7 ppm and sweet corn stover at 8 ppm because the commodities will be covered under grain, cereal, group 16; forage and stover. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for prothioconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with prothioconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Prothioconazole has low acute toxicity by oral, dermal, and inhalation routes. It is not a dermal sensitizer, or a skin or eye irritant. Prothioconazole's metabolite, prothioconazole-desthio, also has low acute toxicity by oral, dermal, and inhalation routes. It is not a dermal sensitizer, or a skin irritant, but it is a slight eye irritant. The subchronic and chronic studies show that the target organs at the lowest observable adverse effects level (LOAEL) include the liver, kidney, urinary bladder, thyroid and blood. In addition, the chronic studies showed body weight and food consumption changes. Prothioconazole and its metabolites may be primary developmental toxicants, producing effects including malformations in the conceptus at levels equal to or below maternally toxic levels in some studies, particularly those studies conducted using prothioconazole-desthio. Reproduction studies in the rat with prothioconazole and prothioconazole-desthio suggest that these chemicals may not be primary reproductive toxicants. Acute and subchronic neurotoxicity studies were conducted in the rat using prothioconazole. A developmental neurotoxicity study was conducted in the rat using prothioconazole-desthio.

The available data show that the prothioconazole-desthio metabolite produces toxicity at lower dose levels in subchronic, developmental, reproductive, and neurotoxicity studies as compared with prothioconazole and the two additional metabolites that were tested.

The available carcinogenicity and/or chronic studies in the mouse and rat, using both prothioconazole and prothioconazole-desthio, show no increase in tumor incidence. Therefore, EPA has concluded that prothioconazole and its metabolites are not carcinogenic, and are classified as "Not likely to be Carcinogenic to Humans" according to the 2005 Cancer Guidelines.

Specific information on the studies received and the nature of the adverse effects caused by prothioconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Prothioconazole. Human Health Risk Assessment for Proposed Section 3 Uses on Crop Group 15 and 16 (Cereal Grains and Forage, Fodder and Straw of the Cereal Grains Group Except Sweet Corn, Sorghum and Rice) and Sweet Corn," pages 14 to 17 in docket ID number EPA–HQ–OPP–2009–0279.

B. Toxicological Points of Departure and Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there

is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for prothioconazole used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROTHIOCONAZOLE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–49 years of age)	NOAEL = 2.0milligrams/kilograms/day (mg/kg/day) UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.02 mg/kg/day aPAD = 0.02 mg/kg/day	Developmental Toxicity Study in Rabbits LOAEL = 10 mg/kg/day based on structural alterations including malformed vertebral body and ribs, arthrogryposis, and multiple malformations.
Chronic dietary (All populations)	NOAEL = 1.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.01 mg/kg/day cPAD = 0.01 mg/kg/day	Chronic/Oncogenicity Study in Rats LOAEL = 8.0 mg/kg/day based on liver histopathology (hepatocellular vacuolation and fatty change (single cell, centrilobular, and periportal)).

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. Loc = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to prothioconazole and its metabolites and/or degradates, EPA considered exposure under the petitioned-for tolerances as well as all existing prothioconazole tolerances in 40 CFR 180.626. EPA assessed dietary exposures from prothioconazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a moderately refined acute dietary exposure assessment. Average field trial values (because all of the crops included in this assessment are blended food forms, except sweet corn), empirical processing factors, and livestock maximum residues were incorporated into the refined acute assessment. The assessment also assumed 100% crop treated (CT). Since no observed effects would be attributable to a single dose exposure for the general U.S. population, females 13 to 49 years of age was the only population subgroup included in the acute assessment.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a moderately refined chronic dietary exposure assessment. Empirical processing factors, average field trial residues, and livestock commodity residues derived from feeding studies and a reasonably balanced dietary burden (RBDB) were incorporated into the chronic assessment; 100% crop treated was assumed.

iii. *Cancer*. EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight-of-the-evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or non-linear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier non-cancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized.

Based on the data summarized in Unit III.A., EPA has concluded that prothioconazole is classified as "Not Likely to be Carcinogenic to Humans." Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section

408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances. Average residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for prothioconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of prothioconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of prothioconazole for the acute dietary risk assessment, the water concentration value of 94.7 parts per billion (ppb) was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration value of 84.3 ppb was used to assess the contribution to drinking water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Prothioconazole is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Prothioconazole is a member of the triazole-containing class of pesticides, often referred to as the triazoles. EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. The conazole pesticides, as a whole, tend to exhibit carcinogenic, developmental, reproductive, and/or neurological effects in mammals. Additionally, all the members of this class of compounds are capable of forming, via environmental and metabolic activities, 1,2,4-triazole, triazolylalanine and/or triazolylacetic acid. These metabolites have also been shown to cause developmental, reproductive, and/or neurological effects. That these compounds, however, have structural similarities and share some common effects does not alone show a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events. A number of potential events could contribute to the toxicity of conazoles (e.g., altered cholesterol levels, stress responses, altered DNA methylation). At this time, there is not sufficient evidence to determine whether conazoles share common mechanisms of toxicity. Without such understanding, there is no basis to make a common mechanism of toxicity finding for the diverse range of effects found. Investigations into the conazoles are currently being undertaken by the EPA's Office of Research and Development. When the results of this research are available, the Agency will make a determination of whether there is a common mechanism of toxicity and, therefore, a basis for assessing cumulative risk. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

To support existing tolerances and to establish new tolerances for conazole pesticides, including prothioconazole, EPA conducted human health risk assessments for exposure to 1,2 4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of triazole-containing pesticides (as of 9/1/05). The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with the common metabolites (e.g., use of maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). Acute and chronic aggregate risk estimates associated with these compounds are below the Agency's level of concern for all durations of exposure and for all population subgroups, including those of infants and children. The Agency's risk assessment for these common metabolites is available in the propiconazole reregistration docket at *http://www.regulations.gov*, Docket ID Number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is evidence of increased susceptibility following prenatal/or postnatal exposure in:

i. Rat developmental toxicity studies with prothioconazole as well as its prothioconazole-desthio and sulfonic acid K salt metabolites.

ii. Rabbit developmental toxicity studies with prothioconazole-desthio.

iii. A rat developmental neurotoxicity study with prothioconazole-desthio; and

iv. Multi-generation reproduction studies in the rat with prothioconazole-desthio. Effects include skeletal structural abnormalities, such as cleft palate, deviated snout, malocclusion, extra ribs, and developmental delays. Available data also show that the skeletal effects such as extra ribs are not completely reversible after birth in the rat, but persist as development continues.

Although increased susceptibility was seen in these studies, the Agency concluded that there is a low concern and no residual uncertainties for prenatal and/or postnatal toxicity effects of prothioconazole because:

- Developmental toxicity NOAELs and LOAELs from prenatal exposure are well characterized after oral and dermal exposure;
- The off-spring toxicity NOAELs and LOAELs from postnatal exposures are well characterized; and
- The NOAEL for the fetal effect, malformed vertebral body and ribs, is used for assessing acute risk of females 13 years and older and, because it is lower than the NOAELs in other developmental studies, is protective of all potential developmental effects.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for prothioconazole is considered complete, with the exception of required functional immunotoxicity testing. The Agency began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Although an immunotoxicity study in the mouse is part of the existing prothioconazole toxicity database, this study as reported does not satisfy the current guideline requirements for an immunotoxicity study (OPPTS 870.7800). As such, EPA is requiring that an immunotoxicity study be submitted which meets guideline requirements. EPA has evaluated the available prothioconazole toxicity database (including the non-guideline study in the mouse) to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. In one chronic study in the rat (but not in the mouse or dog), blood leukocyte counts were significantly elevated at the high dose level (750 mg/kg/day) along with increased thrombocyte counts and decreased hemoglobin. However, this finding is made in the presence of toxicity to a broad range of organ systems such as the liver, urinary bladder, kidney, thyroid, and decreased body weight gains. In a chronic dog study, splenic effects (increased spleen weight with pigmentation and/or fibrosiderotic plaques) were seen at 40 mg/kg/day and above, but these effects are not considered to be indicative of immunotoxicity, and occurred in the presence of toxicity to the liver, kidney, thyroid, and decreased body weights. Furthermore, no signs of immunotoxicity, such as changes in leukocyte counts and albumin/globulin ratio, changes in thymus and spleen weights, or histopathological changes in lymphoid tissues, were observed at dose levels up to 400 mg/kg/day in the non-guideline immunotoxicity study in the mouse. There appears to be no basis for concern for immunotoxicity, particularly at the Points of Departure (POD) for prothioconazole and its metabolites which, at 2.0 and 1.1 mg/kg/day (Acute and Chronic Reference Dose (aRfD and cRfD), respectively) are two orders of magnitude lower than the 400 and 750 mg/kg/day dose levels mentioned in this Unit. This finding, along with the absence of immunotoxicity observed in the subchronic and chronic studies with prothioconazole and its metabolites supports the reduction of the FQPA factor to 1X in the interim, pending receipt of an acceptable guideline immunotoxicity study.

ii. There is an acceptable battery of neurotoxicity studies including a developmental neurotoxicity study. Although offspring neurotoxicity was found, characterized by peripheral nerve lesions in the developmental neurotoxicity studies on prothioconazole-desthio, the increase was seen only in the highest dose group at 105 mg/kg/day, was not considered treatment related, and a clear NOAEL was established for this study.

iii. Although increased susceptibility was seen in the developmental and reproduction studies, the Agency concluded that there is a low concern and no residual uncertainties for prenatal and/or postnatal toxicity effects of prothioconazole for the reasons explained in Unit III.D.2.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment utilized empirical processing factors, 100% crop treated, average crop field trial residue levels, and livestock maximum residues. Results from ruminant feeding studies and poultry metabolism studies were used to determine the maximum residue levels for livestock commodities. The crop field trials were performed using maximum application rates and minimum pre-harvest intervals. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to prothioconazole in drinking water. These assessments will not underestimate the exposure and risks posed by prothioconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

Based on the proposed and existing crop uses for prothioconazole, dietary aggregate exposures (i.e., food plus drinking water) are anticipated. There are no residential uses for prothioconazole and, therefore, no residential exposures are anticipated. Consequently, only dietary (food plus drinking water) exposures were aggregated for this assessment.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to prothioconazole will occupy 38% of the aPAD for females 13 to 49 years of age, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to prothioconazole from food and water will utilize 21% of the cPAD for the general U.S. population and 62% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. There are no residential uses for prothioconazole.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there is no residential exposure, prothioconazole is not expected to pose a short-term risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there is no residential exposure, prothioconazole is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, prothioconazole is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to prothioconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate liquid chromatography methods with tandem mass spectrometry detection (LC/MS/MS) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with

international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for residues of desthio-prothioconazole in barley at 0.2 ppm (04/2010), and in oats, rye, and wheat at 0.05 ppm each and in the fodder (dry) of cereal grains at 4 ppm and in the straw (dry) of cereal grains at 5 ppm. There are currently no established Mexican MRLs for prothioconazole. Canadian MRLs have been established for prothioconazole *per se* in/on several commodities, including barley (0.35 ppm), wheat (0.07 ppm), meat byproducts of cattle, goats, horses and sheep (0.2 ppm), meat byproducts of hogs (0.05 ppm), liver of poultry (0.02 ppm), meat of cattle, goats, horses, and sheep (0.02 ppm), and milk (0.02 ppm). Harmonization of the proposed tolerances with the existing Codex for prothioconazole is not possible at this time because of differences in tolerance expression and use patterns. The MRL expression for Codex is prothioconazole-desthio and is thus not compatible with the U.S. tolerance definition, the sum of prothiocoanzole and prothioconazole-desthio. Much of the Codex cereal grain supervised field trial data is from Europe, where the use pattern is different resulting in lower measured residues. The straw numerical value (5 ppm) is matched between the U.S. and Codex.

The tolerance definition for plant commodities in Canada were recently changed (02/10/2010) and is now harmonized with the U.S. residue definition. The barley tolerance of Canada agrees with the recommended U.S. tolerance for cereal grains (except sweet corn, sorghum, and rice) of 0.35 ppm. However, the Canadian tolerance for wheat is lower (0.07 ppm) than the recommended U.S. group tolerance. The 0.07 ppm value is the current U.S. tolerance value for wheat, but will be replaced by the cereal grain group tolerance. Canada does not routinely establish animal feed commodity tolerances, and therefore there are no harmonization issues with forage, stover, hay, and straw.

C. Response to Comments

One comment was received from an anonymous source objecting to establishment of tolerances and stating that the Agency is not protecting human health. The response contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to prothioconazole, including all anticipated dietary exposures and other exposures for which there is reliable information.

D. Revisions to Petitioned-For Tolerances

Prothioconazole tolerances for crop commodities listed in 40 CFR 180.626(a)(1) are expressed in terms of the combined residues of the fungicide prothioconazole and prothioconazole-desthio, calculated as parent. EPA has also revised the tolerance expression to clarify (1) that, as provided in section 408(a)(3) of FFDCA, the tolerance covers metabolites and degradates of prothioconazole not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

Tolerances are established for residues of prothioconazole, 2-[2-(1-chlorocylcopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thion, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only prothioconazole and its metabolite prothioconazole-desthio, or α-(1-chlorocyclopropyl)-α-[(2-chlorophenyl)methyl]-1H-1,2,4-triazole-1-ethanol, calculated as parent in or on the commodity.

Tolerances are established for residues of prothioconazole, 2-[2-(1-chlorocylcopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thion, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only prothioconazole and its metabolites prothioconazole-desthio, or α-(1-chlorocyclopropyl)-α-[(2-chlorophenyl)methyl]-1H-1,2,4-triazole-1-ethanol, and conjugates that can be converted to these two compounds by acid hydrolysis, calculated as parent in or on the commodity.

The proposed tolerance of 0.02 ppm for combined residues in/on sweet corn K+CWHR should be increased to 0.04 ppm (reflecting the combined limit of quantitation of 0.02 ppm each for prothioconazole and prothioconazole-desthio).

The proposed tolerances of 7 ppm for sweet corn forage and 8 ppm for sweet corn stover should be removed. These commodities will be covered by the tolerance for group 16 grain, cereal, forage and group 16, cereal, grain, stover, respectively.

With the establishment of the requested crop group tolerances for group 15 and 16, the established tolerances for the following commodities are no longer necessary and should be removed: barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw.

V. Conclusion

Therefore, tolerances are established for residues of prothioconazole, 2-[2-(1-chlorocylcopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thion, including its metabolites and degradates, in or on grain, cereal, group 15, except sweet corn, sorghum, and rice at 0.35 ppm; grain, cereal, group 16, except sorghum and rice; forage at 8.0 ppm; grain, cereal, group 16, except sorghum and rice; stover at 10 ppm; grain, cereal, group 16, except sorghum and rice; hay at 7.0 ppm; grain, cereal, group 16, except sorghum and rice; straw at 5.0 ppm.; corn, sweet, kernel plus cob with husks removed at 0.04 ppm.

Further, the EPA is revoking the following eight existing tolerances because they are no longer needed as a result of this rule: barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw. The EPA is also revising the prothioconazole crop and animal tolerance expressions.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 21, 2010.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.626 as follows:

a. Revise the introductory text to paragraph (a)(1).

b. Remove from the table in paragraph (a)(1) existing entries for barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw.

c. Add alphabetically new commodities to the table in paragraph (a)(1).

d. Revise the introductory text to paragraph (a)(2).

The added and revised text read as follows:

§ 180.626 Prothioconazole; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of prothioconazole, 2-[2-(1-chlorocylcopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thion, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only prothioconazole and its metabolite prothioconazole-desthio, or α-(1-chlorocyclopropyl)-α-[(2-chlorophenyl)methyl]-1H-1,2,4-triazole-1-ethanol, calculated as parent in or on the commodity.

Commodity	Parts per million
* * *	* *
Corn, sweet, kernel plus cob with husks removed	0.04
* * *	* *
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; forage	8.0
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; hay	7.0
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; stover	10
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; straw	5.0
Grain, cereal, group 15, except sweet corn, sorghum, and rice	0.35
* * *	* *

(2) Tolerances are established for residues of prothioconazole, 2-[2-(1-chlorocylcopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3H-1,2,4-triazole-3-thion, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only prothioconazole and its metabolites prothioconazole-desthio, or α-(1-chlorocyclopropyl)-α-[(2-chlorophenyl)methyl]-1H-1,2,4-triazole-1-ethanol, and conjugates that can be converted to these two compounds by acid hydrolysis, calculated as parent in or on the commodity.

* * * * *

[FR Doc. 2010–12922 Filed 5–27–10 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; WC Docket No. 05–196; FCC 08–275]

Telecommunications Relay Services, Speech–to–Speech Services, E911 Requirements for IP–Enabled Service Providers

AGENCY: Federal Communications Commission

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements associated with the Commission's Telecommunications Relay Services,

Speech–to–Speech Services, E911 Requirements for IP–Enabled Service Providers, Report Order and Order on Reconsideration (Second Report and Order). This document is consistent with the Second Report and Order, which stated that the Commission would publish a document in the Federal Register announcing the effective date of the revised rules.

DATES: The rules published at 73 FR 79683, December 30, 2008, are effective May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 559–5158 (voice) or (202) 418–0431(TTY), or email: Gregory.Hlibok@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on November 23, 2009, OMB approved, for a period of three years, the information collection requirements contained in the Commission's Second Report and Order and in the Commission's rules at 47 CFR 64.605, FCC 08–275, published at 73 FR 79683, December 30, 2008. The OMB Control Number is 3060–1089. The Commission publishes this document as an announcement of the effective date of the revised rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW, Washington, DC 20554. Please include the OMB Control Number, 3060–1089, in your correspondence. The Commission will also accept your comments via the Internet if you send them to PRA@fcc.gov and Cathy.Williams@fcc.gov.

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).

SYNOPSIS

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on November 23, 2009, for the information collection requirements contained in the Commission's Second Report and Order and the Commission's rules at 47 CFR 64.605. The OMB Control Number is 3060–1089. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 12 respondents, 5,608,692 responses, total annual burden hours of 206,061 hours, and $4,251,635 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB 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 that does not display a current valid OMB Control Number.

The foregoing document is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–12810 Filed 5–27–10; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 389

[Docket No. FMCSA–2009–0354]

RIN 2126–AB23

Direct Final Rulemaking Procedures

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by establishing direct final rulemaking procedures for use on routine or noncontroversial rules. Under these procedures, FMCSA will make regulatory changes that will become effective a specified number of days after the date of publication in the **Federal Register,** unless FMCSA receives written adverse comment(s) or written notice of intent to submit adverse comment(s) by the date specified in the direct final rule. These new procedures will expedite the promulgation of routine or noncontroversial rules by reducing the time and resources necessary to develop, review, clear, and publish separate proposed and final rules. FMCSA will not use the direct final rule procedures for complex or controversial issues.

DATES: *Effective Date:* May 28, 2010.

ADDRESSES: *Docket:* For access to the docket to read background documents including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* by searching Docket ID number FMCSA 2009–0354 at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bivan R. Patnaik, Chief, Regulatory Development Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–8092.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides that notice and comment rulemaking procedures are not required where the Agency determines that there is good cause to dispense with them. Generally, good cause exists where the procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). FMCSA proposes to use direct final rulemaking to streamline the rulemaking process where the rule is noncontroversial and the Agency does not expect adverse comment.

Direct final rulemaking will make more efficient use of FMCSA resources by reducing the time and resources necessary to develop, review, clear, and publish separate proposed and final rules for rules the Agency expects to be noncontroversial and unlikely to result in adverse public comment. A number of Federal agencies use this process, including various Department of Transportation operating administrations. For example, on January 30, 2004, the Office of the Secretary of Transportation published a final rule adopting direct final rule procedures (69 FR 4455) and the Federal Railroad Administration published a final rule adopting direct final rule

procedures on March 7, 2007 (72 FR 10086).

Direct Final Rule Procedures Notice of Proposed Rulemaking (NPRM)

FMCSA proposed direct final rulemaking procedures in an NPRM published on March 17, 2010, in the **Federal Register** (75 FR 12720). The NPRM described the process of how FMCSA will determine whether a particular rulemaking is noncontroversial and unlikely to result in adverse comments. The NPRM also described how FMCSA determines whether a comment is adverse or not.

Discussion of Comments Received on the NPRM

FMCSA provided a 30-day comment period that ended on April 16, 2010. In response, the Agency received three comments and one question on the NPRM.

The Commercial Vehicle Safety Alliance, Advocates for Highway and Auto Safety (Advocates), and the American Trucking Associations submitted comments supporting the direct final rule procedures that were proposed in the NPRM. Advocates additionally stated that FMCSA should not use direct final rule procedures on safety-related rules, as these rules should be considered controversial and subject to full public notice and comment proceedings. They further maintain that FMCSA's granting of applications for waivers and two-year exemptions, under 49 U.S.C. 31315(a) and (b), and the renewal of such exemptions, should always be treated as controversial and subject to full public notice and comment procedures. As stated in the NPRM, FMCSA will use the direct final rule process for routine and noncontroversial rules. In the event that FMCSA publishes a direct final rule on an action that proves to be controversial, the public will have sufficient time and opportunity to submit adverse comments, or submit notices of intent to file adverse comments by the date specified in the direct final rule. If this occurs, FMCSA will publish a notice in the **Federal Register** withdrawing the direct final rule before it goes into effect.

Arkema Incorporated inquired about the number of days FMCSA is considering for a direct final rule to become effective after the date of publication in the **Federal Register.** As FMCSA intends to use the direct final rule process for routine and noncontroversial rules, the Agency will typically use 60 days after the date of publication in the **Federal Register** for the direct final rule to go into effect and 30 days after the date of publication in the **Federal Register** for the submission of adverse comments or notices of intent to submit adverse comments. FMCSA has the discretion to use a longer time period for a direct final rule to go into effect and a longer period for the submission of adverse comments if the Agency determines that it is necessary. If FMCSA receives adverse comments, or receives notice of intent to file adverse comments by the date specified in the direct final rule, it will publish a notice in the **Federal Register** withdrawing the direct final rule before it goes into effect.

Regulatory Analyses and Notices

FMCSA has determined that this action is not a significant regulatory action under Executive Order 12866 or under DOT's Regulatory Policies and Procedures. There are no costs associated with the final rule. There will be some cost savings in **Federal Register** publication costs and may be savings in efficiencies for the public and FMCSA personnel in eliminating duplicative reviews. I certify that this rule will not have a significant impact on a substantial number of small entities. Finally, FMCSA states that there are no Federalism implications.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act

FMCSA has determined that the requirements of Title II of the Unfunded Mandates Act of 1995 do not apply to this final rule.

Environment

FMCSA considered the environmental impacts of this final rule under the National Environmental Policy Act of 1969, and determined it is categorically excluded from further environmental analysis under FMCSA Order 5610.1 paragraph 6.x of Appendix 2. FMCSA Order 5610.1 was published on March 1, 2004 (69 FR 9680). A Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 389

Rulemaking procedures.

■ For the reasons set forth in the preamble, FMCSA amends 49 CFR Part 389 as follows:

PART 389—[AMENDED]

■ 1. The authority citation for 49 CFR part 389 is revised to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.,* subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C 4917; and 49 CFR 1.73

■ 2. Section 389.11 is revised to read as follows:

§ 389.11 General.

Except as provided in § 389.39, Direct final rulemaking procedures, unless the Administrator, for good cause, finds a rule is impractical, unnecessary, or contrary to the public interest, and incorporates such a finding and a brief statement for the reason for it in the rule, a notice of proposed rulemaking must be issued, and interested persons are invited to participate in the rulemaking proceedings involving rules under an Act.

■ 3. Add new § 389.39 to read as follows:

§ 389.39 Direct final rulemaking procedures

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the **Federal Register.**

(a) *Types of actions appropriate for direct final rulemaking.* Rules that the Administrator determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the **Federal Register** as direct final rules. These include non-controversial rules that:

(1) Make non-substantive clarifications or corrections to existing rules;

(2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;

(3) Affect internal FMCSA procedures such as filing requirements and rules governing inspection and copying of documents;

(4) Update existing forms; and

(5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

(b) *Adverse comment.* An adverse comment is a comment that FMCSA judges to be critical of the rule, to suggest that the rule should not be

adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, unless the commenter states that the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the **Federal Register,** if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) *Withdrawal of a direct final rule.*

(1) If FMCSA receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the **Federal Register,** before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

Issued on: May 24, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–12834 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2010–0020; 91200–1231–9BPP]

RIN 1018–AX09

Migratory Bird Permits; Changes in the Regulations Governing Migratory Bird Rehabilitation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 27, 2003, to create regulations governing migratory bird rehabilitation in the United States. Before creation of those regulations, rehabilitators were required to obtain a special purpose permit to engage in rehabilitation activities. The language in the final paragraph of the 2003 regulations dealt with the transition of special purpose permit holders to operation under the new rehabilitation permit regulations. This paragraph is no longer relevant, so we remove it from the regulation.

DATES: This regulations change will be effective on May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2003, we published a final rule in the **Federal Register** (68 FR 61123) to establish regulations for the issuance of permits to rehabilitate migratory birds in the United States. These regulations are at 50 CFR 21.31. Prior to issuance of the rehabilitation permit rule, migratory bird rehabilitators were required to obtain a special use permit to engage in rehabilitation activities. The last paragraph in the rehabilitation permit rule dealt with how we would handle issuing permits during the transition to the (then) new regulations. Since publication of that rule, all persons interested in having a permit to rehabilitate migratory birds must have transitioned from a special purpose permit to a rehabilitation permit. Because special purpose permits are valid for only 3 years, all of those permits in existence in 2003 have expired by now.

Therefore, the text in 50 CFR 21.31(i), "Will I need to apply for a new permit under this section if I already have a special purpose permit to rehabilitate birds, issued under § 21.27 (Special purpose permits)?" is no longer needed. With this final rule, our only change to the rehabilitation regulations is to remove all of the language under paragraph (i). This change is simply a ministerial administrative action to remove text that is no longer necessary from the Code of Federal Regulations and, therefore, will have no substantive effect on the general public.

Administrative Procedure

In accordance with section 553 (b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), we are issuing this final rule without prior opportunity for public comment because public notice and comment procedures are unnecessary. We find that good cause exists to delete paragraph (i) of section 21.31 without going through the public-notice-and-comment procedure because the transition language is anachronistic and no public input received through an open comment period could justify retention of this paragraph. For the same reasons stated above, we find that there is good cause to have this final rule take effect immediately upon publication in the **Federal Register** (5 U.S.C. 553(d)(3).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this

action will not have a significant economic impact on a substantial number of small entities because the change in the regulation is simply to eliminate language that is no longer needed. Consequently, we certify that because this rule will not have a significant economic effect on any entity, let alone a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to permittees or any other part of the economy associated with these regulation changes.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of migratory bird rehabilitation does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Neither regulation nor practice of migratory bird rehabilitation significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. Neither regulation nor practice of migratory bird rehabilitation affects small government activities.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.,* it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. No revisions of State, tribal, or territorial regulations will be necessary.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulation of migratory bird rehabilitation.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2010. This rule does not change the approved information collection. Information from the collection is used to ensure that rehabilitation permit applicants are qualified and that their activities are documented. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the change to the regulations, and determined that, within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, the regulatory change does not have a significant effect on the human environment. Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 8, we conclude that the regulatory change is categorically excluded because it has "no or minor potential environmental impact" (516 DM 8.5(A)(1)). No more comprehensive NEPA analysis of the regulations change is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with tribes' ability to manage themselves or their funds or to regulate migratory bird rehabilitation on tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of migratory bird rehabilitation in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. No Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

This action has no environmental or socioeconomic impacts.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). This regulatory change will not affect threatened or endangered species or their habitats in the United States.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend subpart C of part 21, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703–12); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.31 [Amended]

■ 2. Amend § 21.31 by removing paragraph (i).

Dated: May 17, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–12882 Filed 5–27–10; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 75, No. 103
Friday, May 28, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 1951 and 4284

RIN 0570–AA79

Value-Added Producer Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the Act), amends section 231 of the Agricultural Risk Protection Act of 2000, which established the Value-Added Producer Grant Program. This program will be administered by the Rural Business-Cooperative Service. Under the proposed program, grants will be made to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program will also provide working capital for expenses such as implementing an existing viable marketing strategy. The Agency proposes to implement the program to meet the goals and requirements of the Act.

The Agency is also proposing an amendment to existing regulations that would allow the delegation of the post-award servicing of the proposed program to USDA State Office personnel. Please note that this amendment would only affect the post-award servicing of the grant and would not affect the process for awarding grants, which would still occur at the National office.

DATES: Comments on the proposed rule must be received on or before June 28, 2010 to be assured of consideration. A 30-day comment period is provided for interested persons to comment on the regulatory provisions of this proposed rule. The Agency has determined that a 30-day comment period, rather than the traditional 60 day comment period, is appropriate in order to provide a sufficient amount of time to comment while ensuring program performance during the current fiscal year. This action will also provide applicants more time to develop quality applications for the program with minimal disruptions in ongoing farming activities.

The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through July 27, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments electronically.
- *Mail:* Submit your written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit your written comments via Federal Express mail, or other courier service requiring a street address, to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

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

FOR FURTHER INFORMATION CONTACT: Andrew Jermolowicz USDA, Rural Development, Rural Business-Cooperative Service, Room 4016, South Agriculture Building, Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250–3250, *Telephone:* (202) 720–7558, E-mail *CPGrants@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (*see* 7 U.S.C. 1621 note) authorizes the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants. The Secretary of Agriculture has delegated the program's administration to USDA Rural Development Cooperative Programs.

B. Nature of the Program

This subpart contains the provisions and procedures by which the Agency will administer the Value-Added Producer Grant (VAPG) Program. The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal.

Eligible applicants are independent agricultural producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based business ventures.

Grant funds cannot be used for planning, repairing, rehabilitating, acquiring, or constructing a building or facility (including a processing facility). They also cannot be used to purchase, rent, or install fixed equipment.

This program requires matching funds equal to or greater than the amount of grant funds requested. The Act provides for both mandatory and discretionary funding for the program, as may be appropriated. During subsequent years, additional funding may be appropriated. The number of grants awarded will vary from year to year, based on availability of funds and the quality of applications. The maximum grant amount that may be awarded is $500,000. However, the Agency may reduce that amount depending on the total funds appropriated for the program in a given fiscal year. This policy allows more grants to be awarded under reduced funding.

The Agency notes, pursuant to general Federal directives providing guidance on grant usage, that the 100 percent matching funds requirement described in the Agricultural Risk Protection Act of 2000 may include payment for the time of the applicant/producer or the applicant/producer's family members

only for the production of the business and marketing plans. Please contact the state office for further information.

II. Request for Public Comments on Specific Aspects of the Proposed Program

The Agency is interested in receiving comments on all aspects of the proposed rule. Areas in which the Agency is seeking specific comments are identified below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

a. *Medium-sized farm.* As proposed, medium-sized farm is defined as "A farm or ranch that has averaged between $250,001 and $700,000 in annual gross sales of agricultural products in the previous three years." The Agency is specifically requesting comment on whether it is more appropriate to use $500,000 as the upper limit in this definition. Please be sure to provide rationale for your position.

b. *Branding activities.* The Agency is proposing to allow branding, packaging, or other product differentiation activities that are not more than 25 percent of the total project cost of a value-added project for products otherwise eligible in one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product to be eligible. The Agency is seeking specific comment on the proposed 25 percent limit. If you believe a different limit is more appropriate, please identify your suggested limit and provide your rationale to support your suggestion.

III. Discussion of the Proposed Rule

The following paragraphs present a discussion of provisions of each section of the proposed rule in the order that they appear.

A. Purpose (§ 4284.901)

This section implements the value-added agricultural product market development grant program administered by the Rural Business-Cooperative Service whereby grants are made to enable producers to develop businesses that produce and market value-added agricultural products.

B. Definitions (§ 4284.902)

This section presents program specific definitions which are included to more clearly implement the program.

C. Review or Appeal Rights (§ 4284.903)

This section addresses how a person may seek a review of an Agency decision or file an appeal.

D. Exception Authority (§ 4284.904)

This section explains the Administrator's authority to make exceptions to regulatory requirements or provisions and specifically excludes permission to make exceptions for:

- Applicant eligibility
- Project eligibility

The Agency believes that applicant and project eligibility criteria must be maintained at all times in order to be consistent with statutory authority.

E. Nondiscrimination and Compliance With Other Federal Laws (§ 4284.905)

This section explains that applicants must comply with all applicable Federal laws. Additionally, this section explains how an applicant that believes it has been discriminated against as a result of applying for funds under this program can file a Civil Rights complaint with the USDA Office of Adjudication and Compliance.

F. State Laws, Local Laws, Regulatory Commission Regulations (§ 4284.906)

This section addresses how conflicts between this subpart and State or local laws, or regulatory commission regulations will be resolved.

G. Environmental Requirements (§ 4284.907)

This section addresses the relationship between grants awarded under this subpart and the environmental requirements of subpart G of 7 CFR part 1940.

H. Incorporation by Reference (§ 4284.908)

This section identifies the various regulations that are incorporated by reference in this subpart.

I. Forms, Regulations, and Instructions (§ 4284.909)

This section identifies how forms, regulations, instructions and other materials related to programs may be obtained.

J. Notifications (§ 4284.915)

This section describes the methods the Agency will use in making notifications regarding funding and programmatic changes.

K. Applicant Eligibility (§ 4284.920)

This section describes the requirements an applicant must meet to be eligible for a grant under this subpart, including, but not limited to, such areas as citizenship, legal authority, and multiple grants. An applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

- An independent producer;
- An agricultural producer group;
- A farmer or rancher cooperative; or
- A majority-controlled producer-based business venture.

L. Ineligible Applicants (§ 4284.921)

This section describes those conditions under which an applicant will be considered ineligible to participate in this program.

M. Project Eligibility (§ 4284.922)

The eligibility requirements applicable to this subpart are described in this section. For a product to be eligible it must meet the definition of a value-added agricultural product. The applicant must also demonstrate that, as a result of the project, the customer base for the agricultural commodity or product is expanded, and that a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the agricultural producer of the commodity or product.

Other aspects of project eligibility discussed in this section include, but are not limited to, availability of matching funds, submittal of various items such as work plans, budgets, feasibility studies, and business plans, and how applications that include branding and packaging will be handled.

N. Eligible Uses of Grant Funds (§ 4284.923)

The section identifies the eligible uses of grant and matching funds for both planning funds and working capital funds, and requires that grant and matching funds meet the same use restrictions, including being used to fund only the costs for approved purposes.

O. Ineligible Uses of Grant and Matching Funds (§ 4284.924)

This section describes those activities for which Agency funds under this subpart may not be used. Ineligible uses include expenses related to payment for preparation of the grant application and any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR part 31. Expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility are not eligible. Any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business, are ineligible.

P. Funding Limitations (§ 4284.925)

This section describes the maximum grant fund amount that a grant recipient can receive ($500,000) and several grant terms, including, but not limited to, the portion of total project eligible costs that grant funds can be used to pay (up to 50%) and the term of a grant (not to exceed 3 years).

Q. Preliminary Review (§ 4284.930)

This section encourages applicants to contact their State Office before they submit their applications.

R. Application Package (§ 4284.931)

The application forms, content, evaluation criteria, verifications and certifications required in the application package are detailed in this section.

S. Siplified Application (§ 4284.932)

This section addresses simplified applications, which are applicable to applicants requesting less than $50,000.

T. Filing Instructions (§ 4284.933)

This section provides the instructions for filing an application with the Agency. Completed applications must be received on or before March 15 of each year to be considered for funding that fiscal year. Late and/or incomplete applications will not be considered. Included in this section is information on where to submit and the format required for submission.

U. Processing Applications (§ 4284.940)

This section explains the process by which the Agency will conduct an application review to determine if the application is complete and meets program requirements. After review, the Agency will notify applicants in writing of their findings. Applicants determined to be ineligible may revise and resubmit their applications to the Agency on or before the application deadline.

V. Application Withdrawal (§ 4284.941)

This section describes the process whereby an applicant must notify the Agency in writing of its intention to withdraw its application for assistance.

W. Scoring Applications (§ 4284.942)

This section describes the process and criteria the Agency will use to score applications. The Agency will only score applications for which it has determined that the applicant and project are eligible and that the application is complete and sufficiently responsive to program requirements. Each such application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. Applications will be scored based on the information provided and/or referenced in the scoring section of the application at the time the applicant submits the application to the Agency. The maximum number of points that may be awarded to an application is 100, based on the criteria specified in this section.

X. Award Process (§ 4284.950)

This section describes the process by which the Agency will select applications for funding. Funding will be based on the score an application has received compared to the scores of other applications. Higher scoring applications will receive first consideration for funding. The Agency will notify in writing applicants whose applications have been selected for funding as well as inform those who did not receive funding, including a brief explanation as to why.

Y. Grant Agreement (§ 4284.951)

This section describes the conditions under which the grant will be made to the applicant. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving the Letter of Conditions, unless otherwise specified by the Agency at the time of the award.

Z. Monitoring and Reporting Program Performance (§ 4284.960)

The required monitoring and reporting activities are described in this section. Requirements include semiannual performance reports which must be submitted to the Agency within 30 days following March 31 and September 30. Failure to submit timely performance reports may result in the Agency withholding grant funds.

AA. Grant Servicing (§ 4284.961)

This section states that all grants awarded under this subpart will be serviced pursuant to 7 CFR part 1951, subparts E and O, and in Departmental Regulations. Note that as a separate action being proposed today, the Agency is proposing an amendment to § 1951.215 of subpart E. Paragraph (b)(2) in that section currently states that "All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph." The Agency is proposing to amend this paragraph by deleting the second sentence. This proposed amendment would facilitate the delegation of the servicing of the proposed program, and other grant programs that use part 1951 as their servicing regulation, to USDA State Office personnel. As noted earlier, the awarding of grants will occur at the National office.

BB. Transfer of Obligations (§ 4284.962)

This section explains those circumstances under which an obligation of funds established for an applicant may be transferred to a different (substituted) applicant.

CC. Grant Close out and Related Activities (§ 4284.963)

This section addresses the requirements for conducting grant close out and other related activities.

IV. Administrative Requirements

A. Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a cost-benefit analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of funds to help producers (farmers) expand their customer base for the products or commodities that they produce. This results in a greater portion of the revenues derived from the value-added activity being made available to the producer of the product. These benefits are important to the success of individual producers, farmer or rancher cooperatives, agriculture producer groups, and majority-controlled producer based business ventures.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare, to the extent practicable, a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. With certain exceptions, section 205 of UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

C. Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

D. Executive Order 12988, Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

E. Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. If an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, this analysis is not required. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities for the reasons discussed below. While, the majority of producers of agricultural commodities expected to participate in this Program will be small businesses, the average cost to participants is estimated to be approximately 20 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Further, this regulation only affects producers that choose to participate in the program. Lastly, small entity applicants will not be affected to a greater extent than large entity applicants.

G. Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to producers of agricultural commodities in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs,* and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

I. Programs Affected

Catalog of Federal Domestic Assistance (CFDA) Number: This program is listed in the Catalog of Federal Domestic Assistance under Number 10.352.

J. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for clearance. In accordance with the Paperwork Reduction Act of 1995, USDA Rural Development will seek standard OMB approval of the reporting requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Value-Added Producer Grant Program.

Type of Request: New Collection.

Abstract: The collection of information is vital to Rural Development to make decisions regarding the eligibility of grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Entities seeking funding under this program will have to submit applications that include information on the entity's eligibility, information on each of the evaluation criteria, certification of matching funds, verification of cost-share matching funds, business plan, and feasibility study. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes.

Once an entity has been approved and their application accepted for funding, the entity would be required to sign a Letter of Conditions and a grant agreement. The grant agreement outlines

the approved use of funds and actions, as well as the restrictions and applicable laws and regulations that apply to the award. Grantees must maintain a financial system and, in accordance with Departmental regulations, property and procurement standards. Grantees must submit semi-annual financial performance reports that include a comparison of accomplishments with the objectives stated in the application and a final performance report. Finally, grantees must provide copies of supporting documentation and/or project deliverables for completed tasks (*e.g.,* feasibility studies, business plans, marketing plans, success stories, best practices).

The following estimates are based on the anticipated average over the first three years the program is in place:

Estimate of Burden: Public reporting for this collection of information is estimated to average 34.1 hours per response.

Respondents: Producers of agricultural commodities.

Estimated Number of Respondents: 535.

Estimated Number of Responses per Respondent: 3.3.

Estimated Number of Responses: 1,783.

Estimated Total Annual Burden (hours) on Respondents: 60,724.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch at (202) 692–0043.

Comments

Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

K. E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002 (Pub. L. 107–347, December 17, 2002), to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Parts 1951 and 4284

Agricultural commodities, agricultural products, grant programs, rural areas, rural development, value-added activities.

For the reasons set forth in the preamble, parts 1951 and 4284 of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

2. Section 1951.215 is amended by revising paragraph (b)(2) to read as follows:

§ 1951.215 Grants.

* * * * *

(b) * * *

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart.

PART 4284—GRANTS

3. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989

4. Part 4284 is amended by revising subpart J to read as follows:

Subpart J—Value-Added Producer Grant Program

Section A—General

Sec.
4284.901 Purpose.
4284.902 Definitions.
4284.903 Review or appeal rights.
4284.904 Exception authority.
4284.905 Nondiscrimination and compliance with other Federal laws.
4284.906 State laws, local laws, regulatory commission regulations.
4284.907 Environmental requirements.
4284.908 Incorporation by reference.
4284.909 Forms, regulations, and instructions.
4284.910—4284.914 [Reserved]

Section B—Funding and Programmatic Change Notifications

4284.915 Notifications.
4284.916—4284.919 [Reserved]

Section C—Eligibility

4284.920 Applicant eligibility.
4284.921 Ineligible applicants.
4284.922 Project eligibility.
4284.923 Eligible uses of grant funds.
4284.924 Ineligible uses of grant and matching funds.
4284.925 Funding limitations.
4284.926—4284.929 [Reserved]

Section D—Applying for a Grant

4284.930 Preliminary review.
4284.931 Applications.
4284.932 Simplified applications.
4284.933 Filing instructions.
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Section E—Processing and Scoring Applications

4284.940 Processing applications.
4284.941 Application withdrawal.
4284.942 Scoring applications.
4284.943—4284.949 [Reserved]

Section F—Grant Awards and Agreement

4284.950 Award process.
4284.951 Grant agreement.
4284.952—4284.959 [Reserved]

Section G—Post Award Activities and Requirements

4284.960 Monitoring and reporting program performance.
4284.961 Grant servicing.
4284.962 Transfer of obligations.
4284.963 Grant close out and related activities.
4284.964—4284.999 [Reserved]

Section A—General

§ 4284.901 Purpose.

This subpart implements the value-added agricultural product market development grant program (Value-Added Producer Grants) administered by the Rural Business-Cooperative Service whereby grants are made to enable producers to develop businesses that produce and market value-added agricultural products.

§ 4284.902 Definitions.

Administrator. The Administrator of the Rural Business-Cooperative Service or designees or successors.

Agency. The Rural Business–Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and man-made bodies of water to which the producer has legal access. Agricultural commodities include any product

cultivated, raised, or harvested by the producer. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity that is the subject of the value-added project.

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers.

Agricultural product. Plant and animal products and their by-products to include crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; aquaculture; and fish and seafood products.

Anticipated award date. A date when the Agency expects to announce applications selected to receive grant funding.

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a Beginning Farmer or Rancher must currently own and produce the agricultural commodity to which value will be added.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the project and sufficient to evidence the viability of the venture. It may also contain background information about the organization or team attempting to reach those goals.

Conflict of interest. A situation in which a person or entity has competing professional or personal interests that make it difficult for the person or business to act impartially. An example is a grant recipient or an employee of a recipient that conducts or significantly participates in conducting a feasibility study for the recipient.

Day. Calendar day, unless otherwise stated.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Emerging market. A new or developing product that is new to the applicant or the applicant's product.

Family Farm. The term has the meaning given it in section 761.2 of title 7, Code of Federal Regulations (as in effect on December 30, 2007), in effect that, a Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family.

Farm or ranch. Any place from which $1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farmer or rancher cooperative. A business owned and controlled by agricultural producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a venture over the long term.

Fiscal year. The Federal government's fiscal year.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Independent producers.

(1) Individual agricultural producers or entities that are solely owned or controlled by agricultural producers. Independent producers must produce and own a majority of the agricultural commodity to which value is being added and that is the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity or product from its raw state through the production of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the product produced are not considered independent producers. Entities that contract out the production of an agricultural commodity are not considered independent producers.

(2) A steering committee composed of specifically identified agricultural producers in the process of organizing an eligible entity to operate a value-added venture that will be owned or controlled by those specifically identified agricultural producers supplying the agricultural product to the market. The steering committee must have formed the eligible entity by the time of award.

Local or regional supply network. An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide technical assistance for development of such networks.

Locally-produced agricultural food product. Any agricultural food product that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except farmer or rancher cooperatives) in which more than 50 percent of the financial ownership and voting control is held by independent producers.

Marketing plan. A plan for the project conducted by a qualified consultant that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a conflict of interest, that are used for eligible project purposes during the grant period. Eligible matching funds include confirmed applicant cash, loan or line of credit, non-Federal grant sources (unless otherwise provided by law), and third-party cash or eligible third-party in-kind contributions. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All eligible cash and third-party in-kind matching funds contributions must be spent on eligible expenses during the grant period, and are subject to the same

use restrictions as grant funds. Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended, and if matching funds are proposed in an amount exceeding the grant amount, those matching funds must be spent at a proportional rate equaling the match-to-grant ratio identified in the budget. Expected program income may not be used to fulfill the matching funds requirement at time of application. Further, funds used for an ineligible purpose, contributions donated outside the proposed grant period, and in-kind contributions that are invalid, over-valued or include potential for a conflict of interest are not acceptable matching funds. All matching funds must be verified by authentic documentation from the source as part of the application.

Medium-sized farm. A farm or ranch that has averaged between $250,001 and $700,000 in annual gross sales of agricultural products in the previous three years.

Mid-tier value chain. Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from an eligible agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified (third-party) consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product.

Product segregation. Separating an agricultural commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar products during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the business plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections in the form of cash flow statements, income statements, and balance sheets.

Project. All activities to be funded by grant and matching funds.

Qualified consultant. An independent, third-party possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(1) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(2) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character." Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is "not urban in character" for review, analysis, and decision by the Rural Development Under Secretary.

(3) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(4) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(5) The determination that an area is "rural in character" under this definition will be to areas that are within:

(i) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city town; or

(ii) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

Small farm. A farm or ranch that has averaged $250,000 or less in annual gross sales of agricultural products in the previous three years.

Socially disadvantaged farmer or rancher. This term has the meaning given it in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)). A farmer or rancher who is a member of a "socially disadvantaged group." In this definition, the term farmer or rancher means a person that is engaged in farming or ranching or an entity solely owned by individuals who are engaged in farming or ranching. A socially disadvantaged group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In the event that there are multiple farmer or rancher owners of the applicant organization, the Agency requires that at least 51 percent of the ownership be held by

members of a socially disadvantaged group.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State director. The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

State office. USDA Rural Development offices located in each state.

Total project cost. The sum of all grant and matching funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any agricultural commodity or product that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The agricultural commodity or product must meet one of the following five value-added methodologies:

(i) Has undergone a change in physical state;

(ii) Was produced in a manner that enhances the value of the agricultural commodity or product;

(iii) Is physically segregated in a manner that results in the enhancement of the value of the agricultural commodity or product;

(iv) Is a source of farm- or ranch-based renewable energy, including E–85 fuel; or

(v) Is aggregated and marketed as a locally-produced agricultural food product.

(2) As a result of the change in physical state or the manner in which the agricultural commodity or product was produced, marketed, or segregated:

(i) The customer base for the agricultural commodity or product is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the agricultural commodity or product is available to the producer of the commodity or product.

Venture. The business, including the project and other related activities.

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the value-added product that are eligible uses of grant funds.

§ 4284.903 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator may make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

§ 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws.* Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901–E.

(b) *Nondiscrimination.* The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) *Civil rights compliance.* Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the basis of race, sex and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E. For grants initial compliance review will be conducted after Form RD 400–4, "Assurance Agreement," is signed and one subsequent compliance review after the last disbursement of grant funds have been made, and the facility or programs been in full operations for 90 days.

(d) *Executive Order 12898.* When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, "Civil Right Impact Analysis Certification." This certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§ 4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§ 4284.907 Environmental requirements.

All grants awarded under this subpart are subject to the environmental requirements in subpart G of 7 CFR part 1940 or successor regulations. Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title. Applicants for working capital grants must submit Form 1940–22, Categorical Exclusion Checklist.

§ 4284.908 Incorporation by reference.

(a) *Departmental regulations.* Unless specifically stated, this subpart incorporates by reference the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(b) *Cost principles.* This subpart incorporates by reference the cost

principles found in 2 CFR part 230 and in 48 CFR part 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR 230, or 48 CRF 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency.

§§ 4284.910–4284.914 [Reserved]

Section B—Funding and Programmatic Change Notifications

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications.* The Agency will issue notifications concerning:

(1) The funding level and the minimum and maximum grant amount and any additional funding information as determined by the Agency; and

(2) The contents of simplified applications, as provided for in § 4284.932.

(b) *Programmatic changes.* The Agency will issue notifications of the programmatic changes specified in paragraphs (b)(1) through (4) of this section.

(1) The set of Administrator priority categories or their point allocation, if the provisions specified in § 4284.942(b)(6) are not to be used for awarding Administrator points. Administrator priorities that the program may consider are:

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) To more effectively accomplish the mission area's plans, goals, and objectives.

(v) Public health and safety.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any information specified in § 4284.933.

(4) Preliminary review information.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) in one or more **Federal Register** notices. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

(1) The Agency will make the information specified in paragraph (a) of this section available each fiscal year.

(2) The Agency will make the information specified in paragraphs (b)(1) of this section available at least 60 days prior to the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(2) through (4) of this section available on an as needed basis.

§§ 4284.916–4284.919 [Reserved]

Section C—Eligibility

§ 4284.920 Applicant eligibility.

To be eligible for a grant under this subpart, an applicant must demonstrate that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of applicant.* The applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

(1) An independent producer;

(2) An agricultural producer group;

(3) A farmer or rancher cooperative; or

(4) A majority-controlled producer-based business venture.

(b) *Emerging market.* An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship.*

(1) Individual applicants must demonstrate that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must demonstrate that they are at least 51 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents residing in the U.S. This paragraph is not applicable if the entity is owned solely by members of one immediate family. In such instance, if at least one of the immediate family members is a citizen or national, as defined in paragraph (c)(1) of this section, then the entity is eligible.

(d) *Legal authority and responsibility.* Each applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant.

(e) *Multiple grant eligibility.* An applicant may submit only one application in response to this notice, and must direct that it compete in either the general funds competition or in one of the reserved funds competitions. Separate entities with identical or greater than 75 percent common ownership may only submit one application for one entity per year. Applicants who have already received a planning grant for the proposed project cannot receive another planning grant for the same project. Applicants who have already received a working capital grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant.* If an applicant has an active value-added grant at the time of a subsequent application, the current grant must be closed out within 90 days of the annual NOFA.

§ 4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (d) of this section, as applicable.

(a) *Product eligibility.* Each product that is the subject of the proposed project must meet the definition of a value-added agricultural product, including a demonstration that:

(1) The value-added product results from one of the value-added methodologies identified in paragraphs

(1)(i) through (v) of the definition of value-added agricultural product;

(2) As a result of the project, the customer base for the agricultural commodity or product is expanded; and

(3) As a result of the project, a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the agricultural producer of the commodity or product.

(b) *Purpose eligibility.*

(1) The grant funds requested must not exceed the amount specified annually for planning and working capital grant requests.

(2) The matching funds required for the project budget must be available during the project period and verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.923, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject value-added product.

(4) The project work plan and budget must:

(i) Present a detailed breakdown of all estimated costs associated with the eligible planning or working capital activities related to the processing and/or marketing of the value-added product and allocate those costs among the listed tasks;

(ii) Identify the sources and uses of grant and matching funds for all tasks specified in the budget; and

(iii) Present a project budget period of not longer than 36 months, scaled to complexity, and concluding not later than 3 years after the proposed start date.

(5) Working capital applications must include a feasibility study and business plan completed specifically for the proposed value-added project by a qualified consultant. The Agency must concur in the acceptability or adequacy of the feasibility study and business plan for eligibility purposes.

(6) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture, the applicant must demonstrate that it is entering an emerging market.

(7) All applicants for working capital must either be currently marketing each value-added agricultural product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

(c) *Branding activities.* Applications that propose only branding, packaging, or other similar means of product differentiation are not eligible under this subpart. However, applications that propose branding, packaging, or other product differentiation activities that are no more than 25 percent of total project costs of a value-added project for products otherwise eligible in one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product are eligible.

(d) *Reserved funds eligibility.* In addition to the requirements specified in paragraphs (a) through (c) of this section, the requirements specified in paragraphs (d)(1) and (2) of this section must be met, as applicable. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide documentation demonstrating that the applicant meets one of these definitions.

(2) If the applicant is applying for mid-tier value chain reserved funds, the application must:

(i) Demonstrate that the project proposes development of a local or regional supply network of an interconnected group of entities through which agricultural products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, and its purpose;

(ii) Describe at least two alliances, linkages or partnerships within the value chain that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two eligible small or medium-sized farms or ranches that are structured as a family farm;

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business venture applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible independent producer applicant has obtained at least one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business venture engaged in the value-chain on a marketing strategy;

(v) Demonstrate that the applicant organization currently owns and produces more than 50 percent of the raw agricultural commodity that will be used for the value-added product that is the subject of the proposal; and

(vi) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

§ 4284.923 Eligible uses of grant and matching funds.

Grant and cost-share matching funds have the same use restrictions and must be used to fund only the costs for approved purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning funds may be used to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. Planning funds may not be used for applicant participation in feasibility studies. In-kind contribution of matching funds to cover applicant participation in development of business plans and/or marketing plans is allowed to the extent that the value of such work can be appropriately valued. Funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the value-added product. Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership interest to process and/or market and deliver the value-added product to consumers, paying for inventory supply costs necessary to produce the value-added product from the agricultural commodity or product, and paying for a marketing campaign for the value-added product.

§ 4284.924 Ineligible uses of grant and matching funds.

Grant funds awarded under this subpart may not be used to:

(a) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(b) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(c) Purchase or repair vehicles, including boats;

(d) Pay for the preparation of the grant application;

(e) Pay expenses not directly related to the funded project;

(f) Fund research and development;

(g) Fund political or lobbying activities;

(h) Fund any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR part 31.2.

(i) Fund architectural or engineering design work;

(j) Fund expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;

(k) Conduct activities on behalf of anyone other than a specifically identified independent producer or group of independent producers. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;

(l) Duplicate current services or replace or substitute support previously provided;

(m) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(n) Pay for assistance to any business that does not meet the requirements of § 4284.920(c);

(o) Pay any judgment or debt owed to the United States;

(p) Pay for any goods or services provided by a person or entity that has a conflict of interest or an appearance of a conflict of interest. Also, note that in-kind matching funds may not be provided by a person or entity that has a conflict of interest or an appearance of a conflict of interest;

(q) Purchase land; or

(r) Pay for costs associated with illegal activities.

§ 4284.925 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount.

(b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed $500,000.

(c) A grant under this subsection shall have a term that does not exceed 3 years. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.

(d) The aggregate amount of awards to majority controlled producer-based businesses may not exceed 10 percent of the total funds obligated under this subpart during any fiscal year.

(e) Not more than 5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to independent producers and processors.

(f) Each fiscal year, the following amounts of reserved funds will be made available:

(1) 10 percent to fund projects that benefit beginning farmers or ranchers, or socially-disadvantaged farmers or ranchers; and

(2) 10 percent to fund projects that propose development of mid-tier value chains.

(3) Funds not obligated by June 30 of each fiscal year shall be available to the general fund for the program.

§§ 4284.926–4284.929 [Reserved]

Section D—Applying for a Grant

§ 4284.930 Preliminary review.

The Agency encourages applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss project eligibility potential. At its option, the Agency may establish a preliminary review deadline so that it may informally assess the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency. To implement this section, the Agency will issue a notification addressing this issue in accordance with § 4284.915.

§ 4284.931 Application package.

All applicants are required to submit an application package that is comprised of the elements in this section.

(a) *Application forms.* The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) Form SF–424, "Application for Federal Assistance."

(2) Form SF–424A, "Budget Information-Non-Construction Programs."

(3) Form SF–424B, "Assurances—Non-Construction Programs."

(4) Form RD 400–4, "Assurance Agreement."

(5) Form RD 400–1, "Equal Opportunity Agreement."

(6) All applicants are required to have a DUNS number (including individuals and sole proprietorships).

(b) *Application content.* The following content items must be completed when applying for a grant under this subpart:

(1) *Eligibility discussion.* Using the format prescribed by the application package, the applicant must describe in detail how the:

(i) Applicant (§§ 4284.920 and 921) and project eligibility (§ 4284.922) requirements are met;

(ii) Eligible use of grant and matching funds (§§ 4284.923 and 924) requirements are met; and

(iii) Funding limitation (§ 4284.925) requirements are met.

(2) *Evaluation criteria.* Using the format prescribed by the application package, the applicant must address each evaluation criterion identified below.

(i) *Performance evaluation criteria.* Applicants for planning grants must suggest at least one criterion by which their performance under a grant could be evaluated. Applicants for working capital grants must identify the projected increase in customer base, revenue accruing to independent producers, and number of jobs attributed to the project. Working capital projects with significant renewable energy components must also identify the projected increase in capacity per unit of measure annually attributed to the project. Performance criteria will be incorporated into the applicant's semi-annual and final reporting requirements if selected for award.

(ii) *Proposal evaluation criteria.* Applicants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.

(3) *Certification of matching funds.* Using the format prescribed by the application package, applicants must certify that:

(i) Cost-share matching funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of matching funds will have

been expended prior to submitting the request for reimbursement; and

(ii) If matching funds are proposed in an amount exceeding the grant amount, those matching funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share matching funds.* Using the format prescribed by the application package, the applicant must provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the following requirements:

(i) Matching funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant project period.

(ii) Matching funds must be from eligible sources without a conflict of interest and without the appearance of a conflict of interest.

(iii) Matching funds must be at least equal to the amount of grant funds requested, and combined grant and matching funds must equal 100 percent of the total eligible project costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or confirmed third-party cash or eligible third-party in-kind contribution.

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant period, third-party in-kind contributions that are over-valued, expected program income at time of application, or instances where the potential for a conflict of interest exists, including applicant in-kind contributions in § 4284.923(a).

(5) *Business plan.* As part of the application package, applicants for working capital grants must provide a copy of the business plan that was completed for the proposed project. The Agency must concur in the acceptability or adequacy of the business plan.

(6) *Feasibility study.* As part of the application package, applicants for working capital grants must provide a copy of the third-party feasibility study that was completed for the proposed project. The Agency must concur in the acceptability or adequacy of the feasibility study.

§ 4284.932 Simplified application.

Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915.

§ 4284.933 Filing instructions.

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit.* Complete applications must be received by the Agency on or before March 15 of each year to be considered for funding for that fiscal year. Applications received by the Agency after March 15 will not be considered.

(b) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or on-line through grants.gov.

(d) *Format.* Applications may be submitted as hard copy, or electronically via grants.gov. If submitted as hard copy, only one original copy should be submitted.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site—*http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

§§ 4284.934–4284.939 [Reserved]

Section E—Processing and Scoring Applications

§ 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each fiscal year, the Agency will conduct a review to determine if the applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, the Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, it will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If such revised applications are not received by the specified application deadline, the Agency will not process the application and will inform the applicant that their application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination.

§ 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, the applicant must notify the Agency in writing if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible, the application is complete and sufficiently responsive to program requirements, and the project is likely feasible. Any applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. Each application will be scored based on the information provided and/or referenced in the scoring section of the application at the time the applicant submits the application to the Agency.

(b) *Scoring applications.* The maximum number of points that will be awarded to an application is 100, plus an additional 10 points if the project is located in a rural area. The criteria specified in paragraphs (b)(1) through (7) of this section will be used to score each application. The Agency will specify how points are awarded for each

criterion in a Notice published each fiscal year.

(1) Nature of the proposed project (maximum 25 points).

(2) Personnel qualifications (maximum 20 points).

(3) Commitments and support (maximum 10 points).

(4) Work plan/budget (maximum 20 points).

(5) Type of applicant (maximum 15 points).

(6) Administrator priority categories and points (maximum 10 points).

(7) Rural or rural area location (10 points may be awarded).

§§ 4284.943–4284.949 [Reserved]

Section F—Grant Awards and Agreement

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same fiscal year. Higher scoring applications will receive first consideration for funding. The Agency will notify applicants, in writing, whether or not they have been selected for funding. For those applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Grant agreement.

(a) *Letter of conditions.* When a grant is obligated subject to conditions established by the Agency, the Agency will notify, in writing, each applicant whose application has been selected for funding using a Letter of Conditions, which defines the conditions under which the grant will be made. If the applicant agrees with the conditions, the applicant must complete, sign, and return the Agency's "Letter of Intent to Meet Conditions." If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of award. Each grantee will also be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Grant disbursements.* Grant disbursement will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable. Adequate supporting documentation is required for all disbursements.

§§ 4284.952–4284.959 [Reserved]

Section G—Post Award Activities and Requirements

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees are responsible to expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit prescribed narrative and financial performance reports that include a comparison of accomplishments with the objectives stated in the application. The Agency will prescribe both the narrative and financial report formats in the grant agreement.

(1) Semi-annual performance reports shall be submitted within 30 days following March 31 and September 30 each fiscal year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(2) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(3) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a feasibility study, marketing plan, business plan, success story, or best practice.

(4) The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations.

§ 4284.962 Transfer of obligations.

An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§ 4284.963 Grant close out and related activities.

In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of § 4284.970(b) may result in the suspension or termination of a grant.

§§ 4284.964–4284.999 [Reserved]

Dated: May 21, 2010.

Pandor H. Hadjy,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–12731 Filed 5–27–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF ENERGY

10 CFR Parts 433 and 435

[Docket No. EE–RM/STD–02–112]

RIN 1904–AC13

Energy Efficiency and Sustainable Design Standards for New Federal Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this notice of proposed rulemaking (NOPR) to implement provisions of the Energy Conservation and Production Act, as amended by the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007, that require DOE to establish revised performance standards for the construction of new Federal buildings and major renovations of Federal buildings. This NOPR specifically addresses the use of sustainable design principles for siting, design, and construction, and the use of water conservation technologies to achieve energy efficiency. This proposed rulemaking also provides criteria for identifying a certification system and level for green buildings that encourages a comprehensive and environmentally-sound approach to certification of green buildings.

DATES: Public comments on this proposed rule will be accepted until July 27, 2010. The Department will hold a public meeting on Wednesday, July 28, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Wednesday, July 14, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Wednesday, July 21, 2010.

DOE will accept comments, data, and information regarding the NOPR before and after the public meeting, but no later than July 27, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089. You may submit comments using any of the following methods:

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

2. *E-mail: Cyrus.Nasseri@ee.doe.gov.* Include EE–RM/STD–02–112 and/or RIN 1904–AC13 in the subject line of the message.

3. *Postal Mail:* Cyrus Nasseri, U.S. Department of Energy, Federal Energy Management Program, Mailstop EE–2L, Energy Efficiency and Sustainable Design Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings and Energy Efficiency and Sustainable Design Standards for New Federal Low-Rise Residential Buildings, EE–RM/STD–02–112 and/or RIN 1904–AC13, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9138. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Cyrus Nasseri, U.S. Department of Energy, Federal Energy Management Program, Room 5E–080, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Docket: For access to the docket to read background documents or comments received by DOE, go to the U.S. Department of Energy, Forrestal Building, Room 5E–080 (Resource Room of the Federal Energy Management Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Cyrus Nasseri at the above telephone number for additional information regarding visiting the Resource Room.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at Title 10 of the Code of Federal Register (10 CFR) 1004.11.

FOR FURTHER INFORMATION CONTACT: Cyrus Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, EE–2L, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9138, e-mail: *Cyrus.Nasseri@ee.doe.gov,* or Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1777, e-mail: *Christopher.Calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Today's Action
III. Reference Resources
IV. Regulatory Analysis
V. Approval of the Office of the Secretary

I. Introduction

Section 305 of the Energy Conservation and Production Act (ECPA) established energy conservation requirements for Federal buildings. (42 U.S.C. 6834) Section 109 of the Energy Policy Act of 2005 amended section 305 of ECPA by adding section 305(a)(3)(A), which requires DOE, through regulation, to update the energy efficiency requirements for new Federal buildings. (42 U.S.C. 6834(a)(3)(A)) DOE is also required to establish a requirement that, if life-cycle cost-effective, sustainable design principles must be applied to the siting, design, and construction of all new and replacement buildings. (42 U.S.C. 6834(a)(3)(A)(i)(II)) Section 433 of the Energy Independence and Security Act of 2007 (EISA; Pub. L. 110–140) further amended section 305 of ECPA to apply sustainable design principles to certain new Federal buildings and major renovations of Federal buildings without specifying consideration of life-cycle cost-effectiveness. (42 U.S.C. 6834(a)(3)(D)(i)(III)) In addition, DOE is directed to establish regulations that require water conservation technologies and solar hot water heaters be applied to the extent life-cycle cost-effective. (42 U.S.C. 6834 (a)(3)(A)(ii) and (a)(3)(D)(vii)) Today's proposed rule addresses sustainable design principles, water conservation technologies, and solar water heating. Additionally, as amended by EISA, ECPA directs DOE to identify a certification system and level for rating green buildings that DOE determines to be the most likely to encourage a comprehensive and environmentally sound approach to such certification and rating. (42 U.S.C. 6834(a)(3)(D)(i)(III)) Finally, section 433 of EISA revised the definition of "Federal building" applicable to the regulations for Federal buildings. (42 U.S.C. 6832(6)) This definitional change is addressed in today's notice.

DOE has already addressed energy efficiency in new Federal buildings in a final rule published on December 21, 2007 (72 FR 72565). Specifically, new Federal buildings must be designed to achieve energy consumption levels that are at least 30 percent below the updated minimum standards referenced in section 305(a)(2), if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I); *see also* 10 CFR 433.4 and 435.4) DOE placed the revised Federal commercial

and multi-family high-rise residential building standards in a new 10 CFR Part 433, entitled "Energy Efficiency Standards for the Design and Construction of New Federal Commercial and Multi-Family High-Rise Residential Buildings." The updated standards for Federal low-rise residential buildings are contained in 10 CFR Part 435, Subpart A.

Section 433 of EISA added section 305(a)(3)(D) to require fossil fuel energy savings for certain building types. DOE will address the fossil fuel requirements of section 433 of EISA in a separate rulemaking. The fossil fuel requirement rulemaking may amend the same regulatory sections as those proposed to be amended in today's notice of proposed rulemaking. The proposed regulatory text in today's document would amend the current regulatory text, without consideration of amendments that may result from the fossil fuel requirement rulemaking. If and when these rulemakings are finalized, DOE will coordinate the final regulatory text between the two rulemakings.

DOE notes that it is required to review and revise energy efficiency requirements for Federal building as the voluntary industry codes are updated. (42 U.S.C. 6834(a)(3)(b)) DOE intends to address this review of the current versions of ASHRAE Standard 90.1 and the International Code Council International Energy Conservation Code (IECC) as the minimum energy efficiency performance standards in 10 CFR Parts 433 and 435 in a separate rulemaking.

II. Discussion of Today's Action

A. Scope of Proposed Rulemaking

1. Definition of "Federal Building"

Section 305 of ECPA requires, in part, that DOE establish, by rule, standards for new Federal buildings that require, if life-cycle cost-effective, new Federal buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the applicable industry code, and that sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings. (42 U.S.C. 6834(a)(3)(A)(i)) Further, water conservation technologies must be applied to the extent that the technologies are life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(ii)) and 6834(a)(3)(D)(vii)

As stated previously in this notice, DOE has established regulations that address the energy consumption requirements for new Federal buildings. (72 FR 72565) In the final rule for the energy consumption requirements of new Federal buildings, DOE relied on the statutory definition of "Federal building," *i.e.,* "any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements." (72 FR 72565)

Section 433 of EISA amended the definition of "Federal building" applicable to section 305 of EPCA, including the energy consumption, sustainability, and water conservation requirements. The statute now defines "Federal building" to mean any building to be constructed by, or for the use of, any Federal agency. DOE is proposing that the term include buildings built for the purpose of being leased by a Federal agency, and privatized military housing awarded subsequent to promulgation of this rule.[1] (42 U.S.C. 6832(6)) DOE is proposing to revise the definition of "new Federal building" consistent with the amendment in EISA. Additionally, DOE is considering limiting the inclusion of leased buildings in the definition of "Federal building" to new leased buildings in which a Federal agency has significant control over the design of the building (*e.g.,* "lease-constructs"). DOE welcomes comments on these considerations.

2. Consideration of Life-Cycle Costs

In general, DOE is proposing that the sustainable design requirements be applied to all new and replacement Federal buildings to the extent those requirements are life-cycle cost effective. For a subset of new Federal buildings and Federal buildings undergoing major renovation, DOE is proposing that the sustainable design principles be applied to the "extent practicable." As explained further in this section, "extent practicable" considerations would include specified cost considerations separate from a life-cycle cost threshold.

Section 305(a)(3)(i)(II) requires DOE to establish regulations that require sustainable design principles to be applied to the siting, design, and construction of all new and replacement Federal buildings, to the extent life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(i)(II))

Section 305(a)(3) of ECPA as amended directs DOE to establish regulations that require sustainable design principles be applied to a subset of new Federal buildings and Federal buildings undergoing major renovation, without specifying consideration of life-cycle cost. (42 U.S.C. 6834(a)(3)(D)(i)(III)) A building is in the subset of new Federal buildings and Federal buildings undergoing major renovations if the building is:

- A public building as defined in 40 U.S.C. 3301,[2] for which the Administrator of General Services is required to transmit a prospectus to Congress under 40 U.S.C. 3307, or
- A building and major renovation for which the construction project cost is at least $2,500,000 (in 2007 dollars, adjusted for inflation using U.S. Department of Labor Producer Price Indexes).

If a new or replacement Federal building does not fit into one of these two categories, sustainable design principles would apply only to the extent that they are life-cycle cost-effective.

DOE is proposing that sustainable design principles be applied to the new Federal buildings and major renovations identified by the statute. The sustainable design principles set forth in the requirements of this proposed rule would be required to be incorporated into the new Federal building or major renovation design "to the extent practicable," except in the case of indoor environmental quality requirements, which would be mandatory. DOE

[1] The Military Housing Privatization Initiative (MHPI) is a public/private program whereby private sector developers may own, operate, and maintain military family housing. The MHPI was enacted on February 10, 1996, as part of the National Defense Authorization Act for fiscal year 1996.

[2] Under 40 U.S.C. 3301(5) "public building" is a building, whether for single or multitenant occupancy, and its grounds, approaches, and appurtenances, which is generally suitable for use as office or storage space or both by one or more Federal agencies or mixed-ownership Government corporations.

"Public building" includes Federal office buildings, post offices, customhouses, courthouses, appraisers stores, border inspection facilities, warehouses, record centers, relocation facilities, telecommuting centers, similar Federal facilities, and any other buildings or construction projects the inclusion of which the President considers to be justified in the public interest.

The definition does not include a building or construction project that is on the public domain (including that reserved for national forests and other purposes); that is on property of the Government in foreign countries; that is on Indian and native Eskimo property held in trust by the Government; that is on land used in connection with Federal programs for agricultural, recreational, and conservation purposes, including research in connection with the programs; that is on or used in connection with river, harbor, flood control, reclamation or power projects, for chemical manufacturing or development projects, or for nuclear production, research, or development projects; that is on or used in connection with housing and residential projects; that is on military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense); that is on installations of the Department of Veterans Affairs used for hospital or domiciliary purposes; or the exclusion of which the President considers to be justified in the public interest.

believes that indoor air quality requirements are vitally important to the health and life safety of Federal employees and visitors to Federal buildings and has therefore emphasized their importance by making the requirements mandatory. For major renovations, the sustainable design requirements would only apply to the portion of the building being renovated.

Today's proposed rule would require Federal agencies to apply sustainable design principles to the extent practicable when designing the new Federal buildings and major renovations identified by the statute. Under the proposed rule, actions would be required to be implemented "to the extent practicable;" *i.e.,* actions would need to be implemented unless an agency determines that: Full implementation would prevent the building or facility from fulfilling a key design or function objective; the necessary products or materials cannot be commercially procured in a timely fashion; the net increases in total project life cycle costs are very large, or if initial funding required to integrate features to comply with this rule exceeds 3 percent of total first costs. DOE requests comments on whether or not the 3 percent of total first cost limitation should be added directly to the definition of "to the extent practicable" in today's rulemaking. In this rulemaking, individual sustainable design measures are discussed individually. It is the intent of the 3 percent of total project cost that the entire package of sustainable design measure be less than 3 percent of the total first cost for the project. In addition, DOE requests comments on whether "very large" net increases in total project life cycle costs should be numerically defined, and if so, what that threshold or range should be.

DOE believes that life cycle costing is an important consideration in the definition of "to the extent practicable," but that failure of proof of life-cycle cost-effectiveness in of itself is not sufficient to disregard the application of sustainable design principles. The life-cycle cost analysis may not capture all of the benefits from sustainable design. Environmental impacts often extend far beyond the "life" of a building or measures installed in a building. If a required action cannot be fully implemented for one of these reasons, agencies should endeavor to implement the required action to the maximum extent feasible.

DOE is proposing that new Federal buildings that are not in these two categories identified above would need to comply with the sustainable design requirements only if they are life-cycle cost-effective.

The requirements in this proposed rule would not apply to major renovations that have construction project costs less than $2,500,000 (in 2007 dollars, adjusted for inflation using U.S. Department of Labor Producer Price Indexes).

3. Definition of "Major Renovation"

Major renovations are defined in the proposed rule as changes to a building that provide significant opportunities for substantial improvement in the sustainable design elements covered in this rule, including energy efficiency. DOE has also included in the definition of major renovation the statement that any renovation that exceeds 25 percent of the replacement value of the building would be considered a major renovation. The replacement value is used rather than the current value because the current value of old buildings in poor condition may be very low. The proposed rule would only apply to portions of the building or building system that are being renovated. For example, if the renovation includes the replacement of the watering system for landscaping around an office building, then the requirements for outdoor water use in the rules would apply. DOE notes that this definition has been used for a number of years by the Department of Defense, the Federal government's single largest manager of Federal buildings. DOE welcomes comments on the definition of "major renovation," particularly as to whether the definition would result in an unreasonable burden on planned renovations that are not extensive enough to accomplish sustainable design objectives.

B. Solar Hot Water Heaters

Section 523 of EISA modifies Section 305(a)(3)(A) of ECPA to require 30 percent of hot water demand in new Federal buildings or Federal buildings undergoing major renovations to be met by solar water heaters if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(iii)) DOE interprets Section 523 to include all hot water usage in the building, including hot water used for restrooms, janitorial closets, food handling facilities, and laundry facilities. Agencies should calculate the total hot water load for the building and then determine if it is life cycle cost-effective to use solar hot water systems to meet 30 percent of the annual demand. This requirement has been reflected in the proposed rule. DOE welcomes comments on this requirement.

C. Federal Leadership in High Performance and Sustainable Building—Guiding Principles

DOE is proposing to add requirements to 10 CFR Parts 433 and 435 to implement the directive of section 305 of ECPA that Federal buildings use sustainable design principles for siting, design, and construction, and water conservation. As a basis for the proposed sustainability requirements DOE utilized the December 2008 version of the Guiding Principles originally adopted in the Federal Leadership in High Performance and Sustainable Building Memorandum of Understanding (MOU) signed by most Federal agencies. DOE incorporated those requirements into today's proposed rulemaking. The guiding principles are aimed at helping Federal agencies and organizations:

- Reduce the total ownership cost of facilities.
- Improve energy efficiency and water conservation.
- Provide safe, healthy, and productive built environments.
- Promote sustainable environmental stewardship.

Under Executive Order 13514, "Federal Leadership in Environmental, Energy and Economic Performance" (October 5, 2009), Federal agencies are already required to ensure that new construction and major renovations of agency buildings comply with the Guiding Principles. By basing the rulemaking on the Guiding Principles already in use, DOE intends to minimize the regulatory burden on Federal agencies. DOE notes that the Guiding Principles do not address the issue of site selection, and therefore provisions related to site selection have been added to the proposal. Additionally, DOE is aware that revisions to the Guiding Principles are currently being considered. DOE will evaluate and consider any revisions to the Guiding Principles as part of the final rule.

DOE is aware that several voluntary industry standards that would address sustainable design are currently under development. Specifically, DOE is aware of the development of:

- ASHRAE 189.1P—Standard for the Design of High-Performance, Green Buildings Except Low-Rise Residential Buildings,
- The International Green Construction Code under development by the International Code Council (ICC), and
- The National Green Building Standard jointly developed by the National Association of Home Builders and the ICC for residential buildings.

To the extent that such voluntary industry standards are finalized prior to the issuance of a final rule under this rulemaking, DOE may consider incorporating some or all of the provisions of the identified voluntary industry standards. DOE welcomes comments on whether these or other nationally recognized green/sustainable building design standards should be deemed to comply with the sustainable design requirements in the DOE rules.

The proposed requirements for sustainable design are nearly identical for commercial buildings (including high-rise residential) in 10 CFR 433 and residential buildings in 10 CFR part 435. The differences are a requirement for radon control in residential buildings, and a signage requirement to prohibit smoking for commercial buildings only. Radon is generally considered to be less of a potential health concern in commercial buildings than in residential buildings. The signage requirement for prohibiting smoking is based on GSA notice in **Federal Register** on December 22, 2008.

The major sustainable design elements of the proposed rules are:

- Integrated Design Principles.
- Optimize Energy Performance.
- Protect and Conserve Water.
- Enhance Indoor Environmental Quality.
- Reduce Environmental Impact of Materials.
- Building Siting.

1. Integrated Design Principles

Integrated design principles include planning, setting goals, and building commissioning. Building commissioning is the process of ensuring that building systems and equipment are designed, installed, tested, and capable of being operated and maintained according to the owner's or occupants operational needs. Building commissioning is a key part of designing and building high-performance buildings because it helps ensure that controls, sensors, and equipment will perform as intended throughout their expected life. Building commissioning requires that the facility and all of its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the owner's or occupant's project requirements.

The building commissioning requirements in the proposed rule are based on the Guiding Principles. Additionally, DOE has specified the operation of a building as part of the commissioning efforts. DOE recognizes that certain Federal agencies are required to conduct water and energy evaluations of certain facilities. (42 U.S.C. 8253(f)). DOE has issued guidance on the implementation of this requirement, which would address the operational component of the commissioning requirement proposed in this rulemaking. That guidance can be found at *http://www1.eere.energy.gov/femp/pdfs/eisa_s432_guidelines.pdf.*

2. Optimize Energy Performance

Energy efficiency is considered as a major component of sustainable building design. As mentioned above, DOE issued a final rule on December 21, 2007, that incorporates the energy efficiency standards required in section 305 of ECPA. That final rule incorporated the American Society of Heating, Refrigerating, and Air-Conditioning Engineers ANSI/ASHRAE/IESNA Standard 90.1–2004, "Energy Standard for Buildings Except Low-Rise Residential Buildings," and the International Code Council's 2004 "International Energy Conservation Code." That final rule also established a requirement for new Federal buildings to achieve a level of energy consumption at least 30 percent below that of the Standard 90.1–2004 or the 2004 IECC, as appropriate, when life-cycle cost-effective, as directed by the statute.

Today's notice of proposed rulemaking expands on the energy-related requirements in the previously published final rule to include solar water heating and renewable energy generation projects. The solar water heating requirements are from section 305 of ECPA as amended by section 523 of EISA. The proposed renewable energy generation requirements are reflective of the Guiding Principles and would support compliance with section 203 of the Energy Policy Act of 2005, which sets renewable energy consumption percentages for Federal agencies. (42 U.S.C. 15852)

3. Protect and Conserve Water

Water is a key element of sustainability because water is a limited resource. The U.S. Government Accountability Office estimated in 2003 that 36 States will face water shortages by 2013. The U.S. Geological Survey estimates water use in the U.S. and reports that 410 billion gallons per day were withdrawn for all uses during 2005. Public supply (including commercial and industrial uses) and domestic water use was 48 billion gallons per day, or 12 percent of the national total. Most water use in the nation is for thermoelectric power (49 percent) and irrigation (31 percent).

The proposed rule would implement the requirement established in EPCA, as amended, that if water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent that the technologies are life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(ii)) As proposed, this requirement would apply in instances in which a Federal agency was relying on technologies such as cooling towers or condensing units as a means to achieve energy efficiency. In those instances, the proposed regulation would require that, to the extent life-cycle cost-effective, the technologies are water efficient.

The proposed rule adopts the water saving targets from the Guiding Principles: a 20 percent reduction of indoor potable water usage and a 50 percent reduction in outdoor potable water usage. DOE is interested in input on how to define procedures relating to the calculation of baseline water use and water savings for meeting these requirements. The DOE Federal Energy Management Program provides an estimate of water use by building type (*http://www1.eere.energy.gov/femp/program/waterefficiency_useindices.html*) and in the absence of other data, DOE proposes to use these as the baseline. To the extent practicable, use of WaterSense labeled products, or products with comparable water efficiency, for product categories labeled by WaterSense is required.

The issue of stormwater and hydrology is not addressed in this rule. Stormwater runoff for "Federal development projects" is explicitly addressed in Section 438 of EISA. The U.S. Environmental Protection Agency (EPA) has issued guidance on complying with section 438 of EISA (*http://www.epa.gov/owow/nps/lid/section438/*).

4. Enhance Indoor Environmental Quality

The indoor environmental quality requirements from the Guiding Principles were adapted for this proposed rule. Leading sustainability programs include indoor environmental quality in their scope. A key component of the indoor environment is air quality. All buildings have some potential for indoor air quality-related health problems, such as "sick-building syndrome." The proposed rule addresses the major aspects of indoor air quality—source control for pollutants, moisture, and ventilation.

For pollutant sources, the rules specify low-emitting materials and products used within buildings. For

moisture control, the proposed rule addresses the potential for moisture flows and condensation that may lead to the development of mold. The proposed rule does not identify a particular standard to address moisture control. DOE requests comment on whether a voluntary industry standard, such as the ASHRAE "Indoor Air Quality Guide: Best Practices for Design, Construction and Commissioning" (2009), should be incorporated into the regulation.

For ventilation, the proposed rule would require use of ASHRAE "Standards on Ventilation for Acceptable Indoor Air Quality: Standard 62.1" for commercial buildings and residential high-rise buildings and Standard 62.2 for low-rise residential buildings. Signage prohibiting smoking would be required for commercial and high-rise residential buildings.

Radon control requirements from ASTM Standard 1465 are included in the proposed rule for low-rise residential buildings. DOE requests comments on the inclusion of a radon control requirement. DOE also welcomes suggestions for other or additional radon standards that could be incorporated into this rule. Measures to seal the foundation to prevent or reduce radon from entering the building would be required in regions with high radon potential (about one-third of the nation, mostly in colder States). DOE has taken the definition of high radon potential from EPA as counties that have a predicted average indoor radon screening level greater than 4 pCi/L (picocuries per liter), as shown on the map at: *http://www.epa.gov/radon/zonemap.html.* DOE requests comments on this definition of high radon potential.

Radon is a cancer-causing naturally occurring radioactive gas that is the second leading cause of lung cancer in America and EPA estimates this leads to the loss of about 20,000 lives annually in radon related lung cancers.

5. Reduce Environmental Impacts of Materials

Buildings use a diverse array of products. There is a limited supply of some products' raw materials. Products can also require a substantial amount of energy to be produced and transported. In 1998, an EPA report found 10.8 million tons of waste was generated from new building construction in 1996. In 2003, EPA reported a 21 percent increase in construction waste since the 1998 report. The proposed rule would reduce construction waste and would require the use of materials with recycled content and rapidly renewable materials. The proposals for construction waste and recycled content are taken from the Guiding Principles. The 10 percent recycle content requirement is adopted from the original version of the Guiding Principles.

The proposed rule also addresses ozone depletion. The EPA defines ozone-depleting substance(s) (ODS) as a compound that contributes to stratospheric ozone depletion. ODS include CFCs, HCFCs, halons, methyl bromide, carbon tetrachloride, and methyl chloroform. ODS are generally very stable in the troposphere and only degrade under intense ultraviolet light in the stratosphere. When they break down, they release chlorine or bromine atoms, which then deplete ozone. The proposed rule would instruct agencies to not use ozone depleting compounds if an environmentally preferable material is available. Again, this element of the rule was adapted from the Guiding Principles.

DOE requests comments on whether requirements related to waste diversion and ozone depletion should be included in the rulemaking.

6. Building Siting

The proposed rule includes requirements for siting and directs Federal agencies to comply with all applicable Executive Orders, statutes and regulations. The applicable siting authorities may include Executive Orders 12072, 13006, and 13514; the Rural Development Act of 1972; Federal Urban Land Use Act of 1949; and Public Buildings Cooperative Use Act of 1976.

Site selection is important to minimize direct and indirect environmental impacts on the surroundings of the building(s) to be constructed, including protecting environmentally sensitive lands, reducing energy use for transportation and associated greenhouse gas emissions, and orienting the building to take advantage of solar heat gains in the winter and/or minimize solar heat gains in the summer. The proposed rule includes energy efficiency consideration as a siting priority.

D. Life-Cycle Cost-Effectiveness

Section 305 of ECPA, as amended by section 109 of the Energy Policy Act of 2005, mandates the application of sustainable design principles to the siting, design, and construction of all new and replacement buildings when life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(II)) Section 433 of EISA further amended section 305 of ECPA to apply sustainable design principles to certain new Federal buildings and major renovations of Federal buildings without specific consideration of life-cycle cost-effectiveness. (42 U.S.C. 6834(a)(3)(D)(i)(III)) For major renovations and new buildings that fall in the two categories defined in EISA ("public buildings" requiring a prospectus and buildings/renovations costing at least $2.5 million), the proposed rule would apply to the extent practicable.

Under the proposed rule, for new buildings that do not fall into the two categories, the sustainability design requirements would apply only if the requirements are proven to be life-cycle cost-effective using the procedures in 10 CFR part 436 (excluding indoor air quality requirements, which are mandatory). DOE is proposing that Federal agencies would be permitted to use one of four methods listed in 10 CFR part 436 to demonstrate life-cycle cost-effectiveness. These methods include lower life-cycle costs, positive net savings, savings-to-investment ratio that is estimated to be greater than one, and an adjusted internal rate of return that is estimated to be greater than the Federal Energy Management Program (FEMP) discount rate. The proposed rule would only require that sustainable design measures that are cost effective be done, it would not prohibit measures that improve sustainability but cannot be shown to be cost effective.

Defining life-cycle cost as it applies to sustainable buildings presents challenges. Some of the benefits are economically measurable over a finite period of time, such as energy and water savings. Other benefits may not have an economic benefit that can be clearly calculated, such as reduced greenhouse gases, reduced waste in landfills, protection of natural habitat, *etc.* DOE has not attempted to quantify externalities related to sustainable design, such as the value of wetlands preservation. The International Organization for Standards (ISO) has outlined principles and a framework for life cycle assessments for environmental management in ISO Standard 14040 that provides some guidance. DOE welcomes public comments on whether DOE should attempt to quantify externalities for these types of environmental benefits. Also, DOE requests comments on which types of sustainability objectives should be subject to life cycle cost analysis.

E. Green Building Certification Systems

Section 433 of EISA added a certification system requirement for new Federal buildings and renovations that are public buildings defined in 40 U.S.C. 3301, for which the Administrator of General Services is required to transmit a prospectus to

Congress under U.S.C. Title 40, section 3307, or that are at least $2,500,000 in costs adjusted annually for inflation. (42 U.S.C. 6834(a)(3)(D)(i)(III)) Under that requirement, DOE is to "identify a certification system and level for green buildings that the Secretary determines to be the most likely to encourage a comprehensive and environmentally-sound approach to certification of green buildings." Section 433 of EISA directs that the identification of the certification system and level shall be based on a review of findings prepared by the Federal Director of the Office of Federal High-Performance Green Buildings (within the General Service Administration) under section 436(h) of EISA and the criteria specified in clause (iii), shall identify the highest level the Secretary determines is appropriate above the minimum level required for certification under the system selected, and shall achieve results at least comparable to the system used by and highest level referenced by the General Services Administration (GSA) as of the date of enactment of EISA. In addition to the findings of the Federal Director, DOE is to take into consideration—

(I) The ability and availability of assessors and auditors to independently verify the criteria and measurement of metrics at the scale necessary to implement this subparagraph;

(II) The ability of the applicable certification organization to collect and reflect public comment;

(III) The ability of the standard to be developed and revised through a consensus-based process;

(IV) An evaluation of the robustness of the criteria for a high-performance green building, which shall give credit for promoting:

(a) Efficient and sustainable use of water, energy, and other natural resources;

(b) Use of renewable energy sources;

(c) Improved indoor environmental quality through enhanced indoor air quality, thermal comfort, acoustics, day lighting, pollutant source control, and use of low-emission materials and building system controls; and

(d) Such other criteria as the Secretary determines to be appropriate.

(V) National recognition within the building industry. (42 U.S.C. 6834(a)(3)(D)(iii))

GSA identified a green building certification system under section 436(h) of EISA in a letter to the Secretary of Energy.[3] GSA stated that the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system would meet the criteria in section 436(h) of EISA and identified the "Silver" level as the minimum level. The Department of Defense also identified LEED with the Silver level as the preferred rating system and level in a letter to the Secretary of Energy.[4]

GSA informed DOE in the letter that it evaluated the following five rating systems:

- Building Research Establishment's Environmental Assessment Method (BREEAM);
- Comprehensive Assessment System for Building Environmental Efficiency (CASBEE);
- GBTool;
- Green Globes™ U.S.; and
- Leadership in Energy and Environmental Design.

GSA stated that it evaluated each rating system's:

- *Applicability:* Whether it is relevant to the large scale and complexity of Federal buildings.
- *Stability:* Whether it has been stable over time, so that the evaluation of a building's performance is not subject to drastic changes.
- *Objectivity:* Whether it measures quantifiable aspects of sustainable design and its ratings are verified by qualified third parties.
- *Availability:* Whether it is widely used and has broad practitioner awareness.

In its identification, GSA utilized a 2006 report by Pacific Northwest National Laboratory[5] (PNNL) that evaluated leading green building rating systems. The PNNL report identified the five rating systems listed above as having the greatest potential of addressing GSA needs. The PNNL report summarized and reviewed each of the five rating systems, but did not provide a recommendation on a preferred system.

DOE recognizes that there are multiple green building rating systems currently available and additional systems may be developed. These systems have various levels of ratings, representing differing degrees of energy efficiency and sustainable design. Additionally, the existing systems may be revised and updated over time.

As part of a Federal building being green-rated, DOE is considering the development of requirements to apply the continued certification of a building as a certified green building. DOE is considering a requirement for Federal agencies to demonstrate that the energy use of a certified green building is consistent with the energy use targets identified under the green building certification program. DOE is considering a requirement for a Federal agency to demonstrate that the energy use, at a minimum, in the first year of a building's green building certification is consistent with the energy use identified as part of the certification process. If the building's energy use exceeded the target energy use identified under the green building rating system, DOE is considering the removal of the green building certification.

Focusing on the energy targets identified in a green building rating system would be consistent with the Guiding Principles MOU, which directs the agencies to establish a whole building performance target that takes into account the intended use, occupancy, operations, plug loads, and other energy demands, and design. Reviewing energy use in the first year following construction or renovation would help ensure that green-rated buildings continue to perform as originally specified under the rating. DOE is requesting comment on this potential regulation.

The statute does not require DOE to identify a specific commercially available system, but requires DOE to identify a certification system and level for green buildings. As stated in the statute, DOE believes that the green rating of a building must encourage a comprehensive and environmentally sound approach to building and renovation design. Given that systems may be further developed, DOE is proposing minimum criteria for any system that a Federal agency would choose to use to green rate a building.

DOE is proposing criteria for agencies to identify green rating systems if an agency chooses to green rate a building. Under the proposed regulations, if an agency were to choose to green rate a building the green rating system would be required to—

(1) Enable assessors and auditors to independently verify the criteria and measurement metrics of the system;

(2) Be developed by a certification organization that

(i) Provides an opportunity for public comment on the system; and

(ii) Provides an opportunity for development and revision of the system through a consensus based process; and

(3) Be nationally recognized within the building industry.

[3] Letter from Lorita Doan, GSA Administrator to Samuel Bodman, Secretary of Energy, dated April 25, 2008. EXEC–2008–005379.

[4] Letter from Wayne Arny, Deputy Under Secretary of Defense (Installations and Environment), dated May 5, 2009.

[5] Fowler, KM and Rauch, EM. 2006. *Sustainable Building Rating Systems: Summary.* PNNL–15858. Pacific Northwest National Laboratory. Richland, Washington.

Included in the statutory criteria for consideration by DOE in identifying green building rating systems is the evaluation of the robustness of the system's criteria for a high-performance green building. DOE considers the evaluation of the "robustness" of a green building rating system to include consideration of its ability to improve over time and ensure design performance over time. As such, DOE is also considering to require that green rating systems used by Federal agencies are those systems that—

(1) Are subject to periodic evaluation and assessment of the environmental and energy benefits that result under the rating system; and

(2) Include a verification system for post-occupancy assessment of the rated buildings to periodically demonstrate continued environmental benefits and energy savings.

DOE understands that existing green building rating systems may not meet these two additional criteria, but understands that several systems are moving in a direction consistent with these additional criteria.

Under this proposal, DOE believes that agencies would be provided the flexibility to choose the green building rating system that best fits their needs as long as the system meets the criteria set in this rulemaking.

Under today's proposed rule, the minimum level of rating would need to be a level that ensures compliance with the applicable energy efficiency, water use, and sustainable design requirements established in regulation. DOE requests comments as to whether the minimum level should also reflect the Guiding Principles MOU and all applicable executive orders.

As indicated above, GSA identified LEED Silver as a green rating system and level that meets the criteria expressly identified in the statute. DOE requests comment on other green rating systems and associated levels/points that also would meet the statutory criteria. DOE also requests comments on the additional criteria being considered by DOE. DOE intends to make a list of any green building rating systems determined by Federal agencies to meet the criteria adopted in the final rule available to Federal agencies in order to provide guidance. DOE requests comment on the proposed criteria and the potential for other green rating systems to meet the proposed criteria.

Section 305(a)(3)(D)(v) of ECPA states that "the Secretary may by rule allow Federal agencies to develop internal certification processes, using certified professionals, in lieu of certification by the certification entity identified under clause (i)(III). The Secretary shall include in any such rule guidelines to ensure that the certification process results in buildings meeting the applicable certification system and level identified under clause (i)(III). An agency employing an internal certification process must continue to obtain external certification by the certification entity identified under clause (i)(III) for at least 5 percent of the total number of buildings certified annually by the agency." Under the proposal agencies would be able to submit to DOE their own internal certification systems for approval by DOE.

III. Reference Resources

DOE has prepared a list of resources to help Federal agencies address the principles of sustainable design. The **Federal Register** final rule published on December 21, 2007 (71 FR 72565) contains reference resources for energy efficiency. These resources come in many forms (such as design guidance and case studies) and in a variety of media (such as in printed documents or on Web sites).

Life-Cycle Cost Analysis—U.S. DOE Federal Energy Management Program http://www.access.gpo.gov/nara/cfr/waisidx_04/10cfr436_04.html

The life-cycle cost analysis rules promulgated in 10 CFR part 436 Subpart A, "Methodology and Procedures for Life Cycle Cost Analysis," conform to requirements in the Federal Energy Management Improvement Act of 1988 and subsequent energy conservation legislation. The life-cycle cost guidance, discount rates, and energy price projections are determined annually by FEMP and the Energy Information Administration, and published in the Annual Supplement to The National Institute of Standards and Technology Handbook 135: "Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis." FEMP also provides guidance on the LCC requirements of Executive Order 13423 at *http://www1.eere.energy.gov/femp/program/lifecycle.html* and *http://www1.eere.energy.gov/femp/information/download_blcc.html.* Life cycle cost rules also refer to OMB Circular A–4 and A–94, which may be found at the following links:

Circular A–4—*www.whitehouse.gov/OMB/Circulars/a004/a-4.pdf.*

Circular A–94—*www.whitehouse.gov/omb/circulars/a094/a094.html.*

"*Whole Building Design Guide—National Institute of Building Sciences*" *http://www.wbdg.org*

This is a portal providing one-stop access to up-to-date information on a wide range of building-related guidance, criteria and technology from a whole buildings perspective. Specific guidance for implementing the Guiding Principles for sustainable buildings is provided at *http://www.fedcenter.gov/Documents/index.cfm?id=11130&pge_prg_id=19319&pge_id=1860.*

American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) http://spc189.ashraepcs.org/

ASHRAE has issued Standard 189.1, "Standard for the Design of High-Performance, Green Buildings Except Low-Rise Residential Buildings."

"*Building America*"*—U.S. Department of Energy http://www.eere.energy.gov/buildings/building_america/*

Building America is a private/public partnership that develops energy solutions for new and existing homes. The Building America project combines the knowledge and resources of industry leaders with DOE's technical capabilities. Together, they act as a catalyst for change in the home-building industry.

Energy & Environmental Building Association (EEBA) http://www.eeba.org/

EEBA's mission is to provide education and resources to transform the residential design, development and construction industries to profitably deliver energy efficient and environmentally responsible buildings and communities.

The Partnership for Advancing Technology in Housing (PATH)—U.S. Department of Housing and Urban Development http://www.pathnet.org/

PATH is dedicated to accelerating the development and use of technologies that radically improve the quality, durability, energy efficiency, environmental performance, and affordability of America's housing. PATH is a voluntary partnership between leaders of the homebuilding, product manufacturing, insurance, and financial industries and representatives of Federal agencies concerned with housing.

WaterSense Program http://www.epa.gov/watersense

Launched in 2006, WaterSense is an EPA-sponsored partnership program that seeks to protect the future of our

nation's water supply by promoting water efficiency and enhancing the market for water-efficient products, programs, and practices. WaterSense helps consumers identify water-efficient products and programs that meet WaterSense water efficiency and performance criteria. Products carrying the *WaterSense label* perform well, help save money, and encourage innovation in manufacturing.

Federal Energy Management Program http://www1.eere.energy.gov/femp/program/sustainable_resources.html

Executive Order 13514—Federal Leadership in Environmental, Energy, and Economic Performance http://www1.eere.energy.gov/femp/regulations/eo13514.html

This executive order references the Guiding Principles which are incorporated into this rulemaking.

IV. Regulatory Analysis

A. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's notice of public rulemaking is a significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action was reviewed by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Today's proposed rule would amend standards for the design and construction of new Federal buildings and major renovations of Federal buildings. Today's rulemaking is related to public property, and therefore, is not subject to any legal requirement to publish a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

The Department prepared a draft Environmental Assessment (EA) (DOE/EA–1463) pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The draft EA addresses the potential incremental environmental effects attributable to the application of the proposed rules. The draft EA has been added to the docket for this rulemaking.

E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735). DOE examined this notice of proposed rulemaking and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. The proposed rulemaking would establish requirements for Federal buildings only. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this notice of proposed rulemaking meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process

to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This notice of proposed rulemaking contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This notice of proposed rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

The Department has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this notice of proposed rulemaking would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of proposed rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This notice of proposed rulemaking would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Parts 433 and 435

Buildings and facilities, Energy conservation, Engineers, Federal buildings and facilities, Housing, Sustainable design.

Issued in Washington, DC, on April 13, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE is proposing to amend chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 433—ENERGY EFFICIENCY AND SUSTAINABLE DESIGN STANDARDS FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 7101 *et seq.*

2. The heading for part 433 is revised to read as set forth above.

3. Revise § 433.1 to read as follows:

§ 433.1 Purpose and scope.

This part establishes an energy efficiency performance and sustainable design standard for the new Federal commercial and multi-family high-rise residential buildings, for which design for construction began on or after January 3, 2007 (except as otherwise indicated: Solar water heating, sustainable design, and green building certification requirements are applicable 1 year after publication of the final rule), as required by section 305(a) of the Energy Conservation and Production Act, as amended (42 U.S.C. 6834(a)). Additionally, this part establishes certain requirements applicable to major renovations of Federal commercial and multi-family high-rise residential buildings, as indicated. For renovated buildings, those requirements apply only to the portions of the building or building systems that are being renovated and to the extent that the scope of the renovation permits compliance with the applicable requirements in this rule. Unaltered portions of the building or building systems are not required to comply with this rule.

4. Section 433.2 is amended by:

a. Adding in alphabetical order, definitions of "Biobased," "Commissioning," "Critical visual tasks," "Daylight factor," "EPA-designated product," "Major renovation," "Postconsumer material," "Potable water" and "Rapidly renewable," "To the extent practicable" and "USDA-designated product;" and

b. Revising the definitions of "Life-cycle cost," "Life-cycle cost-effective," and "New Federal building."

The additions and revisions read as follows:

§ 433.2 Definitions.

* * * * *

Biobased means a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable agricultural

materials (*e.g.,* plant, animal, and marine materials) and forestry materials.

* * * * *

Commissioning means a quality focused process for enhancing the delivery of a project. The process focuses upon verifying and documenting that the facility and all of its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the owner's or occupant's project requirements.

Critical visual tasks means office/classroom type work which involves reading printed text, entering data into computers, writing and drawing.

Daylight factor means the illuminance due to daylight on the indoor working plane divided by the illuminance outdoors on an unobstructed horizontal plane.

* * * * *

EPA-designated product means a product listed by EPA as a designated product under EPA's comprehensive procurement guidelines established under section 6002 of the Solid Waste Disposal Act. (42 U.S.C. 6962)

* * * * *

Life-cycle cost means the total cost of owning, operating and maintaining a building, building systems, or building components, including any mechanical systems, service water heating systems and electric power and lighting systems located on the building site and supporting the building over its useful life (including its fuel and water, energy, labor, and replacement components), determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

Life-cycle cost-effective means that the building, energy or water systems in the building, components of those energy or water systems, and conservation measures as defined in 10 CFR 436.11 in the proposed building or major renovation have a lower life-cycle cost than the life-cycle costs of the corresponding systems and measures in the baseline building, as described by 10 CFR 436.19, or has a positive estimated net savings, as described by 10 CFR 436.20; or has a savings-to-investment ratio estimated to be greater than one, as described by 10 CFR 436.21; or has an adjusted internal rate of return, as described by 10 CFR 436.22, that is estimated to be greater than the FEMP discount rate.

* * * * *

Major renovation means changes to a building that provide significant opportunities for substantial improvement in energy efficiency. This may include but is not limited to replacement of the HVAC system, the lighting system, the building envelope, and other components of the building that have a major impact on energy usage. Major renovation also includes a renovation of any kind which has a cost exceeding 25 percent of the replacement value of the building.

New Federal building means any new building (including a complete replacement of an existing building from the foundation up) to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing.

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item.

Potable water means water from public drinking water systems or from natural freshwater sources such as lakes, streams, and aquifers where water from such natural sources would or could meet drinking water standards.

* * * * *

Rapidly renewable refers to materials and products made from plants that are harvested within a 10-year cycle.

* * * * *

To the extent practicable means wherever feasible, taking into consideration health and life safety, key project design and function objectives, agency mission, product or material availability, net increases in life cycle cost (if significant), and total funding available.

USDA-designated product means a product listed by USDA as a designated product under USDA's biobased procurement program established Section 9002 of the Farm Security and Rural Investment Act of 2008. (7 U.S.C. 8102)

5. Add in § 433.4 a new paragraph (d) to read as follows:

§ 433.4 Energy efficiency performance standard.

(d) *Solar hot water.* (1) All Federal agencies shall design new Federal commercial and multi-family high-rise residential buildings, for which design for construction began 1 year after publication of the final rule, such that at least 30 percent of the hot water demand is provided through the installation of solar hot water heaters, to the extent life-cycle cost-effective as compared to other reasonably available technologies.

(2) Federal buildings undergoing a major renovation, for which design for renovation began 1 year after publication of the final rule, must provide at least 30 percent of the hot water demand for the portion of the building that is being renovated through the installation of solar hot water heaters, to the extent life-cycle cost-effective as compared to other reasonably available technologies.

6. Add § 433.6 to read as follows:

§ 433.6 Sustainable design principles for siting, design and construction.

(a) This section applies to new Federal commercial and multi-family high-rise residential buildings and major renovations to Federal commercial and multi-family high-rise residential buildings for which design for construction began 1 year after publication of the final rule.

(b) All Federal agencies shall design new Federal commercial and multi-family high-rise residential buildings and major renovations to Federal commercial and multi-family high-rise residential buildings to meet the requirements of paragraphs (e) and (f) of this section to the extent practicable, and paragraph (g) of this section if:

(1) The subject building is a public building as defined in 40 U.S.C. 3301 and for which transmittal of a prospectus to Congress is required under 40 U.S.C. 3307; or

(2) The cost of the building or major renovation is at least $2,500,000 (in 2007 dollars, adjusted for inflation).

(c) All Federal agencies shall design new Federal commercial and multi-family high-rise residential buildings other than those that meet the criteria in paragraph (b) of this section to comply with the requirements in paragraph (f) of this section to the extent the requirements are life-cycle cost-effective and paragraph (g) of this section.

(d) The requirements of this section are not applicable to major renovations that do not meet the criteria in paragraph (b) of this section.

(e) (1) *Integrated design.* Federal agencies must use a planning and design process that:

(i) Initiates and maintains an integrated project team as described in the National Institute of Building Science "Whole Building Design Guide" in all stages of a project's planning and delivery.

(ii) Integrates the use of OMB's Circular A–11, Section 7, Exhibit 300: *Capital Asset Plan and Business Case Summary.*

(iii) Establishes performance specifications consistent with this part for siting, energy, water, materials, and

indoor environmental quality along with other comprehensive design goals and ensures incorporation of these goals throughout the design and life-cycle of the building.

(iv) Considers all stages of the building's lifecycle, including construction, occupancy, and deconstruction.

(2) *Commissioning.* Federal agencies must employ commissioning practices to verify performance of building components and systems and help ensure that design requirements are met. Commissioning practices must include:

(i) An experienced commissioning provider;

(ii) Inclusion of commissioning requirements in construction documents;

(iii) A commissioning plan;

(iv) Verification of the installation, performance, and operation of systems to be commissioned; and

(v) A commissioning report.

(f) (1) *Renewable energy.* Federal agencies must implement renewable energy generation projects on agency property for agency use, when lifecycle cost effective.

(2) *Indoor water.* Federal agencies must employ strategies that in aggregate use a minimum of 20 percent less potable water than the indoor water use baseline calculated for the building. If baseline data is not available, the baseline for the building shall be calculated from the Federal water use indices issued by the DOE Federal Energy Management Program for a building of the same building type as the proposed building.

(i) Water meters must be installed to allow for the management of water use during occupancy.

(ii) Harvested rainwater, treated wastewater, and air conditioner condensate shall be used to the extent practicable for non-potable use and potable use, but shall not be used to meet the 20 percent reduction in potable water usage.

(3) *Outdoor water.* Federal agencies must use water efficient landscape and irrigation strategies, such as water reuse, recycling, and the use of harvested rainwater, to reduce outdoor potable water consumption by a minimum of 50 percent over the outdoor water baseline calculated for the building. If baseline data is not available, the baseline for the building shall be calculated from the Federal water use indices issued by the DOE Federal Energy Management Program for a building of the same building type as the proposed building.

(4) *Water-efficient products.* Use of WaterSense labeled products, or products with comparable water efficiency, for product categories labeled by WaterSense is required.

(5) *Moisture control.* Federal agencies shall establish and implement a moisture control strategy for controlling moisture flows and condensation to prevent building damage, minimize mold contamination, and reduce health risks related to moisture.

(6) *Day lighting.* (i) Federal agencies must achieve a minimum daylight factor of 2 percent (excluding all direct sunlight penetration) in 75 percent of all space occupied in new buildings and major renovations for critical visual tasks.

(ii) Federal agencies should provide automatic dimming controls or accessible manual lighting controls, and appropriate glare control.

(7) *Low-emitting materials.* Federal agencies must use materials and products with low pollutant emissions, including composite wood products, adhesives, sealants, interior paints and finishes, carpet systems, and furnishings.

(8) *Indoor air quality during construction.* (i) Federal agencies shall follow the appropriate recommended approach of the Sheet Metal and Air Conditioning Contractor's National Association "Indoor Air Quality Guidelines for Occupied Buildings under Construction, 2007," (incorporated by reference, *see* § 433.3)

(ii) After construction and prior to occupancy, Federal agencies shall conduct a minimum 72-hour flush-out with maximum outdoor air consistent with achieving relative humidity no greater than 60 percent.

(iii) After occupancy, Federal agencies shall continue flush-out as necessary to minimize exposure to contaminants from new building materials.

(iv) As an alternative to the requirements in paragraphs (f)(8)(i), (ii), and (iii) of this section, demonstrate that the contaminant maximum concentration levels listed in the table below are not exceeded in the completed building:

Contaminant	Maximum concentration
Formaldehyde	27 parts per billion.
Particulates (PM10)	50 micrograms per cubic meter.
Total volatile organic compounds (TVOCs)	500 micrograms per cubic meter.
4-Phenylcyclohexene (4-PCH)*	6.5 micrograms per cubic meter.
Carbon monoxide (CO)	9 parts per million and no greater than 2 parts per million above outdoor levels.

*This test is only required if carpets and fabrics with styrene butadiene rubber (SBR) latex backing are installed as part of the base building systems.

(9) *Materials.* (i) *Recycled content.* Selection of construction materials and products shall reflect a preference for materials and products containing recycled materials or made from recycled materials such that the post-consumer recycled content, plus one-half of the pre-consumer recycled content, shall constitute a minimum of 10 percent, based on cost or replacement value, of the total materials in the building project. To achieve the 10 percent requirement, the following practices may be employed:

(A) For product categories that are designated in EPA's Comprehensive Procurement Guidelines (CPG), products meeting or exceeding EPA's recycled content recommendations shall be used.

(B) The reuse of lumber, and masonry units, such as brick, tile, stone and concrete block, conforming to the requirements specified in the International Building Code shall be recognized as recycled/recovered content.

(C) Utilize recycled-content landscaping materials (*e.g.,* shredded wood, landscape trimmings, compost, crushed concrete)

(ii) *Biobased content.* (A) Per Section 9002 of the Farm Security and Rural Investment Act for USDA designated products, use products with the highest content level per USDA's biobased content recommendations as specified in the USDA Biopreferred Program.

(B) For other products, specify biobased products made from rapidly renewable resources and certified sustainable wood products.

(iii) *Environmentally preferable products.* Federal agencies must use

products that have a lesser or reduced effect on human health and the environment over their life-cycle when compared with competing products or services that serve the same purpose. Federal agencies should consider the number of standards and ecolabels are available in the marketplace to assist specifiers in making environmentally preferable decisions. Consult the EPA "Federal Green Construction Guide for Specifiers" for recommendations.

(iv) *Waste and materials management.* (A) Buildings shall plan for recycling of specific materials, such as paper, metals, plastics, cardboard, and electronics (and associated products).

(B) Adequate space, equipment, and transport accommodations for recycling must be included in the building design.

(C) During a project's planning stage, local recycling and salvage operations that could process site-related construction and demolition materials must be identified. If such operations are available locally, materials must be recycled or salvaged.

(v) At least 50 percent of non-hazardous and non-radioactive construction, demolition and land clearing materials, excluding soil, must be recycled or salvaged.

(vi) Ozone depleting compounds. The use of ozone depleting compounds during and after construction must be eliminated where alternative environmentally preferable products are available.

(10) *Siting.* (i) The site selection for Federal building construction shall comply with all applicable Federal rules, Executive Orders, and other Federal actions governing environmental issues impacted by Federal building construction.

(ii) Site selection must prioritize:

(A) Building orientation to maximize energy efficiency of the building,

(B) Locations in central business districts and rural town center,

(C) Sites well served by transit,

(D) Site design elements that ensure safe and convenient pedestrian access,

(E) Consideration of transit access and proximity to housing affordable to a wide range of Federal employees,

(F) Adaptive reuse or renovation of buildings,

(G) Avoiding development of sensitive land resources (such as greenfields and USDA Prime Farmland), and

(H) Evaluation of parking management strategies.

(g)(1) *Ventilation and thermal comfort.* Federal agencies shall design new buildings and major renovations to meet the requirements of ASHRAE 55 (incorporated by reference; *see* § 433.3), including continuous humidity control within established ranges per climate zone, and ASHRAE 62.1 (incorporated by reference; *see* § 433.3).

(2) *Environmental tobacco smoke control.* Federal agencies shall implement a policy and post signage indicating that smoking is prohibited within the building and within 25 feet of all building entrances, operable windows, and building ventilation intakes during building occupancy. Agency policy shall be consistent with all applicable Federal rules, Executive Orders, and other relevant Federal actions.

7. Add § 433.7 to read as follows:

§ 433.7 Water conservation.

If water is used to achieve energy efficiency, water conservation technologies must be applied to the extent practicable that the technologies are life-cycle cost-effective.

8. Revise § 433.8 to read as follows:

§ 433.8 Life-cycle costing.

For the purpose of this section, evaluation of whether compliance with a requirement is life-cycle cost-effective shall be considered on the basis of individual requirements, not the entire rule. If synergies exist that make combinations of requirements life-cycle cost-effective where individual requirements are not, then these combination of requirements shall be complied with. If requirements containing numerical savings values are not life-cycle cost-effective, the design of the proposed building shall incorporate as much savings as is life-cycle cost-effective.

9. Add a new § 433.9 to read as follows:

§ 433.9 Green building certification.

(a) *Green building certification system.* If a new Federal building or Federal building undergoing a major renovation, meeting the criteria in § 433.6(b) for which design for construction began 1 year after publication of the final rule is to be certified under a green building certification system, the system under which the building is certified must—

(1) Have the ability for assessors and auditors to independently verify the criteria and measurement metrics of the system;

(2) Be developed by a certification organization that

(i) Provides an opportunity for public comment on the system; and

(ii) Provides an opportunity for development and revision of the system through a consensus based process;

(3) Be nationally recognized within the building industry;

(4) Be subject to periodic evaluation and assessment of the environmental and energy benefits that result under the rating system; and

(5) Include a verification system for post occupancy assessment of the rated buildings to periodically demonstrate continued environmental benefits and energy savings.

(b) *Certification level.* If a new Federal building or Federal building undergoing a major renovation meeting either of the two criteria in § 433.6(b) is to be certified under a green building certification system, the building must be certified to a level that—

(1) Ensures compliance with—

(i) The energy efficiency performance standards of this part; and

(ii) Water use requirements of this part; and

(iii) Sustainable design requirements of this part.

(2) Promotes the high performance sustainable building guidelines referenced in E. O. 13423 "Strengthening Federal Environmental, Energy, and Transportation Management."

(c) Federal agencies may request DOE approval of internal certification processes, using certified professionals, in lieu of certification by a system meeting the criteria in paragraph (a) of this section. Requests for approval must be sent to the Office of the Federal Energy Management Program in DOE. Submissions should demonstrate how the internal certification process would ensure compliance with all applicable regulations under this Part. The Office of the Federal Energy Management Program may request additional information as necessary. The Office of Federal Energy Management will make a determination within 120 days of a completed submission. An agency may then employ the approved internal certification process but must obtain external certification by a system meeting the criteria in paragraph (a) of this section for at least 5 percent of the total number of buildings certified annually by the agency.

PART 435—ENERGY EFFICIENCY AND SUSTAINABLE DESIGN STANDARDS FOR NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS

10. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

11. The heading for part 435 is revised to read as set forth above.

12. Revise § 435.1 to read as follows:

§ 435.1 Purpose and scope.

This part establishes an energy efficiency performance and sustainable design standard for the new Federal low-rise residential buildings, for which design for construction began on or after January 3, 2007 (except as otherwise indicated: solar water heating, sustainable design, and green building certification requirements are applicable 1 year after publication of the final rule), as required by section 305(a) of the Energy Conservation and Production Act, as amended (42 U.S.C. 6834(a)). Additionally, this Part establishes certain requirements applicable to major renovations of Federal low-rise buildings, as indicating in the regulatory text. For renovated buildings, those requirements apply only to the portions of the building or building systems that are being renovated and to the extent that the scope of the renovation permits compliance with the applicable requirements in this rule. Unaltered portions of the building or building systems are not required to comply with this rule.

13. Section 435.2 is amended by:

a. Adding in alphabetical order, the definitions "ASHRAE," "Biobased," "Commissioning," "Critical visual tasks," "Daylight factor," "EPA-designated product," "High radon potential," "Major renovation," "Post consumer material," "Potable water," "Rapidly renewable," "To the extent practicable" and "USDA-designated product;" and

b. Revising the definitions of "Life-cycle cost," Life-cycle cost-effective," and "New Federal building."

The additions and revisions read as follows:

§ 435.2 Definitions.

ASHRAE means the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

* * * * *

Biobased means a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable agricultural materials (*e.g.,* plant, animal, and marine materials) and forestry materials.

Commissioning means a quality-focused process for enhancing the delivery of a project. The process focuses upon verifying and documenting that the facility and all of its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the owner's or occupant's project requirements.

Critical visual tasks means office/classroom type work which involves reading printed text, entering data into computers, writing and drawing.

Daylight factor means the illuminance due to daylight on the indoor working plane divided by the illuminance outdoors on an unobstructed horizontal plane.

* * * * *

EPA-designated product means a product listed by EPA as a designated product under EPA's comprehensive procurement guidelines established under Section 6002 of the Solid Waste Disposal Act. (42 U.S.C. 6962)

* * * * *

High radon potential means locations that have a predicted average indoor radon screening level greater than 4 pCi/L (picocuries per liter). For locations within the United States, these are shown on the map at: *http://www.epa.gov/radon/zonemap.html.*

* * * * *

Life-cycle cost means the total cost of owning, operating and maintaining a building, building systems, or building components, including any mechanical systems, service water heating systems and electric power and lighting systems located on the building site and supporting the building over its useful life (including its fuel and water, energy, labor, and replacement components), determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life-cycle cost shall be calculated over the effective remaining term of the lease.

Life-cycle cost-effective means that the building, energy or water systems in the building, components of those energy or water systems, and conservation measures as defined in 10 CFR 436.11 in the proposed building or major renovation have a lower life-cycle cost than the life-cycle costs of the corresponding systems and measures in the baseline building, as described by 10 CFR 436.19, or has a positive estimated net savings, as described by 10 CFR 436.20; or has a savings-to-investment ratio estimated to be greater than one, as described by 10 CFR 436.21; or has an adjusted internal rate of return, as described by 10 CFR 436.22, that is estimated to be greater than the FEMP discount rate.

* * * * *

Major renovation means changes to a building that provide significant opportunities for substantial improvement in energy efficiency. This may include but is not limited to replacement of the HVAC system, the lighting system, the building envelope, and other components of the building that have a major impact on energy usage. Major renovation also includes a renovation of any kind which has a cost exceeding 25 percent of the replacement value of the building.

New Federal building means any new building (including a complete replacement of an existing building from the foundation up) to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing.

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item.

Potable water means water from public drinking water systems or from natural freshwater sources such as lakes, streams, and aquifers where water from such natural sources would or could meet drinking water standards.

* * * * *

Rapidly renewable refers to materials and products made from plants that are harvested within a 10-year cycle.

To the extent practicable means wherever feasible, taking into consideration health and life safety, key project design and function objectives, agency mission, product or material availability, net increases in life-cycle cost (if significant), and total funding available.

USDA-designated product means a product listed by USDA as a designated product under USDA's biobased procurement program established Section 9002 of the Farm Security and Rural Investment Act of 2008. (7 U.S.C. 8102)

14. Add in § 435.4 a new paragraph (d) to read as follows:

§ 435.4 Energy efficiency performance standard.

* * * * *

(d) *Solar hot water.* (1) All Federal agencies shall design new Federal low-rise residential buildings, for which design for construction began 1 year after publication of the final rule, such that at least 30 percent of the hot water demand is provided through the installation of solar hot water heaters, to the extent life-cycle cost-effective as compared to other reasonably available technologies.

(2) Federal buildings undergoing a major renovation, for which design for renovation began 1 year after publication of the final rule, must provide at least 30 percent of the hot water demand for the portion of the building that is being renovated through the installation of solar hot water

heaters, to the extent life-cycle cost-effective as compared to other reasonably available technologies.

15. Add § 435.6 to read as follows:

§ 435.6 Sustainable design principles for siting, design and construction.

(a) This section applies to new Federal low-rise residential buildings and major renovations to Federal low-rise residential buildings for which design for construction began 1 year after publication of the final rule.

(b) All Federal agencies shall design new Federal low-rise residential buildings and major renovations to Federal low-rise residential buildings to meet the requirements of paragraphs (e) and (f) of this section to the extent practicable, and paragraph (g) of this section if:

(1) The subject building is a public building as defined in 40 U.S.C. 3301 and for which transmittal of a prospectus to Congress is required under 40 U.S.C. 3307; or

(2) The cost of the building or major renovation is at least $2,500,000 (in 2007 dollars, adjusted for inflation).

(c) All Federal agencies shall design new Federal low-rise residential buildings other than those that meet the criteria in paragraph (b) of this section to comply with the requirements in paragraphs (f) of this section to the extent the requirements are life-cycle cost-effective and paragraph (g) of this section.

(d) The requirements of this section are not applicable to major renovations that do not meet the criteria in paragraph (b) of this section.

(e)(1) *Integrated design.* Federal agencies must use a planning and design process that:

(i) Initiates and maintains an integrated project team as described on the National Institute of Building Science "Whole Building Design Guide" in all stages of a project's planning and delivery;

(ii) Integrates the use of OMB's Circular A–11, Section 7, Exhibit 300: "Capital Asset Plan and Business Case Summary";

(iii) Establishes performance specifications consistent with this Part for siting, energy, water, materials, and indoor environmental quality along with other comprehensive design goals and ensures incorporation of these goals throughout the design and life-cycle of the building; and

(iv) Considers all stages of the building's lifecycle, including construction, occupancy, and deconstruction.

(2) *Commissioning.* Federal agencies must employ commissioning practices to verify performance of building components and systems and help ensure that design requirements are met. Commissioning practices must include:

(i) An experienced commissioning provider,

(ii) Inclusion of commissioning requirements in construction documents,

(iii) A commissioning plan,

(iv) Verification of the installation, performance, and operation of systems to be commissioned, and

(v) A commissioning report.

(f)(1) *Renewable energy.* Federal agencies must implement renewable energy generation projects on agency property for agency use, when life-cycle cost-effective.

(2) *Indoor water.* Federal agencies must employ strategies that in aggregate use a minimum of 20 percent less potable water than the indoor water use baseline calculated for the building. If baseline data is not available, the baseline for the building shall be calculated from the Federal water use indices issued by the DOE Federal Energy Management Program for a building of the same building type as the proposed building.

(i) Water meters must be installed to allow for the management of water use during occupancy.

(ii) Harvested rainwater, treated wastewater, and air conditioner condensate shall be used for nonpotable use and potable use, but shall not be used to meet the 20 percent reduction in potable water usage.

(3) *Outdoor water.* Federal agencies must use water efficient landscape and irrigation strategies, such as water reuse, recycling, and the use of harvested rainwater, to reduce outdoor potable water consumption by a minimum of 50 percent over the outdoor water baseline calculated for the building. If baseline data is not available, the baseline for the building shall be calculated from the Federal water use indices issued by the DOE Federal Energy Management Program for a building of the same building type as the proposed building.

(4) *Water-efficient products.* Use of WaterSense labeled products, or products with comparable water efficiency, for product categories labeled by WaterSense is required.

(5) *Moisture control.* Federal agencies shall establish and implement a moisture control strategy for controlling moisture flows and condensation to prevent building damage, minimize mold contamination, and reduce health risks related to moisture.

(6) *Day lighting.* (i) Federal agencies must achieve a minimum daylight factor of 2 percent (excluding all direct sunlight penetration) in 75 percent of all space occupied in new buildings and major renovations for critical visual tasks.

(ii) Federal agencies should provide automatic dimming controls or accessible manual lighting controls, and appropriate glare control.

(7) *Low-emitting materials.* Federal agencies must use materials and products with low pollutant emissions, including composite wood products, adhesives, sealants, interior paints and finishes, carpet systems, and furnishings.

(8) *Materials.* (i) *Recycled content.* Selection of construction materials and products shall reflect a preference for materials and products containing recycled materials or made from recycled materials such that the post-consumer recycled content, plus one half of the pre-consumer recycled content, shall constitute a minimum of 10 percent, based on cost or replacement value, of the total materials in the building project. To achieve the 10 percent requirement, the following practices may be employed:

(A) For product categories that are designated in EPA's Comprehensive Procurement Guidelines (CPG), products meeting or exceeding EPA's recycled content recommendations shall be used.

(B) The reuse of lumber, masonry units, such as brick, tile, stone and concrete block, conforming to the requirements specified in the International Building Code shall be recognized as recycled/recovered content.

(C) Utilize recycled-content landscaping materials (*e.g.,* shredded wood, landscape trimmings, compost, crushed concrete).

(ii) *Biobased content.* (A) Per Section 9002 of the Farm Security and Rural Investment Act for USDA designated products, use products with the highest content level per USDA's biobased content recommendations as specified in the USDA Biopreferred Program.

(B) For other products, specify biobased products made from rapidly renewable resources and certified sustainable wood products.

(iii) *Environmentally preferable products.* Federal agencies must use products that have a lesser or reduced effect on human health and the environment over their life-cycle when compared with competing products or services that serve the same purpose. Federal agencies should consider the number of standards and ecolabels are available in the marketplace to assist specifiers in making environmentally preferable decisions. Consult the "EPA

Federal Green Construction Guide for Specifiers" for recommendations.

(iv) *Waste and materials management.* (A) Buildings shall plan for recycling of specific materials, such as paper, metals, plastics, cardboard, and electronics (and associated products).

(B) Adequate space, equipment, and transport accommodations for recycling must be included in the building design.

(C) During a project's planning stage, local recycling and salvage operations that could process site-related construction and demolition materials must be identified. If such operations are available locally, materials must be recycled or salvaged.

(v) At least 50 percent of non-hazardous and non-radioactive construction, demolition and land clearing materials, excluding soil, must be recycled or salvaged.

(vi) *Ozone-depleting compounds.* The use of ozone-depleting compounds during and after construction must be eliminated where alternative environmentally preferable products are available.

(9) *Siting.* (i) The site selection for Federal building construction shall comply with all applicable Federal rules, Executive Orders, and other Federal actions governing environmental issues impacted by Federal building construction.

(ii) Site selection must prioritize;

(A) Building orientation to maximize energy efficiency of the building;

(B) Locations in central business districts and rural town center;

(C) Sites well served by transit;

(D) Site design elements that ensure safe and convenient pedestrian access;

(E) Consideration of transit access and proximity to housing affordable to a wide range of Federal employees;

(F) Adaptive reuse or renovation of buildings;

(G) Avoiding development of sensitive land resources (such as greenfields and USDA Prime Farmland); and

(H) Evaluation of parking management strategies.

(g)(1) *Ventilation and thermal comfort.* Federal agencies shall design new buildings and major renovations to meet the requirements of ASHRAE 55 (incorporated by reference; *see* § 435.3), including continuous humidity control within established ranges per climate zone, and ASHRAE 62.2, (incorporated by reference; *see* § 435.3).

(2) *Radon.* New Federal low-rise residential buildings and major renovations to such buildings in locations with a high radon potential shall comply with ASTM 1465–08a (incorporated by reference; *see* § 435.3).

16. Add § 435.7 to read as follows:

§ 435.7 Water conservation.

If water is used to achieve energy efficiency, water conservation technologies must be applied to the extent practical that the technologies are life-cycle cost-effective.

17. Revise § 435.8 to read as follows:

§ 435.8 Life-cycle costing.

For the purpose of this section, evaluation of whether compliance with a requirement is life-cycle cost-effective shall be considered on the basis of individual requirements, not the entire rule. If synergies exist that make combinations of requirements life-cycle cost-effective where individual requirements are not, then these combination of requirements shall be complied with. If requirements containing numerical savings values are not life-cycle cost-effective, the design of the proposed building shall incorporate as much savings as is life-cycle cost-effective.

18. Add a new § 435.9 to read as follows:

§ 435.9 Green building certification.

(a) *Green building certification system.* If a new Federal building or Federal building undergoing a major renovation, meeting the criteria in § 435.6(b) for which design for construction began 1 year after publication of the final rule is to be certified under a green building certification system, the system under which the building is certified must –

(1) Have the ability for assessors and auditors to independently verify the criteria and measurement metrics of the system;

(2) Be developed by a certification organization that

(i) Provides an opportunity for public comment on the system; and

(ii) Provides an opportunity for development and revision of the system through a consensus based process;

(3) Be nationally recognized within the building industry;

(4) Be subject to periodic evaluation and assessment of the environmental and energy benefits that result under the rating system; and

(5) Include a verification system for post occupancy assessment of the rated buildings to periodically demonstrate continued environmental benefits and energy savings.

(b) *Certification level.* If a new Federal building or Federal building undergoing a major renovation meeting either of the two criteria in § 435.6(b) is to be certified under a green building certification system, the building must be certified to a level that –

(1) Ensures compliance with—

(i) The energy efficiency performance standards of this part; and

(ii) Water use requirements of this part; and

(iii) Sustainable design requirements of this part.

(2) Promotes the high performance sustainable building guidelines referenced in E.O. 13423 "Strengthening Federal Environmental, Energy, and Transportation Management."

(c) Federal agencies may request DOE approval of internal certification processes, using certified professionals, in lieu of certification by a system meeting the criteria in paragraph (a) of this section. Requests for approval must be sent to the Office of the Federal Energy Management Program in the DOE. Submissions should demonstrate how the internal certification process would ensure compliance with all applicable regulations under this Part. The Office of the Federal Energy Management Program may request additional information as necessary. The Office of Federal Energy Management will make a determination within 120 days of a completed submission. An agency may then employ the approved internal certification process but must obtain external certification by a system meeting the criteria in paragraph (a) of this section for at least 5 percent of the total number of buildings certified annually by the agency.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1281

RIN 2590–AA16

Federal Home Loan Bank Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Section 1205 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) by adding a new section 10C(a) that requires the Director of the Federal Housing Finance Agency (FHFA) to establish housing goals with respect to the Federal Home Loan Banks' (Banks) purchase of mortgages, if any. Section 10C(b) provides that the Banks' housing goals are to be consistent with the housing

goals established by FHFA for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) under sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by HERA, taking into consideration the unique mission and ownership structure of the Banks. Section 10C(c) further provides that, to facilitate an orderly transition, the Director shall establish interim target housing goals for the Banks for a transition period extending through 2010. Section 10C(d) also extends the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act to the Banks in the same manner and to the same extent as those requirements apply to the Enterprises.

To implement section 10C, FHFA is issuing and seeking comments on a proposed rule that would establish three single-family owner-occupied purchase money mortgage goals and one single-family refinancing mortgage goal applicable to the Banks' purchases of single-family owner-occupied mortgages, if any, under their Acquired Member Assets (AMA) programs, consistent with FHFA's proposed single-family housing goals for the Enterprises. A Bank would be subject to the proposed housing goals if its AMA-approved mortgage purchases in a given year exceed a volume threshold of $2.5 billion. Other provisions in the proposed rule would be consistent with comparable provisions applicable to the proposed Enterprise housing goals to the extent appropriate, taking into account the nature of the Banks' AMA programs and the Banks' unique mission and ownership structure.

DATES: Written comments must be received on or before July 12, 2010.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA16, by any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA16" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA16" in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA16, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA16, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Nelson Hernandez, Senior Associate Director, (202) 408–2993, Charles E. McLean, Associate Director, (202) 408–2537, or Rafe R. Ellison, Senior Program Analyst, (202) 408–2968, Office of Housing and Community Investment, 1625 Eye Street, NW., Washington, DC 20006. (These are not toll-free numbers.) For legal matters, contact Kevin Sheehan, Attorney, (202) 414–8952, or Sharon Like, Associate General Counsel, (202) 414–8950, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. (These are not toll-free numbers.) The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, HERA, Division A, Public Law 110–289, 122 Stat. 2654 (2008) (codified at 12 U.S.C. 4501 *et seq.*), amended the Safety and Soundness Act to create FHFA as an independent agency of the Federal Government. HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises and the Banks from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB), respectively, to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner and carry out their public policy missions. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and FHFB, respectively, until such regulations are superseded by regulations issued by FHFA. *See* HERA at sections 1302 and 1312, 122 Stat. 2795 and 2798; 12 U.S.C. 4511 note.

B. Statutory and Regulatory Background

1. Federal Home Loan Bank System

The Federal Home Loan Bank System (System) was created by the Bank Act to support mortgage lending and related community investment. *See* 12 U.S.C. 1421 *et seq.* The System is composed of 12 Banks with more than 8,000 member financial institutions, and the System's fiscal agent, the Office of Finance. The Banks fulfill their statutory mission primarily through providing secured loans (called advances) to their members. The Bank Act provides the Banks explicit authority to make secured advances. 12 U.S.C. 1430(a). Advances provide members with a source of funding for mortgages and asset-liability management, liquidity for a member's short-term needs, and additional funds for housing finance and community investment. Advances are collateralized primarily by residential mortgage loans and government and agency securities. 12 U.S.C. 1430(a)(3). Community financial institutions (*i.e.,* members with average total assets of less than $1 billion (as adjusted annually for inflation)) may also pledge small business, small agriculture or community development loans as collateral for advances. 12 U.S.C. 1430(a)(3)(E).

Consolidated obligations, consisting of bonds and discount notes, are the principal source for the Banks to fund advances and investments. The Office of Finance issues all consolidated obligations on behalf of the 12 Banks. Although each Bank is primarily liable for the portion of consolidated

obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal of, and interest on, all consolidated obligations. *See* 12 CFR 966.9.

2. Bank AMA Programs

In July 2000, FHFB adopted a final regulation authorizing the Banks to establish Acquired Member Assets (AMA) programs. *See* 12 CFR part 955. A Bank may participate in an AMA program at its discretion; FHFA does not have the authority to compel a Bank to engage in any mortgage purchase activities. Each Bank must receive approval from FHFA pursuant to the requirements for new business activities in order to establish an AMA program. *See* 12 CFR part 980. A majority of the Banks have implemented AMA programs pursuant to the AMA approval authority.

In order for a Bank to acquire a mortgage loan under an AMA program, the loan must meet the requirements set forth under a three-part test established by the regulation. The three-part test consists of: a loan type requirement; a member or housing associate nexus requirement; and a credit risk-sharing requirement. 12 CFR 955.2. The AMA regulation generally authorizes the Banks to purchase conforming whole loans on single-family residential real property not more than 90 days delinquent. In addition, the Banks are authorized to purchase conforming whole loans on single-family residential real property regardless of delinquency status if the loan is insured or guaranteed by the U.S. government, although such loans are not eligible to be counted toward the Enterprises' housing goals, as provided in HERA.[1] The Banks acquire AMA from their participating members through either a purchase or funding transaction. The Banks are not authorized under the AMA programs to securitize the mortgages they purchase.

To date, FHFA has approved two AMA programs—the Mortgage Partnership Finance (MPF) program and the Mortgage Purchase Program (MPP)—that authorize the Banks to purchase only eligible single-family, fixed-rate mortgages, including manufactured housing loans, from participating financial institution members (PFIs). The Banks are not approved to purchase any other types of mortgages under the AMA programs, including mortgages secured by multifamily properties. In operation, the Banks have limited their AMA programs to purchasing conforming, conventional and government-insured or -guaranteed fixed-rate whole first mortgages on single-family residential property with maturities ranging from 5–30 years. Banks have also purchased participations in AMA-approved loan pools after the original Bank acquired the loans. As of March 31, 2010, the combined value of the AMA mortgage loans in the 12 Banks' portfolios was $69 billion, representing approximately seven percent of the Banks' total combined assets. In contrast, the Banks' outstanding advances, their primary business line, totaled $572 billion as of March 31, 2010, representing 59 percent of the Banks' total combined assets.[2]

The MPF and MPP programs are designed such that the Banks manage the interest-rate risk and the PFI assumes a substantial portion of the risks associated with originating the mortgage, particularly the credit risk. The AMA regulation requires that PFIs provide credit enhancement to give the mortgages the Banks purchase the credit quality equivalent to an instrument rated at least investment grade (the fourth highest credit rating category or triple-B), although the approved AMA programs require PFIs to enhance the loans to the second highest investment grade (double-A). 12 CFR 955.3. The PFI may provide this credit enhancement through various means, such as establishing a risk account to cover losses in excess of a borrower's equity and primary mortgage insurance on mortgages purchased by a Bank, accepting direct liability to pay credit losses up to a specified amount, or entering into a contractual obligation to provide supplemental mortgage guaranty insurance.

As previously noted, advances remain the core business activity of the Banks and a principal means by which they fulfill their mission. Participation in an AMA program is elective. The acquisition of AMA has presented certain risk management challenges for some Banks. The AMA are long-term, fixed-rate loans and the portfolio requires careful attention to interest rate risk management in order to match the duration of assets and liabilities and to adjust for loan prepayments. The Banks must also competitively price their product in the market without eroding their own financial interest. Given these challenges and in light of recent interest rate and earnings volatility, several Banks have scaled down their purchases of AMA and returned to their core products. After peaking in 2003, when the Banks purchased over $91.2 billion in AMA, annual AMA purchases have steadily declined to an annualized average of about $6.7 billion during the period between 2006 and 2009. Several Banks either have stopped accepting additional master commitments to purchase AMA from their members or no longer accept delivery. In 2007, 2008 and 2009, the principal pay-down and maturities of AMA held for portfolio were greater than purchases and funding of new loans held for portfolio.[3]

3. Bank Housing Goals Statutory Provisions

Section 10C(a) of the Bank Act, as amended by HERA, requires the Director of FHFA to "establish housing goals with respect to the purchase of mortgages, if any, by the [Banks]," which "shall be consistent with the goals established under sections 1331 through 1334 of the [Safety and Soundness Act, as amended]." 12 U.S.C. 1430c(a). Section 10C(b) provides that, in establishing the goals for the Banks, "the Director shall consider the unique mission and ownership structure of the [Banks]." 12 U.S.C. 1430c(b). In addition, section 10C(c) provides that, "to facilitate an orderly transition," the Director shall establish interim target goals for the purchase of mortgages by the Banks for the calendar years 2009 and 2010. 12 U.S.C. 1430c(c). Section 10C(d) provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as they apply to the Enterprises. 12 U.S.C. 1430c(d). Section 10C(e) requires the Director to annually report to Congress on the performance of the Banks in meeting the housing goals under section 10C. 12 U.S.C. 1430c(e).

Sections 1331 through 1333 of the Safety and Soundness Act, as amended by HERA, require the Director of FHFA to establish new housing goals effective for 2010 and beyond for the Enterprises.

[1] *See* 12 U.S.C. 4562. For that reason, the proposed rule would provide that such loans not be eligible to be counted toward the Banks' housing goals either. The AMA regulation also authorizes the Banks to purchase other real-estate-related collateral, including: second liens and commercial real estate loans; small business, small farm and small agri-business loans; whole loans secured by manufactured housing regardless of whether the housing qualifies as residential real property, and state and local housing finance agency bonds, subject to prior new business activity approval by FHFA under 12 CFR part 980. *See* 12 CFR 955.2(a).

[2] *See* "Federal Home Loan Banks First Quarter 2010 Combined Financial Report, Combined Statement of Condition," at 4.

[3] *See* "Federal Home Loan Banks Combined Financial Report for 2008" at 78–80, and "Federal Home Loan Banks Combined Financial Report for 2009" at 55–56.

The new Enterprise housing goals include four goals for conventional conforming single-family owner-occupied housing, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal. *See* 12 U.S.C. 4561, 4563(a)(2). The single-family housing goals target purchase money mortgages for low-income families,[4] families that reside in low-income areas,[5] and very low-income families,[6] and refinancing mortgages for low-income families. *See* 12 U.S.C. 4562. The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families. *See* 12 U.S.C. 4563. In a separate rulemaking in the **Federal Register,** FHFA has issued and sought comments on proposed new housing goals for the Enterprises for 2010 and 2011 pursuant to the requirements of sections 1331 through 1333 of the Safety and Soundness Act, as amended. 75 FR 9034 (Feb. 26, 2010).

4. Banks' and Enterprises' Differences

Section 1201 of HERA, 12 U.S.C. 4513(f), requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability, whenever promulgating regulations that affect the Banks. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that the rule is appropriate. As described below, FHFA is proposing significant differences between the Enterprise housing goals and the Bank housing goals—including establishing a volume threshold to avoid adverse impact on small PFIs—that recognize the significant differences between the Banks' businesses and purposes and those of the Enterprises.

Each Bank is a cooperative owned by financial institution members that act as both owners and customers of the cooperative. Members, as owners, are entitled to receive shares of the cooperative's earnings and access to the cooperative's products and services, including the AMA programs. A Bank is authorized to serve only members of its cooperative and, as discussed above, its primary business is providing advances to its members.

Fannie Mae and Freddie Mac have been owned by investors through their holdings of preferred or common stock shares since 1968 and 1989, respectively. An Enterprise's primary business is securitizing mortgages originated by financial institutions, and guaranteeing the timely payment of principal and interest on the mortgage-backed securities (MBS). The Enterprises also purchase mortgages for their mortgage portfolios. FHFA has instructed the Enterprises to significantly reduce the size of their mortgage portfolios over time. The Banks are restricted to purchasing loans from their members, most of which are regulated depositories. By contrast, the Enterprises have access to a broad, nationwide network of financial institutions from which they purchase mortgages. Also, unlike the Banks, for which participation in the AMA is an elective activity, the fundamental statutory purpose of the Enterprises is to bring stability in the secondary market for residential mortgages by purchasing and making commitments to purchase residential mortgages. *See* 12 U.S.C. 1451 note; 12 U.S.C. 1716.

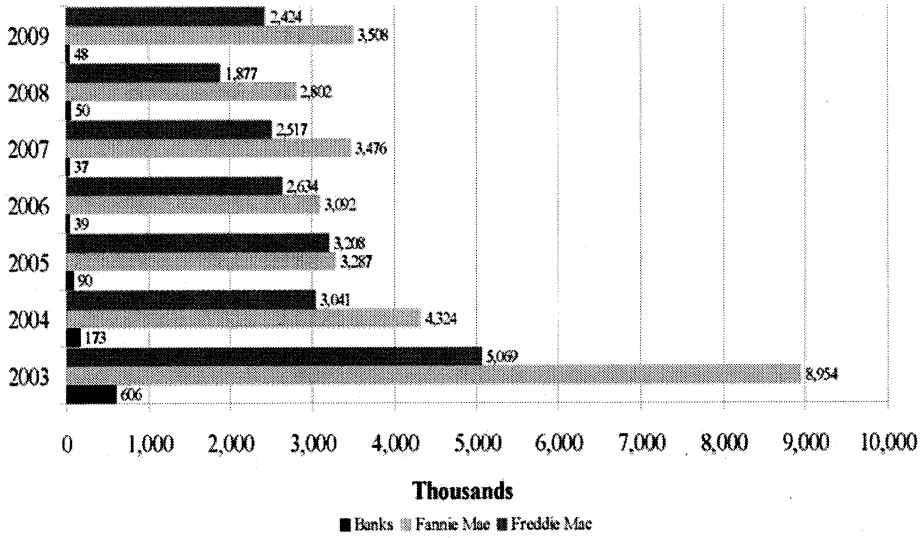
The Banks' and Enterprises' different ownership structures and associated statutory restrictions in the Bank Act and the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), respectively, have a significant impact on their respective mortgage purchase activities. The Enterprises' mortgage purchase activities are substantially greater than that of the Banks. In calendar year 2009, the Banks' combined number of single-family mortgage purchases was slightly over 48,000, while Fannie Mae purchased approximately 3.51 million single-family mortgages and Freddie Mac purchased approximately 2.42 million single-family mortgages. The disparity between the Banks' and Enterprises' mortgage purchase businesses was great even during the peak years of the AMA programs. In 2003, the Banks purchased approximately 606,000 single-family mortgages, which was only 4.3 percent of the approximately 14.02 million single-family mortgages purchased by the Enterprises in that year (*see* Figure 1).

[4] "Low-income" is defined as income not in excess of 80 percent of area median income. *See* 12 U.S.C. 4502(14).

[5] "Families in low-income areas" is defined to include families living in census tracts where the median income does not exceed 80 percent of the area median income and families with incomes not in excess of the area median income that either live in a minority census tract or in a designated disaster area. *See* 12 U.S.C. 4502(28).

[6] "Very low-income" is defined as income not in excess of 50 percent of area median income. *See* 12 U.S.C. 4502(24).

Figure 1. The Banks' and the Enterprises' Mortgage Purchase Activity



Note: The source for the Banks' mortgage purchase activity data was the FHFA's AMA database.
The sources for the Enterprises' mortgage purchase activity data were the 2003 through 2009 Annual Housing Activities Report tables. The data include all single family mortgages purchased by the Enterprises.

III. The Proposed Rule

The proposed rule would define housing goals for the Banks in terms similar to the single-family housing goals for the Enterprises. Separate goals would be established for AMA-approved mortgages on owner-occupied single-family housing. The goals for purchase money mortgages would separately measure performance on purchase money mortgages for low-income families, for families in low-income areas, and for very low-income families. The goal for refinancing mortgages would measure performance on refinancing mortgages for low-income families.

IV. Applicability of Bank Housing Goals to 2010 and Beyond

HERA requires FHFA to establish 2009 and 2010 interim target housing goals for the Banks that facilitate an orderly transition and are consistent with those of the Enterprises. In order to facilitate an orderly transition, FHFA is proposing to establish housing goals for 2010 and beyond. The Banks' administrative and monitoring challenges would be reduced by enabling the Banks to establish policies and procedures to meet the housing goals requirements with the knowledge that these requirements will not be changed the following year. Further, FHFA believes this approach would facilitate a more orderly transition to housing goals than the alternative, which would entail establishing interim target housing goals in the third quarter of 2010 and establishing new housing goals in the fourth quarter of 2010 or first quarter of 2011. The Banks' unique ownership structure and mission is such that FHFA needed to add criteria to the Bank housing goals that are not necessary for those of the Enterprises, and FHFA required additional time to develop these criteria. In addition, establishing interim target housing goals for 2009 and 2010 and then replacing them with housing goals for 2011 that differ significantly could create administrative and monitoring challenges for the Banks.

Pursuant to the requirements of HERA, a Bank that fails to meet a housing goal in 2010 and beyond would be required to submit a housing plan if FHFA determined that the housing goal was feasible for that year and that a housing plan was appropriate. *See* 12 U.S.C. 4566. FHFA appreciates that a Bank's capacity to meet the housing goals is affected by when the housing goals requirements are finalized and that a Bank may have difficulty meeting a housing goal for 2010. For this reason, when determining the feasibility of the 2010 housing goals, FHFA will take into consideration whether a Bank had the capacity to adjust its AMA program in an orderly manner to meet a housing goal and whether a Bank had sufficient opportunity to meet a housing goal. Additionally, FHFA will study the Banks' performance in 2010 and the operations of their AMA programs to gain information on whether the housing goals will require the Banks to make significant changes to their MPF or MPP programs.

V. Market-Based Housing Goals

The proposed rule would establish market-based housing goals for the Banks in a manner largely consistent with the proposed market-based housing goals for the Enterprises. The proposed rule would measure the Banks' single-family housing goals performance relative to the *actual* goals-qualifying shares of the primary mortgage market during the year in their districts. FHFA believes that the advantages of comparing the Bank's performance to actual market performance outweigh the disadvantages. A more detailed discussion of the proposed market-based approach and its legal justification is included in the proposal for the new Enterprise housing goals. *See* 75 FR at 9035–9036 (Feb. 26, 2010).

A disadvantage of this approach is that public information on the goals-qualifying shares of the single-family primary mortgage market is not available until the release of Home Mortgage Disclosure Act (HMDA) data in late summer of the following year. However, FHFA will conduct a monthly survey of single-family mortgage originations pursuant to section 1324(c) of the Safety and Soundness Act, as amended by HERA, and make data collected under that survey available to

the public. 12 U.S.C. 4544(c). Release of that data is likely to provide detailed information on home mortgage lending activity more frequently and in a timelier manner than does the public release of the data collected under HMDA. FHFA will use the survey data to supplement HMDA data in its monitoring of Bank housing goals performance.

Proposed § 1281.11 would establish single-family housing goals that include an assessment of a Bank's performance as compared to the actual share of the market that fits the criteria for each goal. FHFA is proposing to calculate the actual goals-qualifying shares of the district-level primary mortgage market during a year using all mortgages originated in the geographic boundaries of each Bank district (meaning that the properties securing the mortgages are located in the district), including mortgages originated both by members and non-members. A Bank would meet a housing goal if its annual performance meets or exceeds the actual share of the market in that district that fits the criteria for a particular housing goal for that year. A Bank would fail to meet a goal if it falls short of the actual market share for that goal in the year. All mortgages purchased by a Bank that meet the requirements of the proposed regulation would count toward the Bank's goal performance, regardless of where the mortgages are located; but the market share against which the Bank's performance would be evaluated would be the market share of mortgages located in the district as described above. The housing goals would not apply until an individual Bank reached the dollar volume threshold.

FHFA is proposing this approach after considering several alternatives. Because Banks can only purchase AMA-approved mortgages from their members, and because Banks are permitted to, and often do, purchase AMA-approved mortgages originated outside of their districts, defining a Bank's mortgage market based on loans originated within the district does not completely reflect the market a Bank serves. To address this, FHFA considered defining the district-level mortgage market as those mortgages originated by each Bank's members, regardless of the location of the property securing the mortgage. However, the majority of members have never sold mortgages to a Bank, and therefore, this approach would not accurately reflect the market served by a Bank. Additionally, smaller members and nonmetropolitan members are not subject to the data reporting requirements of HMDA, which could have a significant impact on determining the goals-qualifying share in districts such as the Des Moines and Topeka Bank districts with a large number of such members.

FHFA also considered limiting the market to those members that sold AMA-approved mortgages to their Banks in a given year. However, the issues with measuring the market based on all mortgages originated by a Bank's members that are discussed above would also exist for this approach. There could also be variations in the goals-qualifying share resulting from changes in member participation in the AMA program. Such variations would make it difficult for the Banks to establish policies and procedures for meeting the housing goals requirements.

FHFA also considered assigning weights to each AMA-approved mortgage purchased by a Bank to reflect the variations in the share of goals-qualifying mortgages in districts. This approach would assign more weight to a mortgage purchase in a district where the goals-qualifying share of the market was lower, so that the Banks in such districts would not be disadvantaged. FHFA concluded that such an approach would be impractical, because FHFA would not be able to produce the weights until district-level shares of goals-qualifying mortgages were known. As a result, the Banks would not have an opportunity to modify their mortgage purchase activities in response to the weighting values. Such a mortgage-weighting approach could also lead a Bank to increase its mortgage purchase activities outside its district in a manner that could adversely impact members that operate only within its district. The mortgage-weighting approach would increase the complexity of calculating housing goals performance, thus making the process less transparent and potentially more subjective.

FHFA also considered proposing the inclusion of a benchmark level for each housing goal to measure a Bank's performance. Specifically, a Bank would meet a housing goal if its annual performance met the benchmark level or the actual share of the market that fits the criteria for a particular housing goal for that year. A Bank would fail to meet a goal if it fell short of both the benchmark level for that goal and the actual market share for that goal in the year. Benchmark levels for performance could provide more certainty for the Banks in establishing strategies for meeting the housing goals.

If benchmark levels were adopted for the Bank housing goals, FHFA would set the benchmark levels equal to the benchmark levels for the corresponding Enterprise housing goals. FHFA has proposed to establish benchmark levels for the Enterprise housing goals based on FHFA's national market size estimates. *See* 75 FR at 9037–9051 (Feb. 26, 2010). FHFA also considered the possibility of setting benchmark levels based on district-level market size estimates but concluded that the market sizes could not be reliably estimated in advance. Bank members with large residential lending businesses often originate mortgages outside the states that comprise the district of the Bank of which they are a member. For this reason, the geographic market being served by the Banks is not limited to areas within their respective districts. In addition, large Bank members have affiliates that may be members of different Banks, which makes it possible for these affiliates to sell mortgages originated in one Bank district to another Bank. For these reasons, FHFA is not proposing to set benchmarks for the Banks.

FHFA seeks comment on whether it would be appropriate to establish benchmark levels as a means of measuring the Banks' housing goals performance, in addition to measuring performance based on a Bank's actual share of goal-qualifying mortgages relative to its district-level market share, and if so, whether it would be appropriate to set benchmark levels for the Bank housing goals equal to the benchmark levels for the Enterprise housing goals. *See* 75 FR at 9051 (Feb. 26, 2010).

VI. Volume Threshold

The proposed rule would establish a dollar volume threshold of $2.5 billion that a Bank must exceed before it is subject to the housing goals. The threshold is designed to take into consideration the Banks' unique mission and ownership structure and the current status of the AMA programs. Several Banks that continue to participate in the AMA do so principally as a service to their members. The large majority of members participating in the AMA are small asset size institutions. Since the inception of the AMA programs, approximately 88 percent of PFIs that sold mortgages to the Banks had total assets of under $1 billion. From January 1, 2009 to June 30, 2009, the percentage was even higher at 93 percent. Faced with risk management requirements, monitoring for compliance, and reporting of achievement on the housing goals, a Bank with a small AMA program might elect to discontinue offering an AMA product to its members. Discontinuance of an AMA

program could adversely impact PFIs, such as those in rural areas, that may have limited or no access to the secondary market because of the higher per-mortgage sales cost associated with delivering a relatively small number of mortgages to purchasers, or the inability of these PFIs to meet purchasers' mortgage servicing requirements.

FHFA is proposing to establish a volume threshold that would need to be met before a Bank would be subject to the proposed housing goals. The volume threshold is intended to ensure that Banks with significant AMA volume in any year would be subject to the housing goals, while Banks with a relatively low annual volume of purchases of AMA-approved mortgages, *i.e.,* $2.5 billion or less, can continue to serve all PFIs without being subject to the housing goals. FHFA believes it is important that the housing goal mission objective of expanding access to mortgage finance to low-income families and families in low-income areas be balanced against the Banks' need to provide liquidity to small members and the communities they serve.

To establish the proposed volume threshold, FHFA used 2008 HMDA mortgage origination data since these data are the most reliable and accurate mortgage data available to FHFA at this time. Using these data, FHFA calculated the total unpaid principal balance (UPB) of conforming, first lien mortgages secured by owner-occupied, single-family residences (mortgages for home improvement and Home Ownership Equity Protection Act (HOEPA)) mortgages were excluded to be consistent with the market estimate approach for the Enterprise housing goals), which equaled $986 billion (approximately $1.0 trillion). FHFA is proposing that the volume threshold should be equal to approximately 0.25 percent of the market, *i.e.,* $2.5 billion. Assuming the average UPB of the mortgages a Bank purchases equals $200,000, a Bank would need to purchase only 12,500 mortgages in a given year to meet the volume threshold.

The proposed volume threshold of $2.5 billion would be reasonable in light of the history of the AMA program. FHFA considered the volume of mortgages purchased by the Banks during the period when the Banks had their largest presence in the national market, which was from 2002 to 2004. During this period, seven Banks in 2002, eight Banks in 2003 and four Banks in 2004 had annual volume of AMA-approved mortgages greater than $2.5 billion and would have been subject to the housing goals. A significant percentage of Banks' annual volume of AMA-approved mortgages exceeded $5.0 billion in 2002 and 2003: four Banks in 2002 and seven Banks in 2003. (*See* Table 1). Given this, FHFA considered proposing to set the volume threshold at $5.0 billion. The proposed volume threshold of $2.5 billion would be mid-way between the higher volume threshold and housing goals that would apply without regard to the volume of mortgages purchased by the Bank. FHFA requests comments on whether a volume threshold should apply, whether the proposed threshold of $2.5 billion is appropriate, and whether a higher or lower threshold should apply.

Table 1

Banks' AMA Mortgages Purchased
Total Unpaid Principal Balance by Year
(Dollars in Millions)

Bank	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Boston	$32	$644	$3,123	$9,912	$4,091	$3,415	$371	$174	$620	$328
New York	$571	$131	$268	$539	$707	$450	$184	$176	$138	$147
Pittsburgh	$3,643	$6,448	$10,959	$14,306	$3,769	$1,222	$473	$131	$515	$414
Atlanta	$267	$449	$514	$1,798	$912	$1,014	$503	$914	$163	$0
Cincinnati	$0	$556	$3,683	$7,586	$3,546	$1,748	$1,160	$1,509	$1,027	$3,239
Indianapolis	$82	$371	$5,539	$4,780	$1,905	$3,325	$1,636	$468	$496	$564
Chicago	$767	$3,406	$5,824	$16,915	$4,991	$1,842	$1,129	$1,355	$2,684	$43
Des Moines	$6,469	$3,519	$4,997	$17,515	$1,907	$469	$361	$370	$1,065	$1,519
Dallas	$2,219	$2,024	$1,429	$1,938	$569	$332	$225	$179	$190	$0
Topeka	$11	$200	$266	$808	$1,058	$326	$228	$254	$764	$1,159
San Francisco	$0	$0	$522	$8,497	$532	$72	$18	$0	$0	$0
Seattle	$418	$1,489	$8,005	$6,651	$1,561	$86	$0	$0	$0	$0
System	$14,479	$19,236	$45,128	$91,245	$25,549	$14,300	$6,289	$5,530	$7,663	$7,413

FHFA considered proposing a volume threshold that would exclude mortgages acquired from small members when calculating a Bank's annual volume of AMA-approved mortgages for purposes of the volume threshold. If small members were excluded for purposes of the volume threshold, FHFA would establish criteria for determining which members should be excluded, such as excluding members with total assets of less than $1.0 billion. An alternative would be to exclude members that originate a small number of mortgages, or members that are not required to submit HMDA data to their primary regulator. FHFA requests comments on whether any of these alternatives would be appropriate, what criteria would be appropriate for determining which members should be excluded, and whether affiliates should be considered in applying such criteria.

In developing the proposed rule, FHFA also considered other approaches for establishing volume thresholds for the Bank housing goals. FHFA considered a district market share approach that would apply housing goals to a Bank if its purchases of AMA-approved mortgages exceeded one percent of all mortgages originated in its district. The rationale behind the district market share approach was that a Bank would have a material impact on the mortgage market serving its district if it purchased at least one percent of the mortgages originated in its district.

FHFA also considered a dollar and volume loan approach, which was first raised by FHFB in the May 2000 proposed rulemaking for the AMA regulation. In that proposed rule, FHFB decided to defer establishing housing goals until "* * * such time as the conventional residential mortgage programs of the Banks, in the aggregate, have achieved a size and scope indicative of a mature program. * * *" *See* 65 FR 25676, 25685 (May 3, 2000). As an example of a "mature program," FHFB proposed annual aggregated acquisition volume for the System of at least 100,000 loans or $10 billion, which FHFB considered to be of national scope. FHFB also discussed a volume threshold of 75,000 mortgages acquired, so long as seven Banks accounted for at least 10 percent of the AMA acquisitions volume for a given year.

FHFA also considered the feasibility of adopting a volume threshold based on the percentage of AMA-approved mortgages purchased to Bank assets. For example, a Bank would be subject to housing goals if its purchases of AMA-approved mortgages exceeded 10 percent of the Bank's assets. FHFA considered such an approach because at some level of annual mortgage purchases, a Bank is no longer simply providing a service to its members, but is engaging in a profitable line of business to augment its primary line of business—advances to its members. At such a point, it would appear to be reasonable to also apply housing goals to this line of business.

FHFA requests comments on the volume threshold alternatives discussed above and on any other alternatives that might be used.

VII. Analysis of Proposed Rule

A. Definitions—Proposed § 1281.1

Proposed § 1281.1 would set forth definitions applicable to the Bank housing goals provisions. A number of the definitions are the same as those applicable to the Enterprises for their proposed new housing goals, and other definitions have been modified to reflect their applicability under the AMA programs. In order to maintain consistency between the Enterprise housing goals and the Bank housing goals where feasible, FHFA will consider public comments on the definitions proposed in the Enterprise housing goals and any resulting changes to the Enterprise housing goals in determining whether conforming changes are needed in the Bank housing goals. *See* 75 FR 9034 (Feb. 26, 2010).

Definition of "families in low-income areas." The definition of "families in low-income areas" includes families with incomes at or below 100 percent of AMI who reside in "minority census tracts," which is defined by HERA to mean a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of AMI. 12 U.S.C. 4502(29).

In addition, the definition of "families in low-income areas" includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas." Consistent with the proposed definition for the new Enterprise housing goals, the proposed rule would define "designated disaster areas" as areas at the census tract level and include only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by the Federal Emergency Management Agency (FEMA), exceeds $1,000 per household for that census tract.

Definition of "mortgage." The definition of "mortgage" would not include personal property manufactured housing loans, pending further review of the appropriate treatment of such loans under the Enterprise and Bank housing goals.

Designated disaster areas. The definition of "families in low-income areas" includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas." The proposed rule would define "designated disaster areas" as areas at the census tract level and include only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by FEMA, exceeds $1,000 per household for that census tract.

Disaster areas are declared when an area is adversely affected by some unforeseen event. However, not all disasters impact housing to the same degree, and the severity of the impact varies within the declared area. Presidential Major Disaster Declarations are defined by FEMA at the county level in the area affected by the major disaster and can be declared to be eligible for public assistance, individual assistance or both. Public assistance is available to local governments for the repair, replacement or clean-up of public infrastructure. Individual assistance is broken down further into two categories, housing needs and "other than housing needs." [7] Housing needs include repair, replacement and construction of homeowner residences. The proposed rule would limit the definition of "designated disaster areas" to those counties eligible for individual assistance, and it would establish a minimum average real property damage severity.

For purposes of complying with the Community Reinvestment Act (CRA), regulators have made the determination that "[e]xaminers will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended." [8] To accommodate the Banks' business planning requirements, for purposes of the low-income areas housing goal, the proposed rule would treat a designated disaster area as effective beginning no later than January 1 of the year following the FEMA designation and continuing through December 31 of the third full calendar year following the FEMA designation. If data are available in a particular case to support treatment as a designated disaster area from an earlier date, FHFA may provide for such treatment.

FHFA welcomes comments on the proposed definitions in § 1281.1.

B. Housing Goals—Proposed §§ 1281.10 and 1281.11

General. Proposed § 1281.10 provides an overview of the contents of this subpart. Although the final rule establishing the new housing goals for the Banks will not be published for effect until later in 2010, FHFA will evaluate performance under the housing goals established for 2010 on a calendar year basis.

Volume Threshold. Proposed § 1281.11(a) would establish a volume threshold that would trigger application of the housing goals to a Bank. Specifically, a Bank that in a calendar year purchased AMA-approved mortgages with a total UPB greater than $2.5 billion would be subject to the housing goals for that year.

Market-Based Housing Goals. Proposed § 1281.11(b) would provide that compliance with a housing goal would be measured by comparing a Bank's performance with the actual share of the market in the Bank's district. Proposed § 1281.11(b) would establish criteria for determining the size of the market for each Bank district based on HMDA data on mortgages secured by property located in that Bank district. The criteria for establishing the size of the market reflect the types of mortgages that would be counted for purposes of the housing goals and that would typically be eligible for purchase by a Bank.

Bank Housing Goals. Proposed § 1281.11(c) through 1281.11(f) would establish four single-family housing goals applicable to any Bank that met the volume threshold in a particular year. Goals would be established for purchase money mortgages for low-income families, for families in low-income areas, and for very low-income

[7] Federally declared disaster areas are managed by FEMA and can be tracked at FEMA's Web site. *See http://www.fema.gov/news/disasters.fema.*

[8] The Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation, *Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice,* 74 FR 498, 509 (Jan. 6, 2009).

families. A goal would also be established for refinancing mortgages for low-income families. Unlike the new Enterprise housing goals, these Bank housing goals would not include a multifamily special affordable housing goal or multifamily special affordable housing subgoal, as the Banks have not been approved to purchase multifamily loans under the AMA programs. The single-family housing goals would be based on an evaluation of the Bank's performance relative to the market for each housing goal in each year.

C. General Counting Requirements—Proposed § 1281.12

Proposed § 1281.12 would set forth general requirements for the counting of Bank AMA-approved mortgage purchases toward the achievement of the housing goals. Performance under the single-family housing goals would be evaluated based on the percentage of all AMA-approved mortgages on single-family, owner-occupied properties purchased by a Bank that meet a particular goal.

Proposed § 1281.12(a) would provide that performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1281.13(b). The numerator is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular housing goal. The denominator is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied, single-family properties.

Proposed § 1281.12(b) would provide that when a Bank lacks sufficient data or information, *e.g.,* income of mortgagor, to determine whether the purchase of a mortgage counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, but may not be included in the numerator. The proposed rule would not allow the Banks to use missing data estimation methodologies as used by the Enterprises, in light of the complexity of developing an estimation methodology that would be suitable for the Banks. FHFA invites comment on whether a method for estimating missing affordability data would be feasible for the Bank housing goals.

The provisions in proposed § 1281.12(c) through (f), which address credit toward multiple goals, application of median income, sampling and newly available data, respectively, are consistent with the provisions proposed for the Enterprise 2010 housing goals.

The MPF program allows Banks to purchase a percentage of a mortgage or mortgage pool initially acquired by another Bank under the program. For purposes of receiving credit under one of the housing goals, each mortgage will be assigned to the Bank that initially acquired the mortgage regardless of whether an interest in the mortgage was later sold to another Bank.

In September 2008, FHFA approved the Chicago Bank's request to establish the MPF Xtra program, under which the Bank would buy certain qualified, conforming mortgages from eligible members for immediate sale to Fannie Mae. The MPF Xtra program is not an AMA program authorized under 12 CFR part 955.[9] Under the MPF Xtra program, the Bank serves essentially as a conduit or intermediary with respect to the sale of the mortgages to Fannie Mae. The mortgages may be counted by Fannie Mae toward compliance with its housing goals. If the mortgages were also to be considered for purposes of the Bank housing goals, double-counting of the mortgages could occur. For these reasons, under the proposed rule, mortgages purchased by a Bank pursuant to the MPF Xtra program would not be considered for purposes of the Bank housing goals.

D. Special Counting Requirements—Proposed § 1281.13

Proposed § 1281.13 would set forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals, a number of which are discussed further below.

Proposed § 1281.13(b) would specify the types of transactions that shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank's performance under the housing goals. The intent of this section is to specify the counting treatment for transactions in which the Banks are authorized to engage under the approved AMA programs. The counting rules do not purport to authorize the purchase of any types of mortgages, but are intended solely to indicate whether such mortgages shall receive full, partial or no credit toward the housing goals. Accordingly, transactions in which the Banks are not authorized to engage under the approved AMA programs are not included in paragraph (b). The Bank counting rules may differ from the counting rules for the proposed new Enterprise housing goals. For example, the Banks are not authorized to purchase private label securities (PLS) under the AMA programs; therefore, it is not necessary to state in the proposed rule that Bank purchases of PLS shall not be counted for purposes of the housing goals. On the other hand, while the Banks are authorized to purchase non-conventional loans under the AMA authority, HERA amended the Safety and Soundness Act to prohibit such loans from counting toward the Enterprise housing goals and, thus, purchases of such loans by the Banks are specifically excluded from counting in paragraph (b).

Proposed § 1281.13(b) would make clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage should be excluded even if it otherwise would fall within one of the special counting rules in proposed § 1281.13(c). For example, a non-conventional mortgage that would be excluded from consideration pursuant to proposed § 1281.13(b)(1) could not be counted even if it otherwise would be counted as a seasoned mortgage under proposed § 1281.13(c)(2).

Home Equity Conversion Mortgages. Proposed § 1281.13(b)(1) would exclude the purchases of all non-conventional single-family mortgages, including Home Equity Conversion Mortgages (HECMs), from counting towards the Banks' housing goals—that is, such purchases would be excluded from both the numerator and denominator in calculating goal performance. This is consistent with the counting treatment for the proposed new Enterprise housing goals, as HERA amended section 1332(a) of the Safety and Soundness Act to restrict the Enterprise single-family housing goals to include only conventional mortgages. *See* 12 U.S.C. 4562(a).

Mortgages financing secondary residences. Proposed § 1281.13(b)(6) would prohibit the counting of mortgage

[9] In May 2007, FHFB also approved the Atlanta Bank's request to offer the Global Mortgage Alliance Program (GMAP), under which the Bank would facilitate the sale of certain qualified conforming mortgage loans from eligible members to another of its members—Global Mortgage Alliance, LLC, which would then securitize those loans. To date, no transactions have occurred under GMAP. The GMAP is not an AMA program authorized under part 955. Both the MPF Xtra and GMAP programs were separately authorized under the Banks' incidental authority contained in sections 11(a) and 11(e)(1) of the Bank Act. *See* 12 U.S.C. 1431(a), 1431(e)(1).

purchases to the extent they finance any dwelling units that are secondary residences. This is consistent with the counting treatment for the proposed new Enterprise housing goals, as HERA amended section 1332(a) of the Safety and Soundness Act to restrict the Enterprise single-family housing goals to include only purchases of owner-occupied mortgages. *See* 12 U.S.C. 4562.

Subordinate liens. Proposed § 1281.13(b)(8) would exclude the purchases of subordinate lien mortgages (second mortgages) from counting towards the Banks' housing goals. This exclusion is consistent with the counting treatment for the proposed new Enterprise housing goals, as HERA amended section 1331 of the Safety and Soundness Act to provide that the single-family housing goals are limited to purchase money or refinancing mortgages. *See* 12 U.S.C. 4561. This would exclude "piggy-back" liens that may be acquired by a Bank along with the corresponding first lien mortgage and subordinate lien mortgages, such as home equity loans, acquired separately by a Bank where the Bank does not also acquire the corresponding first lien mortgage.

Previously counted mortgages. Proposed § 1281.13(b)(9) would prohibit the counting of mortgages toward performance under the housing goals if the mortgage has previously been counted for purposes of the performance of the Bank under the housing goals. In order to limit excessively burdensome recordkeeping that could result, the rule would make clear that this limitation only extends back for five years. Although the Banks have not previously been subject to housing goals, this language is included for applicability in future years.

Construction-to-permanent loans. Proposed § 1281.13(b)(10) would exclude purchases of mortgages secured by properties that have not been approved for occupancy from consideration for purposes of the housing goals.

Housing goals credit for certain transactions. Proposed § 1281.13(c) would specifically provide that certain types of transactions be counted for purposes of the housing goals, including mortgages on cooperative housing and condominium units, seasoned mortgages, and refinancing mortgages. Proposed § 1281.13(c) would not include certain types of transactions that are eligible for housing goals credit under the Enterprise housing goals, including credit enhancements for goal-qualifying mortgages, entering into risk sharing agreements with federal agencies to finance qualifying mortgages, and purchasing mortgage revenue bonds backed by qualifying mortgages. Such transactions would not be eligible for Bank housing goals credit because of the more limited scope of the approved AMA programs. Proposed § 1281.13(c) would also make clear that where a transaction falls under more than one of the special counting rules in § 1281.13(c), all of the applicable requirements must be satisfied in order for the loan to be counted for purposes of the housing goals.

HOEPA mortgages and mortgages with unacceptable terms and conditions. Proposed § 1281.13(d) would provide that HOEPA mortgages and mortgages with unacceptable terms and conditions must be counted in the denominator as mortgage purchases but may not be counted in the numerator, regardless of whether the mortgages would otherwise qualify based on the affordability and other counting criteria. This proposed treatment is consistent with past practice for the Enterprises and with section 1332(i) of the Safety and Soundness Act, as amended by HERA, which provides that no credit may be given for mortgages that FHFA determines are "unacceptable or contrary to good lending practices." 12 U.S.C. 4562(i).

FHFA guidance. Proposed § 1281.13(e) would provide that FHFA may provide guidance on the treatment of any transactions under the housing goals. Such guidance may be provided in response to a request from a Bank, or it may be provided at the initiation of FHFA.

Private label securities. Because FHFA is proposing to count only mortgages purchased through AMA programs in determining each Bank's housing goal performance, and the Banks are not authorized to purchase PLS through these programs, PLS would not be counted in determining a Bank's housing goals performance.

Housing finance agency obligations. FHFA also considered whether to apply the housing goals to the Banks' purchase of state or local housing finance agency obligations. However, because FHFA is proposing to count only mortgages purchased through AMA programs in determining each Bank's housing goal performance, and the Banks are not authorized to purchase state or local housing finance agency obligations through these programs, state or local housing finance agency obligations would not be counted in determining a Bank's housing goals performance.

E. Housing Goals Enforcement—Proposed §§ 1281.14 and 1281.15

Proposed § 1281.14 would provide that the Director shall determine whether each Bank has exceeded the volume threshold on an annual basis. For any Bank that has exceeded the volume threshold, the Director would also determine whether the Bank has met the housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA. If the Director determines that a Bank has failed to meet any housing goal, the Director shall provide notice to the Bank in writing of such preliminary determination.

Proposed § 1281.15 would include requirements for submission of a housing plan by a Bank for failure to meet any housing goal that is determined to be feasible by FHFA. The requirement to submit a housing plan would be at the discretion of the Director.

F. Reporting Requirements—Proposed §§ 1281.20 through 1281.23

As required for the Enterprises, proposed §§ 1281.20 through 1281.23 would establish reporting requirements for the Banks with respect to their housing goals performance. Proposed § 1281.21(a) would require the Banks to collect and compile computerized loan-level data on each AMA mortgage purchased, as described in the FHFA's Data Reporting Manual (DRM). These reporting requirements would apply to each Bank, regardless of whether in a particular year the Bank expects to exceed the volume threshold and thus be subject to the housing goals.

Proposed § 1281.21(b) would require each Bank to submit to the Director, on a semi-annual basis, a Mortgage Report containing aggregations of the loan-level mortgage data for year-to-date AMA mortgage purchases, and year-to-date dollar volume, number of units, and number of AMA mortgages on owner-occupied properties purchased that do, and do not, qualify under each housing goal. The loan-level data that would be required to be reported are currently collected by FHFA on a semiannual basis. For 2010–2011, the Enterprises would be required to submit quarterly Mortgage Reports, as advances in technology have made more frequent submissions less burdensome, and the additional data provided will facilitate FHFA's monitoring of Enterprise performance under the housing goals. FHFA will consider quarterly reporting for the Banks in future years. The Enterprises are also required to submit

Annual Housing Activities Reports (AHARs) to FHFA. The proposed rule would not require the Banks to submit AHARs, but FHFA will consider requiring such reports in the future.

Proposed § 1281.22 would require each Bank to provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

Proposed § 1281.23 would set forth the data integrity process for Bank housing goals data. The proposed rule would require the senior officer of each Bank who is responsible for submitting any report, data or other information for which certification is requested by the Director, to certify such report, data or information. FHFA would determine on an annual basis the official housing goals performance figures for any Bank that is subject to the housing goals, and may resolve any error, omission or discrepancy by adjusting the Banks' official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year's goal performance.

FHFA will implement the data integrity process pursuant to its general regulatory authority over the Banks. FHFA expects that the Banks will work cooperatively with FHFA to identify and resolve any discrepancies or errors in the housing goals data reported to FHFA.

VIII. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1281

Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHFA proposes to amend chapter XII of title 12 of the Code of Federal Regulations, by adding new part 1281 to subchapter E to read as follows:

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

Subpart A—General

Sec.
1281.1 Definitions.

Subpart B—Housing Goals

1281.10 General.
1281.11 Bank housing goals.
1281.12 General counting requirements.
1281.13 Special counting requirements.
1281.14 Determination of compliance with housing goals; notice of determination.
1281.15 Housing plans.

Subpart C—Reporting Requirements

1281.20 General.
1281.21 Mortgage reports.
1281.22 Periodic reports.
1281.23 Bank data integrity.

Authority: 12 U.S.C. 1430c.

Subpart A—General

§ 1281.1 Definitions.

As used in this part:

Acquired Member Assets (AMA) program means a program that authorizes a Bank to hold assets acquired from or through Bank members or housing associates by means of either a purchase or a funding transaction, subject to the requirements of 12 CFR parts 955 and 980, or successor regulations.

AMA-approved mortgage means a mortgage that meets the requirements of the AMA program at 12 CFR part 955, and is approved to be implemented under 12 CFR part 980, or successor regulations.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (balloon payment) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specific period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Bank means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Bank System means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

Borrower income means the total gross income relied on in making the credit decision.

Conforming mortgage means, with respect to a Bank, a conventional AMA-approved single-family mortgage having an original principal obligation that does not exceed the dollar limitation in effect at the time of such origination and applicable to such mortgage under 12 CFR 955.2(a)(1)(i) and 12 U.S.C. 1717(b)(2), as these sections may be amended.

Conventional mortgage means a mortgage other than a mortgage as to which a Bank has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Data Reporting Manual (DRM) means the manual prepared by FHFA in connection with the Banks' reporting requirements, as may be supplemented from time to time, including reporting requirements under this part.

Day means a calendar day.

Designated disaster area means any census tract that is located in a county designated by FEMA as adversely affected by a declared major disaster, where individual assistance payments were authorized by FEMA, and where average damage severity, as reported by FEMA, exceeds $1,000 per household in the census tract. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation.

Director means the Director of FHFA, or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family

property, multifamily property, or other residential or mixed-use property.

Families in low-income areas means:

(1) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;

(2) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(3) Any family with an income that does not exceed area median income that resides in a designated disaster area.

Family means one or more individuals who occupy the same dwelling unit.

FEMA means the Federal Emergency Management Agency.

FHFA means the Federal Housing Finance Agency.

HOEPA mortgage means a mortgage covered by section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)), as amended by the Home Ownership Equity Protection Act (HOEPA), as implemented by the Board of Governors of the Federal Reserve System.

HMDA means the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801, *et seq.*), as amended.

HUD means the United States Department of Housing and Urban Development.

Low-income means income not in excess of 80 percent of area median income.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Banks annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with 12 CFR 1263.20 or 1263.24(b), or successor regulation(s).

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;

(2) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) Black or African American—a person having origins in any of the black racial groups of Africa;

(4) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means income not in excess of area median income.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Bank or Banks under this part and/or the Data Reporting Manual.

Mortgage purchase means a transaction in which a Bank bought or otherwise acquired a mortgage.

Mortgages with unacceptable terms or conditions means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1,000, or an alternative amount requested by a Bank and determined by the Director as appropriate for small mortgages;

(i) For purposes of this definition, points and fees include:

(A) Origination fees;

(B) Underwriting fees;

(C) Broker fees;

(D) Finder's fees; and

(E) Charges that the member imposes as a condition of making the loan, whether they are paid to the member or a third party;

(ii) For purposes of this definition, points and fees do not include:

(A) Bona fide discount points;

(B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(C) The cost of mortgage insurance or credit-risk price adjustments;

(D) The costs of title, hazard, and flood insurance policies;

(E) State and local transfer taxes or fees;

(F) Escrow deposits for the future payment of taxes and insurance premiums; and

(G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;

(2) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;

(3) Prepayment penalties, except where:

(i) The mortgage provides some benefits to the borrower in exchange for the prepayment penalty (*e.g.,* a rate or fee reduction for accepting the prepayment premium);

(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments;

(4) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage

(5) Underwriting practices contrary to the Interagency Guidance on Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime

Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by federal banking agencies;

(6) Failure to comply with fair lending requirements; or

(7) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.

Nonmetropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

Owner-occupied housing means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

Purchase money mortgage means a mortgage given to secure a loan used for the purchase of a single-family residential property.

Refinancing mortgage means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; or

(5) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Bank already owns or has an interest in the balloon note at the time of the conversion.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than one year before the Bank purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Very low-income means income not in excess of 50 percent of area median income.

Subpart B—Housing Goals

§ 1281.10 General.

Pursuant to the requirements of the Bank Act (12 U.S.C. 1430c), this subpart establishes:

(a) Three single-family owner-occupied purchase money mortgage housing goals, and one single-family refinancing mortgage housing goal;

(b) A volume threshold for the application of the housing goals to a Bank;

(c) Requirements for measuring performance under the housing goals; and

(d) Procedures for monitoring and enforcing the housing goals.

§ 1281.11 Bank housing goals.

(a) *Volume threshold.* The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank's purchases of AMA-approved mortgages in that year exceeds $2.5 billion.

(b) *Market-based housing goals.* A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each housing goal shall be established annually by FHFA for each Bank district based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market for each Bank district shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable housing goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 300 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income Families Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(d) *Low-income Areas Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(e) *Very Low-income Families Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(f) *Refinancing Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of refinancing AMA-approved mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

§ 1281.12 General counting requirements.

(a) *Calculating the numerator and denominator for single-family housing goals.* Performance under each of the single family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1281.13(b).

(1) *The numerator.* The numerator of each fraction is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-

occupied single-family properties that count toward achievement of a particular single-family housing goal.

(2) *The denominator.* The denominator of each fraction is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied, single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) *Missing data or information for single-family housing goals.*—(1) When a Bank lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular single-family housing goal, that mortgage purchase shall be included in the denominator for that housing goal and shall not be included in the numerator for that housing goal.

(2) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level (*i.e.,* low- or very low-income), the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1281.1.

(c) *Credit toward multiple goals.* A mortgage purchase by a Bank in a particular year shall count toward the achievement of each housing goal for which such purchase qualifies in that year.

(d) *Application of median income.* For purposes of determining an area's median income under § 1281.1, the area is:

(1) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(2) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(e) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(f) *Newly available data.* When a Bank uses data to determine whether a mortgage purchase counts toward achievement of any housing goal, and new data is released after the start of a calendar quarter, the Bank need not use the new data until the start of the following quarter.

§ 1281.13 Special counting requirements.

(a) *General.* FHFA shall determine whether a Bank shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank's performance under the housing goals, even if the transaction or activity would otherwise be counted under paragraph (c) of this section:

(1) Purchases of non-conventional single-family mortgages;

(2) Commitments to buy mortgages at a later date or time;

(3) Options to acquire mortgages;

(4) Rights of first refusal to acquire mortgages;

(5) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(6) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(7) Single family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if a Bank already owns, or has an interest in, the balloon note at the time conversion occurs;

(8) Purchases of subordinate lien mortgages (second mortgages);

(9) Purchases of mortgages that were previously counted by a Bank under any current or previous housing goal;

(10) Purchases of mortgages where the property has not been approved for occupancy; and

(11) Any combination of factors in paragraphs (b)(1) through (b)(10) of this section.

(c) *Other special rules.* Subject to FHFA's determination of whether a Bank shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages from each such transaction or activity shall be included in the denominator in calculating a Bank's performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) *Cooperative housing and condominiums.* The purchase by a Bank of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals.

(2) *Seasoned mortgages.* The purchase of a seasoned mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals, except where the Bank has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(3) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(d) *HOEPA mortgages and mortgages with unacceptable terms or conditions.* The purchase by a Bank of HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1281.1, shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals. FHFA will notify each Bank in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

§ 1281.14 Determination of compliance with housing goals; notice of determination.

(a) *Determination of compliance with housing goals.* On an annual basis, the Director shall determine whether each Bank has exceeded the volume threshold. For each Bank that has exceeded the volume threshold in a year, the Director shall determine the Bank's performance under each housing goal.

(b) *Failure to meet a housing goal.* If the Director determines that a Bank has failed to meet any housing goal, the Director shall notify the Bank in writing of such preliminary determination. Any notification to a Bank of a preliminary determination under this section shall provide the Bank with an opportunity to respond in writing in accordance with the following procedures:

(1) *Notice.* The Director shall provide written notice to a Bank of a preliminary determination under this section, the reasons for such determination, and the

information on which the Director based the determination.

(2) *Response period.*—(i) *In general.* During the 30-day period beginning on the date on which notice is provided under paragraph (b)(1) of this section, the Bank may submit to the Director any written information that the Bank considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was feasible.

(ii) *Extended period.* The Director may extend the period under paragraph (b)(2)(i) of this section for good cause for not more than 30 additional days.

(iii) *Shortened period.* The Director may shorten the period under paragraph (b)(2)(i) of this section for good cause.

(iv) *Failure to respond.* The failure of a Bank to provide information during the 30-day period under this paragraph (b)(2), as extended or shortened, shall waive any right of the Bank to comment on the proposed determination or action of the Director.

(3) *Consideration of information and final determination.*—(i) *In general.* After the expiration of the response period under paragraph (b)(2) of this section, or upon receipt of information provided during such period by a Bank, whichever occurs earlier, the Director shall issue a final determination on:

(A) Whether the Bank has failed to meet the housing goal; and

(B) Whether, taking into consideration market and economic conditions and the financial condition of the Bank, the achievement of the housing goal was feasible.

(ii) *Considerations.* In making a final determination under paragraph (b)(3)(i) of this section, the Director shall take into consideration any relevant information submitted by a Bank during the response period.

§ 1281.15 Housing plans.

(a) *Housing plan requirement.* If the Director determines that a Bank has failed to meet any housing goal and that the achievement of the housing goal was feasible, the Director may require the Bank to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Bank will take to achieve the housing goal for the next calendar year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Bank shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Bank to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plan.* The Director shall review and approve or disapprove a housing plan as follows:

(1) *Approval.* The Director shall review each submission by a Bank, including a housing plan submitted under this section and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Bank Act, this part, and any other applicable provision of law.

(2) *Notice of approval and disapproval.* The Director shall provide written notice to a Bank submitting a housing plan of the approval or disapproval of the plan, which shall include the reasons for any disapproval of the plan, and of any extension of the period for approval or disapproval.

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by a Bank, the Bank shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Bank 15 days to submit a new plan.

(f) *Enforcement of housing plan.* If the Director finds that a Bank has failed to meet any housing goal, and that the achievement of the housing goal was feasible, and has required the Bank to submit a housing plan under this section, the Director may issue a cease and desist order, or impose civil money penalties, if the Bank refuses to submit such a plan, fails to submit an acceptable plan, or fails to comply with the approved plan. In taking such action, the Director shall follow procedures consistent with those provided in 12 U.S.C. 4581 through 4588 with respect to actions to enforce the housing goals.

Subpart C—Reporting Requirements

§ 1281.20 General.

This subpart establishes data submission and reporting requirements to provide the Director with the mortgage and other information relating to the Banks' performance in connection with the housing goals, as supplemented from time to time in the Banks' Data Reporting Manual (DRM).

§ 1281.21 Mortgage reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Banks' housing goal activities, each Bank shall collect and compile computerized loan-level data on each AMA-approved mortgage purchase, as described in the DRM. The Director may, from time to time, issue a list in the DRM specifying the loan-level data elements to be collected and maintained by the Banks and provided to the Director. The Director may revise the DRM list by written notice to the Banks.

(b) *Semi-annual mortgage reports.* Each Bank shall submit to the Director, on a semi-annual basis, a mortgage report. The second semi-annual mortgage report each year shall serve as the annual mortgage report and shall be designated as such. Each mortgage report shall include:

(1) Aggregations of the loan-level mortgage data compiled by each Bank under paragraph (a) of this section for year-to-date AMA-approved mortgage purchases, in the format specified in writing by the Director;

(2) Year-to-date dollar volume, number of units, and number of AMA-approved mortgages on owner-occupied properties purchased by each Bank that do, and do not, qualify under each housing goal as set forth in this part; and

(3) Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) *Timing of reports.* Each Bank shall submit its first semi-annual mortgage report within 45 days of the end of the second quarter. Each Bank shall submit its annual mortgage report within 60 days after the end of the calendar year.

(d) *Revisions to reports.* At any time before submission of its annual mortgage report, a Bank may revise its first semi-annual mortgage report for that year.

(e) *Format.* The Banks shall submit to the Director computerized loan-level data with the mortgage report, in the

format specified in writing by the Director.

§ 1281.22 Periodic reports.

Each Bank shall provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

§ 1281.23 Bank data integrity.

(a) *Certification.*—(1) The senior officer of each Bank who is responsible for submitting the annual mortgage report, or for submitting any other report(s), data or other information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: "To the best of my knowledge and belief, the information provided herein is true, correct and complete."

(b) *Adjustment to correct errors, omissions or discrepancies.* FHFA shall determine on an annual basis the official housing goals performance figures for a Bank that is subject to the housing goals. FHFA may resolve any error, omission or discrepancy by adjusting the Bank's official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year's goal performance.

Dated: May 24, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–12849 Filed 5–27–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE308; Notice No. 23–10–02–SC]

Special Conditions: Cirrus Design Corporation Model SF50 Airplane; Function and Reliability Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cirrus Design Corporation SF50 airplane. This airplane will have a novel or unusual design feature(s) associated with the complex design and performance features consistent with larger airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by June 28, 2010.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE308. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4125; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to take submit such written data, views, or arguments as they desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On April 29, 2010, Cirrus Design Corporation applied for a type certificate for their new Model SF 50 "Vision" Jet. The SF50 is a low-wing, five-plus-two-place (2 children), single-engine turbofan-powered aircraft. It incorporates an Electronic Flight Information System (EFIS), pressurized cabin, retractable gear, and a V-tail. The turbofan engine is mounted on the upper fuselage/tail cone along the aircraft centerline. It is constructed largely of carbon and fiberglass composite materials. Like other Cirrus products, the SF50 includes a ballistically deployed airframe parachute.

The model SF50 has a maximum operating altitude of 28,000 feet, where it cruises at speeds up to 300 KTAS. Its V_{MO} will not exceed 0.62 Mach. The maximum takeoff weight will be at or below 6000 pounds with a range at economy cruise of roughly 1000 nm. Cirrus intends for the model SF50 to be certified for single-pilot operations under 14 CFR part 91 and 14 CFR part 135 operating rules. *The following operating conditions will be included:*

- Day and Night VFR.
- IFR.
- Flight into Known Icing.

Discussion

Before Amendment 3–4, Section 3.19 of Civil Air Regulation (CAR) part 3 required service testing of all airplanes type certificated on or after May 15, 1947. The purpose of the testing was to "ascertain whether there is reasonable assurance that the airplane, its components, and equipment are reliable, and function properly."

Amendment 3–4 to CAR part 3 became effective January 15, 1951, and deleted the service test requirements in Section 3.19 for airplanes of 6,000 pounds maximum weight or less. The introductory text published in Amendment 3–4 explained that most of the significant changes in the amendment stemmed from "the desire for simplification of the rules in this part with respect to the smaller airplanes, specifically those of 6,000 pounds maximum weight or less, which would be expected to be used mainly as personal airplanes." The introductory material also stated the service test requirement was removed for airplanes

of 6,000 pounds maximum weight or less because "experience seems to indicate that this rule imposes a burden upon the manufacturers not commensurate with the safety gained." The requirement for Function and Reliability (F&R) testing, and the exception for airplanes of 6,000 pounds or less maximum weight, is now found in 14 CFR part 21, section 21.35(b)(2).

The decision to exempt airplanes of 6,000 pounds maximum weight or less from F&R testing was based on the state of technology envisioned in 1951. At that time, airplanes of 6,000 pounds maximum weight or less were expected to be used mainly as personal airplanes. They used simple, "stand-alone" systems whose failure was more likely to be an inconvenience than an accident. The situation is different today. Technological advances allow airplanes weighing less than 6,000 pounds to be more complex and integrated than some transports. New part 23 airplanes can incorporate sophisticated equipment not previously used in a part 23 aircraft. Additionally, part 23 airplanes are being used for business and commercial transportation. They should no longer be envisioned mainly as personal airplanes. Therefore, a special condition to require F&R testing for airplanes weighing 6,000 pounds or less is needed where the level of sophistication is beyond evaluating failures by inspection.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Cirrus Design Corporation must show that the SF50 meets the applicable provisions of part 23, as amended by Amendment 23–1 through 23–59 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the SF 50 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the SF50 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The SF 50 will incorporate the following novel or unusual design features: Complex design and performance features consistent with technologically advanced aircraft over 6,000 pounds.

Applicability

As discussed above, these special conditions are applicable to the SF50. Should Cirrus Design Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on model SF50 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following Special conditions as part of the type certification basis for Cirrus Design Corporation model SF50 airplanes.

1. Function and Reliability Testing

Flight tests: In place of 14 CFR part 21.35(b)(2), the following applies:

(b) Upon showing compliance with paragraph (a) of 14 CFR part 21.35(a), the applicant must make all flight tests that the Administrator finds necessary—

(2) For aircraft to be certificated under this subchapter to determine whether there is reasonable assurance that the aircraft, its components, and its equipment are reliable and function properly.

Additionally the provisions of 14 CFR part 21.35(c) and 21.35(f) then apply:

(c) Each applicant must, if practicable, make the tests described in paragraph (b)(2) of this section upon the aircraft that was used to show compliance with—

(1) Paragraph (b)(1) of this section; and

(2) —.

(f) The flight tests prescribed in paragraph (b)(2) of this section must include—

(1) For aircraft incorporating turbine engines of a type not previously used in a type certificated aircraft, at least 300 hours of operation with a full complement of engines that conform to a type certificate; and

(2) For all other aircraft, at least 150 hours of operation.

Issued in Kansas City, Missouri on May 18, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–12875 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0387; Airspace Docket No. 10–ANM–1]

Proposed Revocation of Class E Airspace; Eastsound, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E surface airspace at Orcas Island Airport, Eastsound, WA. Controlled airspace already exists in the Eastsound, WA, area to accommodate the safety and management of aircraft operations at Orcas Island Airport.

DATES: Comments must be received on or before July 12, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0387; Airspace Docket No. 10–ANM–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0387 and Airspace Docket No. 10–ANM–1) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0387 and Airspace Docket No. 10–ANM–1". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Class E airspace at Orcas Island Airport, Eastsound, WA. The controlled airspace is unnecessary because existing controlled airspace upward from 700 feet above the surface around the Eastsound, WA, area accommodates aircraft at Orcas Island Airport. This action would enhance the safety and management of aircraft operations for the Eastsound, WA, area.

Class E airspace designations are published in paragraph 6002, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove unnecessary controlled Airspace at Orcas Island Airport, Eastsound, WA.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Eastsound, WA [Removed]

Issued in Seattle, Washington, on May 14, 2010.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–12879 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–5275–N–09]

Native American Housing Assistance and Self-Determination Reauthorization Act of 2008: Negotiated Rulemaking Committee Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of negotiated rulemaking committee meetings.

SUMMARY: This document announces two meetings of the negotiated rulemaking committee that was established pursuant to the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008. The primary purpose of the committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program and the Title VI Loan Guarantee program.

DATES: The fourth committee meeting will be held on Tuesday, June 8, 2010, Wednesday, June 9, 2010, and Thursday, June 10, 2010. The fifth committee meeting will be held on Tuesday, July 20, 2010, Wednesday, July 21, and Thursday, July 22, 2010. The meetings will begin at 8 a.m. and are scheduled to end at 5 p.m. on each day.

ADDRESSES: The fourth meeting will take place at the Hyatt at Olive 8, 1635 8th Avenue, Seattle, Washington 98101; telephone number 206–695–1234 (this is not a toll-free number). The fifth meeting will take place at the Crowne Plaza Hotel Seattle, 1113 Sixth Avenue, Seattle, WA 98101; telephone number 206–464–1980 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410; telephone number 202–401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (NAHASDA Reauthorization) reauthorizes The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) through September 30, 2013, and makes a number of amendments to the statutory requirements governing the Indian Housing Block Grant Program (IHBG) and Title VI Loan Guarantee programs. For more information on the IHBG and Title VI of NAHASDA, please see the background section of the Notice of Negotiated Rulemaking Committee Meeting published on February 22, 2010 at (75 FR 7579). The NAHASDA Reauthorization amends section 106 of NAHASDA to provide that HUD shall initiate a negotiated rulemaking in order to implement aspects of the 2008 Reauthorization Act that require rulemaking. On January 5, 2010 (75 FR 423), HUD published a **Federal Register** notice announcing the final list of members of the negotiated rulemaking committee (the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee).

II. Negotiated Rulemaking Committee Meeting

This document announces the fourth and fifth meetings of the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee. The committee meetings will take place as described in the **DATES** and **ADDRESSES** sections of this document. The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meetings, to the extent time permits, and to file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: May 24, 2010.

T. Michael Andrews,

Director, Office of Headquarters Operations, Office of Native American Programs.

[FR Doc. 2010–12972 Filed 5–27–10; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0320; FRL–9156–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for Transportation Conformity Regulations. In the Final Rules section of this **Federal Register,** EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by June 28, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0320 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0320, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0320. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Fifth Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at: *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 17, 2010.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–12928 Filed 5–27–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
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Friday, May 28, 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

Agricultural Marketing Service

[Doc. No. AMS–NOP–10–0046; NOP–10–02]

National Organic Program Request for an Extension 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 intention to request approval from the Office of Management and Budget, for an extension of the currently approved information collection National Organic Program (NOP) Record Keeping Requirements.

DATES: Comments received by July 27, 2010 will be considered.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to Toni Strother, Agricultural Marketing Specialist, National Organic Program, AMS/USDA, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268 or by Internet: *http://www.regulations.gov.* Written comments responding to this notice should be identified with the document number AMS–NOP–10–0046; NOP–10–02. It is USDA's intention to have all comments concerning this notice, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov (*http://www.regulation.gov*) Internet site. Comments submitted in response to this notice will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2624–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this notice are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Toni Strother, Agricultural Marketing Specialist, Standards Division, Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program.

OMB Number: 0581–0191.

Expiration Date of Approval: October 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The Organic Foods Production Act of 1990 (OFPA) as amended (7 U.S.C. 6501–6522) mandates that the Secretary develop a NOP to accredit eligible State program's governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in OFPA. This regulation: (1) Established national standards governing the marketing of certain agricultural products as organically produced products; (2) assures consumers that organically produced products meet a consistent standard; and (3) facilitates interstate commerce in fresh and processed food that is organically produced.

Reporting and recordkeeping are essential to the integrity of the organic certification system. They create a paper trail that is a critical element in carrying out the mandate of OFPA and NOP. They serve the AMS mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The information affects decisions because it is the basis for evaluating compliance with OFPA and NOP, for administering the program, for management decisions and planning, and for establishing the cost of the program. It supports administrative and regulatory actions in response to noncompliance with OFPA and NOP.

In general, the information collected is used by USDA, State program governing State officials, and certifying agents. It is created and submitted by State and foreign program officials, peer review panel members, accredited certifying agents, organic inspectors, certified organic producers and handlers, those seeking accreditation or certification, and parties interested in changing the National List. Additionally, it necessitates that all of these entities have procedures and space for recordkeeping.

USDA. USDA is the accrediting authority. USDA accredits domestic and foreign certifying agents who certify domestic and foreign organic producers and handlers, using information from the agents documenting their business operations and program expertise. USDA also permits States to establish their own organic certification programs after the programs are approved by the Secretary, using information from the States documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP.

States. States may operate their own organic certification programs. State officials obtain the Secretary's approval of their programs by submitting information to USDA documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP. The Secretary, or delegated representative, will review a State organic program not less than once during each 5-year period following the date of the initial program approval. To date, one State organic certification program is approved by USDA. The initial burden for each State organic certification program is an average of 40 hours or if calculated at a rate of $32 per hour (rounded up to the next dollar) $1,280. State organic certification programs require reporting and recordkeeping burdens similar to those required by the NOP. The average annual burden for States are 55 hours or if calculated at a rate of $32 per hour (rounded up to the next dollar) $1,760.

Certifying agents. Certifying agents are State, private, or foreign entities who are accredited by USDA to certify domestic and foreign producers and handlers as organic in accordance with OFPA and NOP. Each entity wanting to be an agent seeks accreditation from USDA, submitting information documenting its business operations and program expertise. Accredited agents determine if a producer or handler meets organic

requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. Initial estimates were based on 59 entities applying for accreditation (13 State certifiers, 36 private entities, 10 foreign entities). The initial burden for each State certifier was an average of 695 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,765. The initial burden for each private or foreign entity was 700 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,900. Currently, 97 certifying agents (21 State certifiers, 33 private entities, 43 foreign entities) have been accredited. The AMS anticipates receiving approximately 3 new applications per year. Accredited certifying agents submit annual updates with an annual burden, for each certifying agent, of an average of 11 hours or if calculated at a rate of $32 per hour (rounded up to the next dollar) $352.

Administrative costs for reporting, disclosure of information, and recordkeeping vary among certifying agents. Factors affecting costs include the number and size of clients, the categories of certification provided, and the type of systems maintained.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504(b)(3)). Once certified, agents have to make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501(a)(9)). The USDA charges certifying agents for the time required to do these document reviews. Audits require less time when the documents are well organized and centrally located.

Recordkeeping requirements for certifying agents are divided into three categories of records with varying retention periods: (1) Records created by certifying agents regarding applicants for certification and certified operations, maintain 10 years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations, maintain 5 years, the same as OFPA's requirement for the retention of records by certified operations; and (3) records created or received by certifying agents regarding accreditation, maintain 5 years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.5 10(b)).

Organic inspectors. Inspectors, on behalf of certifying agents, conduct on-site inspections of certified operations and operations applying for certification. They determine whether or not certification should continue or be granted and report their findings to the certifying agent. Inspectors are the agents themselves, employees of the agents, or individual contractors. We estimate that about half are certifying agents or their employees and half are individual contractors. Individuals who apply for positions as inspectors submit to the agents information documenting their qualifications to conduct such inspections. Estimates: 293 inspectors (147 certifying agents and their employees, 146 individual contractors). The annual burden for each inspector is an average of 1 hour or if calculated at $32 per hour (rounded up to the next dollar) $32.

Producers and handlers. Producers and handlers, domestic and foreign, apply to certifying agents for organic certification, submit detailed information documenting their specific practices, provide annual updates to continue their certification, and report changes in their practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who transport or transform food and include millers, bulk distributors, food manufacturers, processors, repackagers, or packers. Some handlers are part of a retail operation that processes organic products in a location other than the premises of the retail outlet.

The OFPA requires certified operators to maintain their records for 5 years. We estimate: 36,147 total operators (31,000 certified and 5,147 exempt), including 27,102 producers (22,128 certified and 4,974 exempt) and 8,705 handlers (8,532 certified and 173 exempt). The annual recordkeeping burden for each certified operator is an average of 5 hours or if calculated at $32 per hour (rounded up to the next dollar) $160.

Administrative costs for reporting and recordkeeping vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained.

Research studies have indicated that operations using product labels containing the term "organic" handle an average of 20 labels annually and that there are about 8,532 handlers with the term organic on their label. An estimate of the time needed to develop labels for products sold, labeled, or represented as "100 percent organic," "organic," "made with organic (specified ingredients)," or which use the term organic to modify an ingredient in the ingredients statement is included. Also included is the time spent deciding about use of the USDA seal, a State emblem, or the seal, logo, or other identifying marks of a private certifying agent (§§ 205.300–205.310). Because the labeling requirements are in addition to Food and Drug Administration and Food Safety and Inspection Service requirements, the burden measurement does not include the hours necessary to develop the entire label. For purposes of calculating the burden, it is estimated that each handler develops 20 labels annually. Estimates: 8,532 certified handlers. The annual burden for each certified handler is an average of 1 hour per product label times 20 product labels per handler or if calculated at a rate of $32 per hour (rounded up to the next dollar) $640.

Interested parties. Any interested party may petition the National Organic Standards Board (NOSB) for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List. Estimates: 25 interested parties may petition the NOSB. The annual burden for each interested party is an average of 104 hours or if calculated at $32 per hour (rounded up to the next dollar) $3,328.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.303 hours per response.

Respondents: Producers, handlers, certifying agents, inspectors and State, Local or Tribal governments and interested parties.

Estimated Number of Respondents: 32,600.

Estimated Number of Responses: 776,407.

Estimated Number of Responses per Respondent: 23.8.

Estimated Total Annual Burden on Respondents: 1,011,647.

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.

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: 7 U.S.C. 6501–6522.

Dated: May 24, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–12833 Filed 5–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Volunteer Application for Natural Resources Agencies

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection entitled, Volunteer Application for Natural Resources Agencies.

DATES: Comments must be received in writing on or before July 27, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Merlene Mazyck, Youth & Volunteer Programs, Forest Service, USDA, 1400 Independence Avenue, SW., Mailstop 1136, Washington, DC 20250–1136. Comments also may be submitted via e-mail to: *mmazyck@fs.fed.us.*

The public may inspect comments received at Forest Service, USDA, 1621 N. Kent Street, Rosslyn Plaza East, Room 1010, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to 703–605–4831 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Merlene Mazyck, Youth & Volunteer Programs, 202–205–0650. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Volunteer Application for Natural Resources Agencies.

OMB Number: 0596–0080.

Expiration Date of Approval: 10/31/2010.

Type of Request: Extension with Revision.

Abstract: The collected information is needed by participating natural resources agencies to manage agency volunteer programs. Information is collected from potential and selected volunteers of all ages. Those under the age of 18 years must have written consent from a parent or guardian.

Participating Agencies

The volunteer programs of the following natural resource agencies are included:

Department of Agriculture: U.S. Forest Service and Natural Resources Conservation Service;

Department of the Interior: National Park Service, Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and U.S. Geological Survey;

Department of Defense: U.S. Army Corps of Engineers;

Department of Commerce: National Oceanic and Atmospheric Administration.

Forms

OF–301 Volunteer Application: Individuals interested in volunteering may access the National Federal volunteer opportunities Web site (*http://www.volunteer.gov/gov/index.cfm*), individual agency Web sites, and/or contact agencies to request a Volunteer Application (OF–301).

Applicants provide name, address, telephone number, age, preferred work categories, available dates, preferred location, description of physical limitations, and lodging preferences. Information collected using this form assists agency volunteer coordinators and other personnel in matching volunteers with agency opportunities appropriate for an applicant's skills and physical condition and availability. Signature of a parent or guardian is mandatory for applicants under 18 years of age.

OF–301A Volunteer Agreement: This form is used by participating resource agencies to document agreements for volunteer services between a Federal agency and individual or group volunteers, including international volunteers. Signature of parent or guardian is mandatory for applicants under 18 years of age.

Forms unique to participating agencies: The forms listed below gather information necessary to reimburse volunteers for approved, miscellaneous expenses associated with volunteer assignments and record service time of volunteers.

U.S. Forest Service: FS–6500–299, Volunteers Request for Reimbursement.

U.S. Fish and Wildlife Service: Volunteer Time Sheet; SF–1164, Claim for Miscellaneous Expenses.

U.S. Geological Survey: Form 9–2080, USGS Individual Volunteer Agreement.

National Park Service: Form 10–67, Volunteer Claim for Reimbursement.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 400,000.

Estimated Annual Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 500,000 hours.

Comment is invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 24, 2010.

William E. Timko,

Acting Deputy Chief, National Forest System.

[FR Doc. 2010–12945 Filed 5–27–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0047]

Environmental Impact Statement; Determination of Nonregulated Status of Sugar Beet Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and proposed scope of study.

SUMMARY: We are advising the public that the Animal and Plant Health

Inspection Service plans to prepare an environmental impact statement in connection with a court-mandated evaluation of the potential impacts on the human environment associated with the Agency's determination of nonregulated status for a Monsanto/KWS SAAT AG sugar beet line, designated as event H7–1. This notice identifies the environmental and interrelated economic issues raised by the Court and other potential issues that we may include in the environmental impact statement and requests public comment to further delineate the scope of the issues and reasonable alternatives.

DATES: We will consider all comments that we receive on or before June 28, 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–2010–0047* to submit or view public 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–2010–0047, 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–2010–0047.

Reading Room: You may read any comments that we receive on this docket 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.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Huberty, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0485.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On October 19, 2004, APHIS published a notice in the **Federal Register** (69 FR 61466–61467, Docket No. 04–075–1) announcing receipt of a petition from Monsanto/KWS SAAT AG requesting a determination of nonregulated status under 7 CFR part 340 for sugar beet (*Beta vulgaris* ssp. *vulgaris*) designated as event H7–1, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition stated that this article should not be regulated by APHIS because it does not present a plant pest risk. APHIS also announced in that notice the availability of a draft environmental assessment (EA) for the proposed determination of nonregulated status. Following review of public comments and completion of the EA, we published another notice in the **Federal Register** on March 17, 2005 (70 FR 13007–13008, Docket No. 04–075–2), advising the public of our determination, effective March 4, 2005, that the Monsanto/KWS SAAT AG sugar beet event H7–1 was no longer considered a regulated article under APHIS regulations in 7 CFR part 340.

On September 21, 2009, the U.S. District Court for the Northern District of California issued a ruling in a lawsuit filed by two organic seed groups and two nonprofit organizations challenging our decision to deregulate sugar beet event H7–1 (referred to in the lawsuit as Roundup Ready® sugar beet), pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Administrative Procedure Act, and the Plant Protection Act. Under the provisions of NEPA, agencies must examine the potential environmental impacts of proposed Federal actions. The Court ruled that APHIS' EA failed to consider certain environmental and interrelated economic impacts. As a result, the Court stated that APHIS is required to prepare an environmental impact statement (EIS). Accordingly, APHIS plans to prepare an EIS. In doing so, APHIS will utilize as appropriate any environmental analysis provided by the Environmental Protection Agency (EPA) and other data or analysis prepared by other agencies. APHIS has requested that EPA serve as a cooperating agency. This notice identifies potential issues and reasonable alternatives that we are considering addressing, and requests public comment on the inclusion of these or related issues and alternatives in the EIS.

Management practices for organic sugar beet, conventional sugar beet, and glyphosate-tolerant sugar beet. What are the management practices and associated costs of establishing, growing, harvesting, and marketing sugar beet, including selling prices and premiums for the various types of sugar beet? What crop rotation regimes are used with sugar beet?

Production levels of organic and conventional sugar beet, Swiss chard, and table beet by region, State, and county. What is the acreage of cultivated, volunteer, or feral sugar beet? What is the acreage of Swiss chard and table beet? Which regions of the country may be affected as a result of a determination of nonregulated status for glyphosate-tolerant sugar beet? What are the potential impacts on adjacent, nonagricultural lands such as natural areas, forested lands, or transportation routes that may result from the use of glyphosate-tolerant sugar beet?

Potential impacts of glyphosate-tolerant sugar beet cultivation on livestock production systems. What are the potential impacts of glyphosate-tolerant sugar beet cultivation on conventional and organic livestock production systems?

Potential impacts on food and feed. Does glyphosate affect the socioeconomic value of food or feed or its nutritional quality? What are the impacts, if any, on food or feed socioeconomic value or its nutritional quality from the use of glyphosate?

Differences in weediness traits of conventional sugar beet versus glyphosate-tolerant sugar beet. What are the differences, if any, in weediness traits of conventional sugar beet versus glyphosate-tolerant sugar beet under managed crop production systems, as well as in unmanaged ecosystems?

Occurrence of common and serious weeds found in organic sugar beet systems, in conventional sugar beet systems, and in glyphosate-tolerant sugar beet systems. What are the impacts of weeds, herbicide-tolerant weeds, weed management practices, and unmet weed management needs for organic and conventional sugar beet cultivation? How may the weed impacts

change with the use of glyphosate-tolerant sugar beet?

Management practices for controlling weeds in organic sugar beet systems, in conventional sugar beet systems, and in glyphosate-tolerant sugar beet systems. What are the potential changes in crop rotation practices and weed management practices for control of volunteer sugar beet or herbicide-tolerant weeds in rotational crops that may occur with the use of glyphosate-tolerant sugar beet? What are the potential effects on sugar beet stand termination and renovation practices that may occur with the use of glyphosate-tolerant sugar beet?

Cumulative impact on the development of glyphosate-resistant weeds. What glyphosate-resistant weeds have been identified and what is their occurrence in crops and in non-crop ecosystems? How would the addition of glyphosate-tolerant sugar beet impact the occurrence of glyphosate-resistant weeds in sugar beet, in other crops, and in the environment? Which are the most likely weeds, if any, to gain glyphosate resistance and why would they gain such resistance with the use of glyphosate-tolerant sugar beet? What are the current and potentially effective strategies for management of glyphosate-tolerant or other herbicide-tolerant weeds in glyphosate-tolerant sugar beet stands or in subsequent crops? What are the potential changes that may occur in glyphosate-tolerant sugar beet as to susceptibility or tolerance to other herbicides?

Current or prospective herbicide-tolerant weed mitigation options. What are the potential impacts of current or prospective herbicide-tolerant weed mitigation options, including those addressed by the EPA-approved label for glyphosate herbicides?

Potential for gene flow from glyphosate-tolerant sugar beet to other Beta species, including gene flow between seed fields, root crops, and feral plants. To what extent will deregulation change hybridization between cultivated and feral sugar beet, sugar beet introgression or establishment outside of cultivated lands, and sugar beet persistence or weediness in situations where it is unwanted, unintended, or unexpected? What are the potential impacts associated with feral glyphosate-tolerant sugar beet plants? Will the removal of glyphosate-tolerant sugar beet, in situations where it is unwanted, unintended, or unexpected, result in adverse impacts? In such situations, how will glyphosate-tolerant sugar beet be controlled or managed differently from other unwanted, unintended, or unexpected sugar beet?

Economic and social impacts on organic and conventional sugar beet, Swiss chard, and table beet farmers. What are the economics of growing organic sugar beet, conventional sugar beet, or glyphosate-tolerant sugar beet as well as the economics of growing organic or conventional Swiss chard and table beet? What are the potential impacts of the presence of glyphosate-tolerant sugar beet caused by pollen movement or seed admixtures? What are the potential impacts of commingling sugar beet seed with glyphosate-tolerant sugar beet seed? What are the potential changes in the economics of growing and marketing organic and conventional sugar beet that may occur with the growing of glyphosate-tolerant sugar beet? What are the potential changes in production levels of other crops that may occur with the growing of glyphosate-tolerant sugar beet? Will the cultivation of glyphosate-tolerant sugar beet result in more or fewer acres of other crops? What are the potential changes in growing practices, management practices, and crop rotational practices in the production of sugar beet seed for planting purposes that may occur with the use of glyphosate-tolerant sugar beet? What are the potential changes in the choice of seeds available for organic and conventional sugar beet farmers that may occur with the use of glyphosate-tolerant sugar beet?

Cumulative impact of potential increased glyphosate usage with the cultivation of glyphosate-tolerant crops. What are the past, present, and future impacts of glyphosate usage on soil quality, water quality, air quality, weed populations, crop rotations, soil microorganisms, diseases, insects, soil fertility, food or feed quality, crop acreages, and crop yields as a result of the introduction of glyphosate-tolerant crops? Does the level of glyphosate tolerance within glyphosate-tolerant sugar beet plants have an impact on the amount of glyphosate applied on the glyphosate-tolerant sugar beet crop on a routine basis?

Impacts on threatened or endangered species. What are the potential impacts of glyphosate-tolerant sugar beet cultivation on listed threatened or endangered species, or on species proposed for listing? What are the potential impacts of glyphosate use on listed threatened or endangered species or species proposed for listing, including glyphosate used on glyphosate-tolerant sugar beet? What impacts does the addition of glyphosate tolerance in sugar beet cultivation have on threatened and endangered species as a result of displacing other herbicides?

Potential health impacts. What are the potential health impacts to farmers or others who would be exposed to glyphosate-tolerant sugar beet?

Can any potential negative environmental impacts of the action be mitigated and what is the likelihood that such mitigation measures will be successfully implemented and effective? What is the likely effectiveness of the stewardship measures, outlined in the petition, which are designed to reduce inadvertent gene flow to negligible levels as well as to monitor and minimize the potential development of glyphosate-tolerant weeds? Are there reasonable alternative stewardship or monitoring measures that may avoid or minimize reasonably foreseeable environmental impacts of a deregulation decision?

Impacts of the mitigation measures on coexistence with organic and conventional sugar beet production and on export markets. What are the potential impacts of mitigation measures on coexistence with organic and conventional sugar beet production and on export markets? Are there reasonable alternative measures that may avoid or minimize reasonably foreseeable impacts on organic and conventional sugar beet production and on export markets that may be associated with a deregulation decision?

Consideration of reasonable alternatives. The EIS will consider a range of reasonable alternatives. These could include continued regulation of Roundup Ready® sugar beets, deregulating Roundup Ready® sugar beets, deregulating Roundup Ready® sugar beets in part with geographic restrictions, or deregulating Roundup Ready® sugar beets in part with required separation distances from sexually compatible crops. Comments that identify other reasonable alternatives that should be examined in the EIS would be especially helpful.

Sugar beet growth, crop management, and crop utilization may vary considerably by geographic region, and therefore, when providing comments on a topic or issue, please provide relevant information on the specific locality or region in question. Additionally, we invite the participation of any affected Federal, State, or local agencies or Tribes.

All comments on this notice will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an invitation to

comment on it will be published in the **Federal Register**.

Done in Washington, DC, this 25th day of May 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–12997 Filed 5–26–10; 11:15 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kenai Peninsula-Anchorage Borough Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Kenai Peninsula-Anchorage Borough Resource Advisory Committee will convene for their first formal meeting in Portage Valley, Alaska, for the purpose of establishing the Committee through the development of bylaws, a chairperson, and a future meeting schedule, under the provisions of Title II of the Secure Rural Schools and Community Self-Determination Act of 2008 (Pub. L. 110–343).

DATES: The meeting will be held on Saturday, June 12, 2010.

ADDRESSES: The meeting will take place at the Begich Boggs Visitor's Center, 800 Portage Lake Loop, Portage, AK 99587.

Send written comments to Kenai Peninsula-Anchorage Borough Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 390, Seward, AK 99664 or electronically to *slatimer@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Travis Moseley, Designated Federal Official, c/o USDA Forest Service, P.O. Box 390, Seward, AK 99664, telephone (907) 288–7730.

SUPPLEMENTARY INFORMATION: The agenda will include background on the provisions of Title II of the Secure Rural Schools and Community Self-Determination Act of 2008 (Pub. L. 110–343) and an overview of the Federal Advisory Committee Act (FACA). In addition, the agenda will include time for the Committee to develop and adopt bylaws, a chairperson, and a future meeting schedule to discuss project proposals.

All Resource Advisory Committee Meetings are open to the public. The public input and comment forum will take place in the afternoon of June 12, 2010. Interested citizens are encouraged to attend.

Dated: May 13, 2010.

Travis Moseley,

District Ranger.

[FR Doc. 2010–12714 Filed 5–27–10; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Notice of Meeting

May 10, 2010.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 93rd meeting in Washington, DC, on June 2–3, 2010. The business session, open to the public, will convene June 3 at 8:30 a.m.

The Agenda items include:

(1) Call to order and approval of the agenda.

(2) Approval of the minutes from the 92nd meeting.

(3) Commissioners and staff reports.

(4) Discussion and presentations concerning Arctic research activities.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 2010–12712 Filed 5–27–10; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–956]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 28, 2010.

SUMMARY: The Department of Commerce ("Department") has determined that it made certain significant ministerial errors in the preliminary determination of sales at less than fair value in the antidumping duty investigation of certain seamless carbon and alloy steel standard, line, and pressure pipe ("seamless pipe") from the People's Republic of China ("PRC"). As a result, we are amending our preliminary determination to correct certain significant ministerial errors with respect to the antidumping duty margins for a mandatory respondent and for exporters eligible for a separate rate.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162.

SUPPLEMENTARY INFORMATION: On April 28, 2010, the Department published its affirmative preliminary determination in this proceeding. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 75 FR 22372 (April 28, 2010) ("*Preliminary Determination*"). On May 3, 2010, Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation (collectively "TPCO") submitted ministerial error allegations with respect to the margin calculations for TPCO in the *Preliminary Determination*, alleging certain errors in conversion, arithmetic, and surrogate value calculations. No other interested party submitted ministerial error allegations. After reviewing TPCO's allegations, we have determined that the *Preliminary Determination* contains ministerial errors. We agree that the ministerial errors are "significant" as that term is defined in 19 CFR 351.224(g). Therefore, pursuant to 19 CFR 351.224(e), we have made changes to the *Preliminary Determination.*

Scope of Investigation

The merchandise covered by this investigation is certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall–thickness, manufacturing process (*e.g.*, hot–finished or cold–drawn), end finish (*e.g.*, plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.*, bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other

than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials ("ASTM") or American Petroleum Institute ("API") specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below. Specifically excluded from the scope of the investigation are unattached couplings. The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Ministerial–Error Allegations

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. See 19 CFR 351.224(f). A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, (1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted–average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted–average dumping margin of zero or *de minimis* and a weighted–average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g).

After reviewing the ministerial error allegations submitted by TPCO in its May 3, 2010, submission, the Department agrees that some of the errors alleged by TPCO are ministerial errors within the meaning of 19 CFR 351.224(f), and that these errors are significant pursuant to 19 CFR 351.224(e). We are amending the *Preliminary Determination* to correct these ministerial errors. *See* the "Ministerial Error Memorandum, Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," dated concurrently with this **Federal Register** notice, for a discussion of the ministerial error allegations. *See also* Appendix I for a list of the ministerial error allegations.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

Amended Preliminary Determination

As a result of our correction of significant ministerial errors in the Preliminary Determination, we have determined that the following weighted–average dumping margin applies:

Tianjin Pipe International Economic and Trading Corporation Produced by:Tianjin Pipe (Group) Corporation.	22.67%
Xigang Seamless Steel Tube Co., Ltd. Produced by: Xigang Seamless Steel Tube Co., Ltd., and Wuxi Seamless Special Pipe Co., Ltd..	57.30%
Jiangyin City Changjiang Steel Pipe Co., Ltd. Produced by: Jiangyin City Changjiang Steel Pipe Co., Ltd..	57.30%
Pangang Group Chengdu Iron & Steel Co., Ltd. Produced by: Pangang Group Chengdu Iron & Steel Co., Ltd..	57.30%
Yangzhou Lontrin Steel Tube Co., Ltd. Produced by: Yangzhou Lontrin Steel Tube Co., Ltd..	57.30%
Yangzhou Chengde Steel Tube Co., Ltd. Produced by: Yangzhou Chengde Steel Tube Co., Ltd..	57.30%

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission ("ITC") of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: May 21, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issue 1: Whether the Department correctly added freight costs to the surrogate value for water.

Issue 2: Whether the Department correctly deducted the value of by–products from the calculation of the normal value.

Issue 3: Whether the Department correctly added rail freight to the value of ferromanganese.

Issue 4: Whether the Department correctly applied the appropriate price corresponding to the type of blast furnace pellets used by TPCO.

Issue 5: Whether the Department used the correct currency conversion for the inputs of EMAG, TEFRRO, MCARBON, and LCFERRO.

Issue 6: Whether the Department correctly valued steel billets.

Issue 7: Whether the Department's calculations correctly considered the weight of the green pipe caps.
Issue 8: Whether the Department should adjust the adverse facts available rate applied to TPCO's U.S. affiliate's downstream sales.

[FR Doc. 2010–12960 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2010]

Foreign-Trade Zone 3—San Francisco, CA; Application for Reorganization under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the San Francisco Port Commission, grantee of FTZ 3, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 21, 2010.

FTZ 3 was approved by the Board on March 10, 1948 (Board Order 12, 13 FR 1459, 3/19/48) and the boundaries were modified on July 31, 1950 (Board Order 25, 15 FR 1653, 9/8/50) and on December 20, 1956 (Board Order 43, 21 FR 10434, 12/28/56). FTZ 3 was relocated on May 5, 1958 (Board Order 46, 23 FR 3277, 5/14/58), an extension of the relocation granted May 5, 1965 (Board Order 66, 30 FR 6596, 5/13/65) and the zone was relocated again on July 13, 1977 (Board Order 121, 42 FR 38942, 8/1/77). FTZ 3 was expanded on November 21, 2000 (Board Order 1129, 65 FR 76217, 12/6/00).

The current zone project includes the following sites: Site 1 (5.82 acres)—Pier 19, Pier 23, Pier 50 and Pier 80 port facilities on the Embarcadero, San Francisco; *Site 2* (42.50 acres)—San Francisco International Airport jet-fuel storage and distribution system, which consists of the airport hydrant and storage facilities, two adjacent off-airport terminals, a pipeline and two off-site terminals and related pipelines in Brisbane and South San Francisco; *Site 3* (55 acres)—Selby Terminal petroleum facilities, 90 San Pablo Avenue, Crockett; and, *Site 4* (164 acres)—Martinez Terminal petroleum facilities, 2801 Waterfront Road, Martinez.

The grantee's proposed service area under the ASF would be the City and County of San Francisco and the County of San Mateo, California, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the San Francisco Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing sites 2, 3 and 4 as "usage-driven" sites. The applicant is also requesting authority to remove Site 1 from the zone project due to changed circumstances. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 3's authorized subzones.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 27, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 11, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: May 21, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12957 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before June 17, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–010. *Applicant:* University of Maine System, 16 Central St., Bangor, ME 04401. *Instrument:* Live Color Cathodoluminescence detector accessory for Scanning Electron Microscope. *Manufacturer:* Gatan, UK. *Intended Use:* The instrument will be used to study the morphology and microstructure of primarily geological but also some archaeological and biological materials. Techniques include imaging using three components of light (red, green, blue) split from a panchromatic signal induced in the sample by an incident electron beam inside an SEM. This instrument offers live color detectors, *i.e.,* panchromatic cathodoluminescence detectors in which the intensity of the light across the entire visible spectrum is measured. *Justification for Duty-Free Entry:* There are no domestic manufacturers of this instrument. *Application accepted by Commissioner of Customs:* April 27, 2010.

Docket Number: 10–011. *Applicant:* Washington University in St. Louis, Purchasing Dept., 1 Brookings Drive, Campus Box 1069, St. Louis, MO 63130. *Instrument:* Electron Microscope. *Manufacturer:* Japanese Electron-Optics, Limited (JEOL), Japan. *Intended Use:* This instrument will be used to study a complete range of medically relevant cells, tissues, and molecules and understand the molecular and cellular basis of a wide range of human diseases. The instrument allows for techniques including advanced forms of biological specimen preparation, as well as more classical procedures for fixation,

dehydration, plastic embedding and thin-sectioning of biological materials. *Justification for Duty-Free Entry:* No instruments of same general category are manufactured in the United States. *Application accepted by Commissioner of Customs:* April 30, 2010.

Docket Number: 10–012. *Applicant:* California Institute of Technology, 1200 E. California Blvd., M/C 127–72, Pasadena, CA 91125. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to improve researchers' understanding of the structural dynamics of materials like graphite, as well as ultrafast structural changes over time in microscopy. Techniques used with the instrument include imaging, both in real space and using diffraction. Imaging is done using light as opposed to thermal heating or field ionization. *Justification for Duty-Free Entry:* There are no domestic manufacturers of this type of electron microscope. *Application accepted by Commissioner of Customs:* May 5, 2010.

Docket Number: 10–013. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Road, Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to examine portions of vertebrate and invertebrate organisms embedded in plastic resins and cut into thin sections mounted on support grids for examination. The objective is to examine, at high resolution, the ultrastructural organization of complex biological structures to help elucidate function. The instrument can be used for 2D and 3D imaging of stained or even unstained, low-contrast samples. The instrument also allows for observation and analyses of samples at both room and liquid-nitrogen temperature. *Justification for Duty-Free Entry:* There are no domestic manufacturers of this type of electron microscope. *Application accepted by Commissioner of Customs:* May 12, 2010.

Docket Number: 10–014. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Road, Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to examine portions of vertebrate and invertebrate organisms embedded in plastic resins and cut into thin sections mounted on support grids for examination. The objective is to examine, at high resolution, the ultrastructural organization of complex biological structures to help elucidate function. The instrument can be used for 2D and 3D imaging of stained or even unstained, low-contrast samples. The instrument also allows for observation and analyses of samples at both room and liquid-nitrogen temperature. *Justification for Duty-Free Entry:* There are no domestic manufacturers of this type of electron microscope. *Application accepted by Commissioner of Customs:* May 14, 2010.

Docket Number: 10–016. *Applicant:* United States Geological Survey, 6th Ave. & Kipling St., P.O. Box 25046, MS973, Denver Federal Center, Building 20, Denver, CO 80225. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for the microanalysis of rocks, minerals and other particulate matter. Analyses of the morphology, surface textures, grain boundaries, and other properties of the materials investigated include the use of chemical composition and crystallographic orientation and strain. The low vacuum and low voltage features of the instrument allows for the viewing of hydrated and un-coated samples with minimal sample degradation or alteration. The advantage of this instrument is that it can operate at high vacuum and high acceleration voltages as well as atmospheric pressures and/or low accelerating voltages while still maintaining high resolution and high beam currents. *Justification for Duty-Free Entry:* There are no domestic manufacturers of this type of electron microscope. *Application accepted by Commissioner of Customs:* May 18, 2010.

Docket Number: 10–017. *Applicant:* University of Massachusetts Medical School, Department of Cell Biology, Rm. S7–210, 55 Lake Avenue North, Worcester, MA 01655. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will enable the study of tissue cell structures at high resolution, the recording of images on the Eagle CCD camera, and the observation of cryo-fixed specimens at low temperatures. Justification for *Duty-Free Entry:* There are no domestic manufacturers of this type of electron microscope. *Application accepted by Commissioner of Customs:* May 12, 2010.

Docket Number: 10–018. *Applicant:* Texas Tech University, Department of Mechanical Engineering, 7th Street and Boston Ave., Lubbock, TX 79409–1021. *Instrument:* Electron Microscope. *Manufacturer:* Japanese Electron-Optics, Limited (JEOL), Japan. *Intended Use:* The instrument will be used to probe the crystalline structure of materials at a magnification beyond that required to image dislocation behavior of fully crystalline nanostructured metals. The instrument will provide detailed surface structures and faceting information. *Justification for Duty-Free Entry:* No instruments of same general category are manufactured in the United States. *Application accepted by Commissioner of Customs:* May 17, 2010.

Docket Number: 10–020. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Road, Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to examine portions of vertebrate and invertebrate organisms embedded in plastic resins and cut into thin sections mounted on support grids for examination. The objective is to examine, at high resolution, the ultrastructural organization of complex biological structures to help elucidate function. The instrument can be used for 2D and 3D imaging of stained or even unstained, low-contrast samples. The instrument also allows for observation and analyses of samples at both room and liquid-nitrogen temperature. *Justification for Duty-Free Entry:* There are no domestic manufacturers of this type of electron microscope. *Application accepted by Commissioner of Customs:* May 12, 2010.

Dated: May 24, 2010.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–12962 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1679]

Expansion of Foreign-Trade Zone 272; Lehigh Valley, Pennsylvania

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Lehigh Valley Economic Development Corporation, grantee of Foreign-Trade Zone 272, submitted an application to the Board for authority to expand FTZ 272 to include a site in Bethlehem, Pennsylvania, adjacent to the Philadelphia Customs and Border Protection port of entry (FTZ Docket 37–2009, filed 9/9/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 47920–47921, September 18, 2009) and the application

has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 272 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on May 31, 2017 for Site 9 if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 13th day of May 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12958 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Certain Cut–to–Length Carbon–Quality Steel Plate Products From Italy: Extension of the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate products from Italy. *See Certain Cut–to–Length Carbon-Quality Steel Plate Products From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 4779 (January 29, 2010). The review covers the period February 1, 2008, through January 31, 2009. The final results of this administrative review were originally due no later than May 29, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, the deadline for the final results of this administrative review has been extended by seven days, until June 5, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results up to 180 days after the date on which the preliminary results are published.

The Department finds that it is not practicable to complete this review by June 5, 2010, because the Department requires additional time to consider the extensive comments submitted by the interested parties in relation to the preliminary results of this review. Consequently, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the final results of this administrative review by 60 days to August 4, 2010.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: May 20, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12963 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates.

Change to the Deadlines for No-Shipment Letters and Separate Rate Certifications

Effective with this **Federal Register** notice, the Department is changing the deadline for submission of No-Shipment Letters and Separate Rate Certifications from 30-days after initiation to 60-days after initiation, as indicated in the relevant sections of this **Federal Register** notice. The Department requires that a company under review, which currently has a separate rate, submit either a No-Shipment Letter or a Separate Rate Certification, as relevant to the company's situation, as described in the relevant sections of this **Federal Register** notice, below. If a company under review that currently has a separate rate fails to submit either a No-Shipment Letter, a Separate Rate Certification, or a Separate Rate Application (as appropriate) for this POR, the company will not have demonstrated its eligibility to retain its separate rate status and will be considered to be part of the China-wide entity for purposes of this administrative review. The Department's practice remains unchanged for companies that do not

have a separate rate, *i.e.,* a separate rate application is due 60-days after initiation.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter named in this initiation notice had no exports, sales, or entries during the POR, it must notify the Department within 60 days of publication of this notice in the **Federal Register.** The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2011.

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products,[3] A–351–828	3/1/09–2/28/10
Usinas Siderurgicas de Minas Gerais, S.A. (Usiminas)	
France: Sorbitol, A–427–001.	
Syral, S.A.S.	4/1/09–3/31/10
India: 1–Hydroxyethylidene-1, 1–Diphosphonic Acid (HEDP), A–533–847	4/23/09–3/31/10
Aquapharm Chemicals Pvt., Ltd.	
Russia: Magnesium Metal, A–821–819	4/1/09–3/31/10
PSC VSMPO–AVISMA Corporation	
Solikamsk Magnesium Works	
The People's Republic of China: Certain Activated Carbon,[4 5] A–570–904	4/1/09–3/31/10
AmeriAsia Advanced Activated Carbon Products Co., Ltd.	
Anhui Handfull International Trading (Group) Co., Ltd.	
Anhui Hengyuan Trade Co., Ltd.	
Anyang Sino-Shon International Trading Co., Ltd.	
Baoding Activated Carbon Factory	
Beijing Broad Activated Carbon Co., Ltd.	
Beijing Haijian Jiechang Environmental Protection Chemicals	
Beijing Hibridge Trading Co., Ltd.	
Beijing Pacific Activated Carbon Products Co., Ltd.	
Benbu Jiutong Trade Co., Ltd.	
Calgon Carbon (Tianjin) Co., Ltd.	
Changji Hongke Activated Carbon Co., Ltd.	
Chengde Jiayu Activated Carbon Factory	
Cherishmet Incorporated	
China National Building Materials and Equipment Import and Export Corp.	
China National Nuclear General Company Ningxia Activated Carbon Factory	
China Nuclear Ningxia Activated Carbon Plant	
Da Neng Zheng Da Activated Carbon Co., Ltd.	
Datong Carbon Corporation	
Datong Changtai Activated Carbon Co., Ltd.	
Datong City Zouyun County Activated Carbon Co., Ltd.	
Datong Fenghua Activated Carbon	
Datong Forward Activated Carbon Co., Ltd.	
Datong Fuping Activated Carbon Co., Ltd.	
Datong Guanghua Activated Carbon Co., Ltd.	
Datong Hongtai Activated Carbon Co., Ltd.	
Datong Huanqing Activated Carbon Co., Ltd.	
Datong Huaxin Activated Carbon	
Datong Huibao Active Carbon Co., Ltd.	
Datong Huibao Activated Carbon Co., Ltd.	
Datong Huiyuan Cooperative Activated Carbon Plant	
Datong Juqiang Activated Carbon Co., Ltd.	
Datong Kaneng Carbon Co. Ltd.	
Datong Locomotive Coal & Chemicals Co., Ltd.	
Datong Municipal Yunguang Activated Carbon Co., Ltd.	
Datong Tianzhao Activated Carbon Co., Ltd.	
DaTong Tri-Star & Power Carbon Plant	
Datong Weidu Activated Carbon Co., Ltd.	
Datong Xuanyang Activated Carbon Co. Ltd.	
Datong Yunguang Chemicals Plant	
Datong Zuoyun Biyun Activated Carbon Co., Ltd.	
Datong Zuoyun Fu Ping Activated Carbon Co., Ltd.	
Dezhou Jiayu Activated Carbon Factory	
Dongguan Baofu Activated Carbon	
Dongguan SYS Hitek Co., Ltd.	
Dushanzi Chemical Factory	
Fu Yuan Activated Carbon Co., Ltd.	
Fujian Jianyang Carbon Plant	
Fujian Nanping Yuanli Activated Carbon Co., Ltd.	
Fujian Yuanli Active Carbon Co., Ltd.	
Fuzhou Taking Chemical	
Fuzhou Yihuan Carbon	
Great Bright Industrial	
Hangzhou Hengxing Activated Carbon	
Hangzhou Hengxing Activated Carbon Co., Ltd.	
Hangzhou Linan Tianbo Material (HSLATB)	
Hangzhou Nature Technology	
Hebei Foreign Trade and Advertising Corporation	
Hebei Shenglun Import & Export Group Company	
Hegongye Ninxia Activated Carbon Factory	
Heilongjiang Provincial Hechang Import & Export Co., Ltd.	
Hongke Activated Carbon Co., Ltd.	

	Period to be reviewed
Huaibei Environment Protection Material Plant	
Huairen Jinbei Chemical Co., Ltd.	
Huairen Huanyi Purification Material Co., Ltd.	
Huaiyushan Activated Carbon Group	
Huatai Activated Carbon	
Huzhou Zhonglin Activated Carbon	
Inner Mongolia Taixi Coal Chemical Industry Limited Company	
Itigi Corp. Ltd.	
J&D Activated Carbon Filter Co., Ltd.	
Jacobi Carbons AB	
Jiangle County Xinhua Activated Carbon Co., Ltd.	
Jiangsu Taixing Yixin Activated Carbon Technology Co., Ltd.	
Jiangxi Hansom Import Export Co.	
Jiangxi Huaiyushan Activated Carbon	
Jiangxi Huaiyushan Activated Carbon Group Co.	
Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd.	
Jiangxi Jinma Carbon	
Jianou Zhixing Activated Carbon	
Jiaocheng Xinxin Purification Material Co., Ltd.	
Jilin Bright Future Chemicals Company, Ltd.	
Jilin Province Bright Future Industry and Commerce Co., Ltd.	
Jing Mao (Dongguan) Activated Carbon Co., Ltd.	
Kaihua Xingda Chemical Co., Ltd.	
Kemflo (Nanjing) Environmental Tech	
Keyun Shipping (Tianjin) Agency Co., Ltd.	
Kunshan Actview Carbon Technology Co., Ltd.	
Langfang Winfield Filtration Co.	
Link Link Shipping Limited	
Longyan Wanan Activated Carbon	
Mindong Lianyi Group	
Nanjing Mulinsen Charcoal	
Nantong Ameriasia Advanced Activated Carbon Product Co., Ltd.	
Ningxia Baota Active Carbon Plant	
Ningxia Baota Activated Carbon Co., Ltd.	
Ningxia Blue-White-Black Activated Carbon (BWB)	
Ningxia Fengyuan Activated Carbon Co., Ltd.	
Ningxia Guanghua A/C Co., Ltd.	
Ningxia Guanghua Activated Carbon Co., Ltd.	
Ningxia Guanghua Chemical Activated Carbon Co., Ltd.	
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	
Ningxia Haoqing Activated Carbon Co., Ltd.	
Ningxia Henghui Activated Carbon	
Ningxia Honghua Carbon Industrial Corporation	
Ningxia Huahui Activated Carbon Co., Ltd.	
Ningxia Huinong Xingsheng Activated Carbon Co., Ltd.	
Ningxia Jirui Activated Carbon	
Ningxia Lingzhou Foreign Trade Co., Ltd.	
Ningxia Luyuangheng Activated Carbon Co., Ltd.	
Ningxia Mineral & Chemical Limited	
Ningxia Pingluo County Yaofu Activated Carbon Plant	
Ningxia Pingluo County Yaofu Activated Carbon Factory	
Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd.	
Ningxia Pingluo Yaofu Activated Carbon Factory	
Ningxia Taixi Activated Carbon	
Ningxia Tianfu Activated Carbon Co., Ltd.	
Ningxia Tongfu Coking Co., Ltd.	
Ningxia Weining Active Carbon Co., Ltd.	
Ningxia Xingsheng Coal and Active Carbon Co., Ltd.	
Ningxia Xingsheng Coke and Activated Carbon Co., Ltd.	
Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd.	
Ningxia Yirong Alloy Iron Co., Ltd.	
Ningxia Zhengyuan Activated	
Nuclear Ningxia Activated Carbon Co., Ltd.	
OEC Logistic Qingdao Co., Ltd.	
Panshan Import and Export Corporation	
Pingluo Xuanzhong Activated Carbon Co., Ltd.	
Pingluo Yu Yang Activated Carbon Co., Ltd.	
Shanghai Activated Carbon Co. Ltd.	
Shanghai Coking and Chemical Corporation	
Shanghai Goldenbridge International	
Shanghai Jiayu International Trading (Dezhou Jiayu and Chengde Jiayu)	
Shanghai Jinhu Activated Carbon (Xingan Shenxin and Jiangle Xinhua)	
Shanghai Light Industry and Textile Import & Export Co., Ltd.	

	Period to be reviewed
Shanghai Mebao Activated Carbon	
Shanhai Xingchang Activated Carbon	
Shanxi Blue Sky Purification Material Co., Ltd.	
Shanxi Carbon Industry Co., Ltd.	
Shanxi Dapu International Trade Co., Ltd.	
Shanxi DMD Corporation	
Shanxi Industry Technology Trading Co., Ltd.	
Shanxi Newtime Co., Ltd.	
Shanxi Qixian Foreign Trade Corporation	
Shanxi Qixian Hongkai Active Carbon Goods	
Shanxi Sincere Industrial Co., Ltd.	
Shanxi Supply and Marketing Cooperative	
Shanxi Tianli Ruihai Enterprise Co.	
Shanxi Xiaoyi Huanyu Chemicals Co., Ltd.	
Shanxi Xinhua Activated Carbon Co., Ltd.	
Shanxi Xinhua Chemical Co., Ltd. (formerly Shanxi Xinhua Chemical Factory)	
Shanxi Xinhua Protective Equipment	
Shanxi Xinshidai Import Export Co., Ltd.	
Shanxi Xuanzhong Chemical Industry Co., Ltd.	
Shanxi Zuoyun Yunpeng Coal Chemistry	
Shenzhen Sihaiweilong Technology Co.	
Sincere Carbon Industrial Co., Ltd.	
Sinoacarbon International Trading Co., Ltd.	
Taining Jinhu Carbon	
Tangshan Solid Carbon Co., Ltd.	
Tianchang (Tianjin) Activated Carbon	
Tianjin Century Promote International Trade Co., Ltd.	
Tianjin Jacobi International Trading Co. Ltd.	
Tianjin Maijin Industries Co., Ltd.	
Taiyuan Hengxinda Trade Co., Ltd.	
Tonghua Bright Future Activated Carbon Plant	
Tonghua Xinpeng Activated Carbon Factory	
Triple Eagle Container Line	
Uniclear New-Material Co., Ltd.	
United Manufacturing International (Beijing) Ltd.	
Valqua Seal Products (Shanghai) Co.	
VitaPac (HK) Industrial Ltd.	
Wellink Chemical Industry	
Xi Li Activated Carbon Co., Ltd.	
Xi'an Shuntong International Trade & Industrials Co., Ltd.	
Xiamen All Carbon Corporation	
Xingan County Shenxin Activated Carbon Factory	
Xinhua Chemical Company Ltd.	
Xuanzhong Chemical Industry	
Yangyuan Hengchang Active Carbon	
Yicheng Logistics	
Yinchuan Lanqiya Activated Carbon Co., Ltd.	
Zhejiang Quizhou Zhongsen Carbon	
Zhejiang Xingda Activated Carbon Co., Ltd.	
Zhejiang Yun He Tang Co., Ltd.	
Zhuxi Activated Carbon	
Zuoyun Bright Future Activated Carbon Plant	
The People's Republic of China: Certain Steel Threaded Rod,[6] A–570–932	10/8/08–3/31/10
Advanced Hardware Company	
Anhui Ningguo Zhongding Sealing Co. Ltd.	
Autocraft Industrial (Shanghai) Ltd.	
Beijing Peace Seasky International	
Billion Land Ltd.	
Century Distribution Systems	
Certified Products International Inc.	
China Jiangsu International Economic Technical Cooperation Corporation	
Dalian Americh International Trading Co., Ltd.	
Dalian Fortune Machinery Co., Ltd.	
Dalian Harada Industry Co., Ltd.	
EC International (Nantong) Co. Ltd.	
Ever Industries Co.	
Fastwell Industry Co. Ltd.	
Gem-Year Industrial Co., Ltd.	
Haining Light Industry Trade Co. Ltd.	
Haiyan County No. 1 Fasteners Factory (Hu-Hang Company)	
Haiyan Dayu Fasteners Co., Ltd.	
Haiyan Feihua Fasteners Co. Ltd.	
Haiyan Haiyu Hardware Co. Ltd.	

	Period to be reviewed
Haiyan Julong Standard Part Co., Ltd.	
Haiyan Lianxiang Hardware Products	
Haiyan Sanhuan Import & Export Co.	
Haiyan Xiyue Electrical Appliances Co., Ltd.	
Haiyan Yida Fastener Co. Ltd.	
Handsun Industry General Co.	
Hangshou Daton Wind Power	
Hangshou Huayan Imp. and Exp. Co. Ltd.	
Hangzhou Everbright Imp & Exp Co. Ltd.	
Hangzhou Grand Imp. & Exp. Co., Ltd.	
Hangzhou Robinson Trading Co. Ltd.	
HD Supply Shanghai Distribution Center	
Hebei Richylin Trading Co Ltd.	
Honghua International Co. Ltd.	
Jiangsu Changzhou International	
Jiangsu Soho International Group Corp.	
Jiangsu Yanfei Special Steel Products	
Jiangxi Yuexin Standard Part Co. Ltd.	
Jiashan Lisan Metal Products Co. Ltd.	
Jiashan Zhongsheng Metal Products Co., Ltd.	
Jiaxing Brother Fastener Co., Ltd., IFI & Morgan Ltd. and RMB Fasteners Ltd.	
Jiaxing Pacific Trading Co. Ltd.	
Jiaxing Tsr Hardware Inc.	
Jiaxing Wonper Imp. & Exp. Co. Ltd.	
Jiaxing Xinyue Standard Part Co., Ltd.	
JS Fasteners Co. Ltd.	
Jun Valve Junshan Co. Ltd.	
Kewell Products Corporation	
Lanba Fasteners Co. Ltd.	
Nantong Harlan Machinery Co. Ltd.	
Ningbiao Bolts & Nuts Manufacturing Co.	
Ningbo ABC Fasteners Co. Ltd.	
Ningbo Beilun Fastening Co. Ltd.	
Ningbo Beilun Longsheng	
Ningbo Daxie Chuofeng Industrial Development Co., Ltd.	
Ningbo Etdz Holding Ltd.	
Ningbo Fengya Imp. & Exp. Co. Ltd.	
Ningbo Fourway Co. Ltd.	
Ningbo Haishu Wit Imp. & Exp. Co. Ltd.	
Ningbo Haobo Commerce Co. Ltd.	
Ningbo Jiansheng Metal Products Co.	
Ningbo Shareway Import and Export Co. Ltd.	
Ningbo Weiye Co.	
Ningbo Xinyang Weiye	
Ningbo Yinzhou Foreign Trade Co. Ltd.	
Ningbo Yonggang Fastener Co. Ltd.	
Ningbo Zhenghai Yongding Fastener Co.	
Ningbo Zhengyu Fasteners Co., Ltd.	
Ningbo Zhongbin Fastener Mfg. Co. Ltd.	
Ningbo Zhongjiang High Strength	
Ningbo Zhongjiang Petroleum Pipes & Machinery Co. Ltd.	
Orient International Enterprise Ltd.	
Penglai City Bohai Hardware Tool Co. Ltd.	
Pennengineering Automotive Fastener	
Pinghu City Zhapu Screw Cap	
Qingdao H.R. International Trading Co.	
Qingdao Hengfeng Development Trade	
Qingdao Huaqing Imp. and Exp. Co. Ltd.	
Qingdao Morning Bright Trading	
Qingdao Uni-trend Int'l Ltd.	
Roberts Co.	
R-union Enterprise Co. Ltd.	
Shaanxi Shcceed Trading Co. Ltd.	
Shanghai Foreign Trade Enterprises Pudong Co. Ltd.	
Shanghai Huiyi International Trade	
Shanghai Jiading Foreign Trade Co. Ltd.	
Shanghai Overseas International Trading Co. Ltd.	
Shanghai Prime Machinery Co. Ltd.	
Shanghai Recky International Trading Co., Ltd.	
Shanghai Shangdian Washer Co.	
Shanghai Shenguang High Strength Bolts Co. Ltd.	
Shanghai Sunrise International Co.	
Shanghai Tianying Metal Parts Co. Ltd.	

	Period to be reviewed
Shanghai Wisechain Fastener Ltd.	
Shanghai Xianglong International Trading Co., Ltd. (Wangzhai Group)	
Shanghai Xiangrong International Trading Co., Ltd.	
Shenzhen Texinlong Trading Co.	
Shenzhen Xiguan Trading Ltd.	
Suntec Industries Co., Ltd.	
Suzhou Textile Silk Co. Ltd.	
Synercomp China Co. Ltd.	
T and C Fastener Co. Ltd.	
T and L Industry Co. Ltd.	
T&S Technology LLC	
Tong Ming Enterprise	
Tri-Star Trading Co. (Hong Kong)	
Unimax International Ltd.	
Wujiang Foreign Trade Corporation	
Wuxi Zontai International	
Yancheng Sanwei Imp. & Exp. Co. Ltd.	
Yi Chi Hsiung Ind. Corp.	
Yixunda Industrial Products Supply	
Yueyun Imp & Exp Co. Ltd.	
Yuyao Nanshan Development Co. Ltd.	
Zhapu Creative Standard Parts Material Co., Ltd.	
Zhejiang Guorui Industry Co., Ltd.	
Zhejiang Hailiang Co. Ltd.	
Zhejiang Huamao International Co. Ltd.	
Zhejiang Laibao Hardware Co. Ltd.	
Zhejiang Machinery & Equipment Co. Ltd.	
Zhejiang Minmetals Sanhe Import & Export Co. Ltd.	
Zhejiang Morgan Brother	
Zhejiang New Oriental Fastener Co., Ltd.	
Zhejiang Peace Industry and Trading	
Zhejiang Xingxing Optoelectron	
Zhejiang Zhenglian Corp.	
The People's Republic of China: Frontseating Service Valves,[7] A–570–933	10/22/08–3/31/10
AMTEK/CAG Inc.	
Anhui Technology Imp Exp Co., Ltd.	
Anhui Yingliu Casting Industrial Co.	
Anhui Yingliu Electromechanical Co.	
Ningbo Weitao Electrical Appliance Co., Ltd.	
Atico International (Asia) Ltd.	
Beijing KJL Int'l Cargo Agent Co., Ltd.	
Bergstrom China Group	
Bowen Casting Co Ltd	
Broad–Ocean Motor (Hong Kong) Co., Ltd.	
C.H. Robinson Worldwide Logistics (Dalian) Co., Ltd.	
Catic Fujian Co., Ltd.	
Ceiec International Electronics Service Company	
Changzhou Ranco Reversing Valve Co., Ltd.	
Changzhou Regal-Beloit Motor Co., Ltd.	
Chian International Electronics A	
China National Building Materials & Equipment Imp & Exp Corp	
Chongqing Jianshe Automobile	
Zhonghuan Mach. Factory	
CPI Motor Co.	
Dongyou International Co., Ltd.	
Egelhof Regelungstechnik (Suzhou)	
Fujitsui General (Shanghai) Co., Ltd.	
Gamela Enterprise Co Ltd	
GD Midea Air-Conditioning Equipment Co Ltd.	
Global PMX Co. Ltd	
Globe Express Services-NGB	
Grace Meng	
Guangdong Sanyo Air Conditioner Co., Ltd.	
Guangzhou Lai-Long Co, Ltd	
Hang Ji Industries International Co	
Hangzhou Chunjiang Valve Corporation	
Headwin Logistics Co., Ltd.	
Higher Hardware Co., Limited	
Jiangsu Wei Xi Group Co.	
Jiashan Sinhai Precision Casting Co., Ltd.	
Leyuan Kuo Enterprise Co Ltd	
LHMW Investment Corporation	
Long Quan Heng Feng Auto Air Accessories Co., Ltd.	

	Period to be reviewed
Long Term Elec Co. Ltd	
Nantong Bochuang Fine Ceramic Co. Ltd.	
Netmotor (Mfg.) Ltd.	
New Centurion Import Export Ltd.	
Ningbo Chindr Industry Co., Ltd.	
Ningbo Gime Bicycle Co. Ltd.	
Ningbo IDC Int'l Trading Co., Ltd	
Ningbo Kaiyuan Shipping Co., Ltd.	
Ningbo ND Imp. Exp Co., Ltd.	
Ningbo Riyue Refri. Equip. Co., Ltd.	
Ningbo Silvertie Foreign Economic Trading Corp.	
Ningbo Waywell International Co., Ltd.	
Ningbo Yinzhou Along Imp Exp Co.	
On Time Taiwan Ltd.	
Orient Refrigeration Group Ltd.	
Pan Pacific Express Corp.	
Promac Intl Corp. No 35	
Shanghai Haitai Precision Machine Co., Ltd.	
Shanghai Highly Group Trading Co., Ltd.	
Shanghai Huan Long Im Ex Co. Ltd.	
Shanghai Jing HE Worked Trade Ltd.	
Shanghai Research Institute OF	
Shanghai Sitico International Trading Co.	
Shanghai Velle Automobile Air	
Shenyang Henyi Enterprise Co., Ltd.	
Shenzhen Heg Import and Export Co., ltd.	
Shenzhen Pacific-Net Logistics, Ltd.	
Summit International Logistics, Ltd.	
Suzhou KF Valve Co., Ltd.	
Suzhou Samsung Electronic Co., Ltd.	
Taizhou Boxin Imp Exp Co., Ltd.	
Taizhou Chen's Copper Co., Ltd.	
Taizhou DBW Metal Pipe Fittings Co., Ltd.	
Traffic Tech International Freight	
Tyconalloy Ind (Shenzhen) Co., Ltd.	
Uniauto Co., Ltd.	
Uniauto International Limited	
Uniauto International Ltd.	
Uniauto Intl Ltd	
WDI (Xiamen) Technology Inc.	
Weiss-Rohlig China Co., Ltd.	
Wudi County Import and Export Corp.	
Xiamen Chengeng Auto Parts Supplier Co., Ltd.	
Yancheng H&M Pressure Valve	
York International (Northern Asia) Ltd.	
Yuyao Dianbo Machinery Co., Ltd.	
Yuyao Shule Air Conditioning Equipment Co., Ltd.	
Yuyao Smart Mold Plastic Co Ltd	
Zhejiang Delisai Air Conditioner Co., Ltd.	
Zhejiang Dunan Hetian Metal Co., Ltd.	
Zhejiang Friendship Valve Co., Ltd.	
Zhejiang Pinghu Foreign Trade	
Zhejiang Sanhua Climate and Appliance Controls Group Co., Ltd.	
Zhejiang Sanhua Co., Ltd.	
Zhejiang Sanrong Refrigeration	
Zhejiang Tongxiang	
Zhejiang Yili Automobile Air Condition Co., Ltd.	
Zhejiang Yilida Ventilator Co., Ltd.	
The People's Republic of China: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid[8] (HEDP), A–570–934	4/23/09–3/31/10
Changzhou Wujin Fine Chemical Factory Co., Ltd.	
Jiangsu Jianghai Chemical Group Co., Ltd.	
The People's Republic of China: Magnesium Metal,[9] A–570–896	4/1/09–3/31/10
Tianjin Magnesium International Co., Ltd.	
The People's Republic of China: Non-Malleable Cast Iron Pipe Fittings,[10] A–570–875	4/1/09–3/31/10
NEP Tianjin Machinery Company	
The People's Republic of China: Uncovered Innersprings Units,[11] A–570–928	8/6/08–1/31/10

[3] In the initiation notice that published on April 27, 2010 (75 FR 22108), the full case name for the above referenced case was not listed. The correct case name is listed above. Also in the same notice, the company Usinas Siderurgicas de Minas Gerais, S.A. (Usiminas) was incorrectly initiated as Usiminas Siderurgicas de Minas Gerais, S.A. (Usiminas). The correct spelling of the company name is listed above.

Continued

Countervailing Duty Proceeding

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v.*United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 25, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13049 Filed 5–27–10; 8:45 am]

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[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Activated Carbon from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] Petitioners, Calgon Carbon Corporation and Norit Americans Inc., also requested a review of fifteen additional companies, but were unable to provide addresses for these companies. We are still considering the appropriateness of initiating a review on these fifteen companies. Therefore, at this time, we are not initiating a review with respect to the following companies: Actview Carbon Technology Co., Ltd.; Alashan Yongtai Activated Carbon Co., Ltd.; Beijing Huapeng Environment Protection Materials; Datong Kangda Activated Carbon Factory; Datong Runmei Activated Carbon Factory; Fangyuan Carbonization Co., Ltd.; Huaxin Active Carbon Plant; Jilin Goodwill Activated Carbon Plant; Kaihua Xinghua Chemical Plant; Xingtai Coal Chemical Co., Ltd.; Xinyuan Carbon; Yinyuan Carbon; Yuanguang Activated Carbon Co., Ltd.; YunGuan Chemical Factory; and, Yuyang Activated Carbon Co., Ltd.

[6] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Steel Threaded Rod from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above named companies does not qualify for a separate rate, all other exporters of Fronseating Service Valves from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above named companies does not qualify for a separate rate, all other exporters of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] If the above named company does not qualify for a separate rate, all other exporters of Magnesium Metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[10] If the above named company does not qualify for a separate rate, all other exporters of non-malleable cast iron pipe fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[11] In the initiation notice that published on March 30, 2010 (75 FR 15679), the review period for the above referenced case was incorrect. The period listed above is the correct period of review for this case.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU10

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

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

ACTION: Notice.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS hereby issues a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals of the Central North Pacific (CNP) stock of endangered humpback whales by the Hawaii-based longline fisheries (deep-set and shallow-set). This authorization is based on determinations that mortality and serious injury of humpback whales incidental to commercial fishing will have a negligible impact on the CNP stock of humpback whales, that a recovery plan has been developed, that a monitoring program is established, that vessels in the fisheries are registered, and that the MMPA does not require a take reduction plan (TRP) at this time.

DATES: This permit is effective for a 3–year period beginning May 28, 2010.

ADDRESSES: Reference material for this permit is available on the Internet at the following address: *http://www.fpir.noaa.gov*.

Copies of the reference materials may also be obtained from the Protected Resources Division, NMFS, Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814 Attention - Lisa Van Atta, Assistant Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Lisa Van Atta, Pacific Islands Region (808) 944–2257 or Tom Eagle, Office of Protected Resources, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Background

MMPA section 101(a)(5)(E) requires NMFS to allow the taking of marine mammals from species or stocks listed as threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*) incidental to commercial fishing operations if NMFS determines that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On February 24, 2010 (75 FR 8305), NMFS proposed to issue a permit under

MMPA section 101(a)(5)(E) to vessels registered in the Hawaii-based longline fisheries (deep-set and shallow-set) to incidentally take individuals from the CNP stock of humpback whales, which are listed as endangered under the Endangered Species Act (ESA). The Hawaii-based longline fisheries do not take other species or stocks of threatened or endangered marine mammals; therefore, no other species or stocks were considered for this permit. There has been one serious injury (in 2006) of a CNP humpback whale in the Hawaii-based shallow-set longline fishery.

No other mortality or serious injury of humpback whales has been recorded incidental to the longline fishery (a single fishery under MMPA section 118 from 1994 until 2004, and separated into shallow-set and deep-set fisheries since 2004) since 1994. Consequently, authorization only for harassment and non-lethal injury of humpback whales is necessary incidental to the deep-set longline fishery. The proposed permitted lethal (serious injury or mortality) taking of CNP humpback whales incidental to the Hawaii-based longline fisheries was limited to the shallow-set fishery. Although humpback whales are taken incidental to fisheries in Alaskan, as well as Hawaiian, waters the proposed permit was limited to the Hawaii-based longline fisheries. Alaska-based fisheries will be addressed in a future permitting procedure.

Determinations for the Permit

The following determinations and supporting information were included in notice of the proposed permit (75 FR 8305, February 24, 2010). As described in detail in the documentation for the negligible impact determination (see **ADDRESSES**), NMFS estimated that mortality and serious injury of CNP humpback whales incidental to commercial fishing operations in HI and AK totaled 5.4 whales per year, which is 26.5 percent of the stock's Potential Biological Removal (PBR) level. NMFS concluded that incidental mortality and serious injury at this total rate will have a negligible impact on CNP humpback whales.

A recovery plan for humpback whales has been in place since November 1991. Accordingly, a recovery plan for humpback whales, including the CNP stock, has been developed.

An observer program is in place for the Hawaii-based longline fisheries. The shallow-set fishery has 100 percent observer coverage. The deep-set fishery has at least 20 percent observer coverage. These observer levels are required under the ESA to protect threatened or endangered sea turtles taken incidental to longline fishing operations for Pacific pelagic species of fish. Furthermore, participants in the fishery are required to hold a Federal permit for fishing, and registration under MMPA section 118(c) has been integrated into the fishery permitting process. Accordingly, NMFS determines that, as required by MMPA section 118, a monitoring program is established for these fisheries and that vessels engaged in such fisheries are registered in accordance with such section.

The purpose of a TRP is to reduce mortality and serious injury incidental to commercial fisheries, and only Category I or II fisheries are subject to take reduction requirements. Observer reports since 1994 confirm that there have been no serious injuries or mortalities of a CNP humpback whale in the Hawaii-based deep-set longline fishery. Recent levels of mortality in the shallow-set fishery (0.2 whales per year) are insignificant and average less than 1 percent of the PBR of the CNP humpback whale stock. As a result of the current data, both the deep-set and shallow-set fisheries would be listed in the List of Fisheries as Category III fisheries, but for the higher level of taking of other marine mammals, not listed under the ESA. Finally, MMPA section 118(f) provides that if there is insufficient funding available to develop and implement a take reduction plan for stocks that interact with commercial Category I and II fisheries, the Secretary shall give highest priority to the development of TRP's for species or stocks whose level of incidental mortality and serious injury exceeds PBR, those that have small population size, and those that are declining most rapidly. NMFS has evaluated availability of TRT funding for the humpback whale under the statutory criteria and determined that there is insufficient funding available for a TRT. Accordingly, NMFS determines that a TRP is not required by MMPA section 118 at this time. (See response to Comment 9.)

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. NMFS and the Western Pacific Fishery Management Council (Council) have analyzed the impacts of fishing operations, including the deep-set and shallow-set longline fisheries on the human environment. The current permit does not modify fishing operations; therefore, the analyses included in two recent Environmental Impact Statements (EIS) issued by NOAA evaluate the impacts of issuing the current permit. The Council and NMFS completed the Final Supplemental EIS for Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region in March 2009, and the Assistant Administrator for Fisheries (AA) signed the Record of Decision for this action on June 17, 2009. The Council and NMFS also completed a Final Programmatic EIS toward an Ecosystem Approach for the Western Pacific Region: From Species-Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans in September 2009, and the AA signed the Record of Decision for this action on December 11, 2009. Because this permit does not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit.

Section 7 of the ESA requires NMFS to consult with itself when agency actions may affect threatened or endangered marine species, including marine mammals. NMFS has evaluated numerous actions related to implementation of fishery management plans for pelagic species by Hawaii-based fisheries, including the deep-set and shallow-set longline fisheries. The two most recent biological opinions (BiOp) related to deep-set and shallow-set longline fisheries are (1) BiOp and Incidental Take Statement on the Continued Authorization of the Hawaii-based Pelagic, Deep-set, Tuna Longline Fishery Based on the Fishery Management Plan for Pelagic Fishing of the Western Pacific Region, October 4, 2005; and (2) BiOp on Management Modifications for the Hawaii-based Shallow-set Longline Swordfish Fishery Implementation of Amendment 18 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, October 15, 2008. NMFS reviewed these BiOps and information related to issuing the permit and have concluded that issuing the permit would not modify the activities of the fishery nor the effects of these fishing activities on ESA-listed species, including humpback whales, in a manner that would cause adverse effects not previously evaluated and that there has been no new listing of species or designation of critical habitat that could be affected by the action. Accordingly, no additional analyses under the ESA are required at this time.

Current Permit

NMFS has made determinations under MMPA section 101(a)(5)(E) that (1) mortality and serious injury of CNP humpback whales incidental to

commercial fishing will have a negligible impact on the stock, (2) a recovery plan for humpback whales has been developed, (3) as required by MMPA section 118, a monitoring program has been established in the Hawaii-based longline fisheries, and vessels in the fishery are registered, and (4) no TRP is required by MMPA section 118 to reduce mortality and serious injury of CNP humpback whales incidental to Hawaii-based longline fisheries. As required by MMPA section 101(a)(5)(E), NMFS hereby issues a permit to vessels in the Hawaii-based longline fisheries (deep-set and shallow-set) authorizing the taking of CNP humpback whales incidental to fishing operations. Taking of humpback whales incidental to the deep-set fishery is limited to non-lethal taking (harassment and injury). Taking of these whales incidental to the shallow-set fishery includes harassment and non-serious injury, as well as serious injury and mortality. If NMFS determines at a later date that incidental mortality and serious injury from commercial fishing is having more than a negligible impact on the CNP stock of humpback whales, NMFS may use its emergency authority under MMPA section 118 to protect the stock and may modify the permit issued herein.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was published, as required, on October 26, 2007 (72 FR 60814), which authorized the taking of threatened or endangered marine mammals to one Category I and two Category III fisheries along the west coast of the U.S. With issuance of the current permit, NMFS adds the Hawaii-based deep-set and shallow-set longline fisheries to this list (Table 1).

TABLE 1. LIST OF FISHERIES AUTHORIZED TO TAKE THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO FISHING OPERATIONS.

Fishery	Category	Marine Mammal Stock
CA/OR Drift Gillnet Fishery	I	Fin whale, CA/OR/WA stock Humpback whale, ENP stock Sperm whale, CA/OR/WA stock
CA lobster, prawn, shrimp, rock crab, fish pot	III	Fin whale, CA/OR/WA stock Humpback whale, ENP stock Sperm whale, CA/OR/WA stock
WA/OR/CA crab pot	III	Fin whale, CA/OR/WA stock Humpback whale, ENP stock Sperm whale, CA/OR/WA stock
HI deep-set (tuna target) longline/set line	I	Humpback whale, CNP stock
HI shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock

Comments and Responses

NMFS received letters containing comments from four organizations, the Marine Mammal Commission (Commission), the Hawaii Longline Association (HLA), the Council, and the Human Society of the United States (HSUS). Each letter contained multiple comments.

Comment 1: The Commission briefly summarized NMFS' findings for the proposed permit and recommended that NMFS comply with MMPA section 101(a)(5)(E) by issuing the permit to the Hawaii-based deep-set and shallow-set longline fisheries to authorize the taking of CNP humpback whales incidental to their fishing operations.

Response: NMFS agrees and is issuing the permit as required by the MMPA.

Comment 2: The Commission noted that NMFS is currently conducting a status review of humpback whales under the ESA and recommended that NMFS reexamine the findings related to this permit if the status review indicates a new stock structure and factors that may compromise the conservation of those stocks.

Response: NMFS agrees to re-evaluate these findings if the status review indicated a new stock structure modifying the current CNP humpback whale stock.

Comment 3: HLA supported issuance of the proposed permit and supporting documentation. HLA's rationale for its support included the following:

(1) Abundance of the CNP stock has substantially recovered from depressed levels resulting from commercial whaling, noting that the estimated annual rate of increase is 7 percent;

(2) Mortality and serious injury of the stock is less than the stock's PBR, and there has been no detectable adverse impact on the growth and recovery of the stock;

(3) Interactions between the Hawaii-based longline fisheries and the CNP stock are "extremely rare events≥;

(4) There has been no observed mortality or serious injury of humpback whales incidental to the deep-set fishery and only a single observed interaction of a humpback whale with this fishery since 2004 with observer coverage of 20 percent; and

(5) There has been only one observed serious injury of a humpback whale in the shallow-set fishery only one interaction of any kind observed in this fishery with100 percent observer coverage since 2004.

Response: NMFS agrees that the available information supports the finding of negligible impact required by MMPA section 101(a)(5)(E).

Comment 4: HLA stated that NMFS used a worst case analysis for the negligible impact analysis and cited a decision by the Supreme Court (Bennett v. Spear, 520 U.S. 154, 176–77 (1997)) related to the ESA. HLA also asserted that NMFS' analysis implementing MMPA section 101(a)(5)(E) reflects exactly the kind of zealous, but misguided, conservation bias that the definition of "negligible impact" and the "best science" requirements proscribe.

Response: NMFS disagrees that the negligible impact analysis is a worst case analysis and that the analysis is inconsistent with the MMPA. NMFS maintains that the finding was based upon appropriate levels of precaution. Although NMFS used a "worst case"

estimate of abundance to calculate PBR for this stock (see Allen and Angliss, 2010 Alaska Marine Mammal Stock Assessment Reports (SAR), 2009, NOAA Tech. Mem. NMFS-AFSC–206.), NMFS also acknowledged in the SAR and in the negligible impact determination for this permit that mortality may have been underestimated (minimum estimate). Estimates of mortality and serious injury were based upon strandings and observations of entangled or injured free-swimming humpback whales, and such data sources may be underestimates because not all entangled or injured whales are observed, identified to source, and recorded.

HLA incorrectly applies court rulings under the ESA to agency findings under the MMPA. In the original passage of the MMPA, the associated House of Representatives Report stated the burden for permits as follows: "Before any marine mammal may be taken, the appropriate Secretary must first establish general limitations on the taking, and must issue a permit which would allow that taking. In every case, the burden is placed upon those seeking permits to show that the taking should be allowed and will not work to the disadvantage of the species or stock of animals involved. If that burden is not carried and it is by no means a light burden the permit may not be issued. The effect of this set of requirements is to insist that the management of the animal populations be carried out with the interests of the animals as the prime consideration." (House of Representatives Report No. 92–707, December 4, 1971)

For the provisions of MMPA section 101(a)(5)(E), the associated House of Representatives Report stated that "These permits may extend for a maximum of three years and may be issued only if the Secretary determines that the total of such [incidental to commercial fishing] taking will have a negligible impact on the species or stock . The Committee notes that the "negligible impact" standard in the MMPA is more stringent than the "no jeopardy" standard in the ESA, and consequently provides more protection for endangered or threatened marine mammals under the MMPA than under the ESA." (House of Representatives Report No. 103–439, March 21, 1994). Thus, a precautionary evaluation under the MMPA is appropriate.

In this determination, NMFS evaluated uncertainties in abundance and in mortality and serious injury, considered the increase in population size in using Criterion 3 (PBR rather than 10 percent of the stock's PBR) rather than the more stringent Criterion 1 (10 percent of PBR), in concluding that mortality and serious injury of CNP humpback whales incidental to commercial fishing was having a negligible impact on the population (see History of Applying Negligible Impact in Fisheries above). Accordingly, NMFS maintains that the negligible impact determination contains an appropriate level of precaution as required by the MMPA. (Also, see Comment 8 and associated response.)

Comment 5: The Council supported issuance of the proposed permit, noted that the Hawaii-based deep-set longline fishery had only 1 to 2 non-fatal interactions with humpback whales, noted that only one humpback whale had been observed seriously injured in the shallow-set longline fishery, and expressed that it was perplexed why NMFS waited so long to make a determination and issue a permit for taking CNP humpback whales incidental to HI-based longline fishing.

Response: NMFS acknowledges the Council's support for this permit. The delay in issuing this permit was related to several factors. First, a basin-wide abundance estimate was in progress as part of a large international study of humpback whales, and this basin-wide estimate had to be partitioned by stocks recognized under the MMPA. Second, as noted in the response to Comment 4, the requisite negligible impact determination must include the effect of the total mortality and serious injury of CNP humpback whales incidental to commercial fishing rather than incidental to the Hawaii-based fisheries only. Most mortality and serious injury has been documented in Alaska rather than Hawaii, this mortality had to be evaluated and reconciled among several documents, and fishery-caused mortality and serious injury had to be evaluated in the context of other human-related sources of mortality and serious injury (due to the comparison to PBR, which includes consideration of all removals other than natural mortalities). Third, staffing limitations required conservation activities with the Pacific Islands Region to be address in priority order, with activities directed toward species or stocks most at risk receiving highest priority.

Comment 6: The Council also noted that the CNP humpback population is increasing, which could result in more interactions with the HI longline fleet. For this reason, NMFS must now consider providing the HI-based deep-set fishery a permit including lethal as well as non-lethal taking.

Response: NMFS disagrees that permitting lethal takes incidental to the deep-set longline fishery is appropriate at this time. Despite continued population growth in the CNP stock of humpback whales, the long history of no documented lethal taking and of very few takings of any kind suggests the potential for increased mortality and serious injury incidental to the deep-set fishery, despite population growth over the 3–year duration of the MMPA permit, is minimal.

Comment 7: HSUS noted that NMFS included an incorrect Internet address for the supporting negligible impact determination in the notice of the proposed permit and located a draft negligible impact determination dated February 2010. HSUS noted the determination should be final before issuing a permit to a fishery.

Response: NMFS acknowledges that the Internet address in the notice of the proposed permit was incorrect and that HSUS and three other organizations were able to locate the draft negligible impact determination. The negligible impact determination was available in draft form because the MMPA requires that such a determination be completed after public review and comment. Accordingly, NMFS made the draft available so that the public had the opportunity to provide additional information or insights before making a final determination. The final negligible impact determination will be released concurrent with issuance of the permit.

Comment 8: NMFS used a minimum estimate of mortality and serious injury in its finding that mortality and serious injury of CNP humpbacks incidental to commercial fishing is having a negligible impact on the stock. HSUS noted that the take of large endangered whales in most fisheries is generally under-represented by fisher self-reports or limited observer coverage; that NMFS did not include entanglements observed in Hawaii in the 2009 SAR for the CNP stock of humpback whales, upon which the negligible impact determination was based. Furthermore, large whales may become entangled in gear and break free with gear attached; however, NMFS did not include information on the percentage of trips where there are reports of lost gear.

Response: NMFS acknowledged (in the negligible impact determination and within the SAR) that the estimate of mortality and serious injury is considered a minimum estimate. The extent of lost fishing gear was not reported because it is not available for most fisheries; furthermore, gear may be lost due to many factors other than large whale entanglements.

For several reasons, the finding of negligible impact is reasonable in spite

of the potential for underestimating mortality and serious injury. First, PBR is based upon conservative estimates of abundance and Rmax and has a recovery factor of 0.1. Second, the PBR approach was thoroughly tested in simulation trials and found to be robust to over-estimates of Rmax, underestimates of mortality, and low precision of abundance and mortality estimates. Finally, the annual rate of increase of the stock observed in Hawaii is reported in the SAR to be 7 percent. Accordingly, in spite of all factors, human-caused (including commercial fisheries) and natural, that may be affecting humpback whales in the North Pacific Ocean, this stock is increasing rapidly. For these reasons, NMFS maintains that the negligible impact determination is based upon reasonable precaution. (Also, see Comment 4 and the associated response.)

Comment 9: HSUS stated that NMFS wrongly claims that the obligations to develop and implement a TRP are subject to the availability of funding. Rather, the MMPA requires NMFS to develop and implement a TRP for each strategic stock of marine mammals that interacts with fisheries that have frequent (Category I) or occasional (Category II) incidental mortality and serious injury of marine mammals. Further, MMPA section 101(a)(5)(E) clearly requires that a TRP regardless of what priority NMFS assigns its development must be in existence before incidental take may be authorized. If NMFS cannot develop or, at least initiate development of, a TRP because it lacks funding, it cannot authorize incidental take. It would be a simple matter for NMFS to convene a working group of the existing Take Reduction Team (TRT) for false killer whales, which includes the Hawaii-based longline fisheries, to recommend measures to reduce likelihood of interactions with humpbacks.

Response: The CNP stock of humpback whales is strategic. The Hawaii-based longline fisheries are Category I (deep-set fishery) and Category II (shallow-set fishery). Moreover, the List of Fisheries for 2009 and 2010 noted that CNP stock of humpback whales was the marine mammal species or stock for which the shallow-set fishery had occasional mortality and serious injury.

However, NMFS' analysis of the MMPA requirements and the available information does not support developing a TRP for humpback whales. The CNP stock of humpback whales is strategic because humpback whales were listed as an endangered species under the ESA due to the effects of commercial whaling that ceased before the MMPA was passed. Current human-caused mortality of CNP humpback whales is negligible, particularly mortality and serious injury resulting from longline fishing.

MMPA 118(f)(2) provides that the goal of a TRP for a strategic stock is reduce within 6 months of implementation the serious injury and mortality in the course of commercial fishing operations to levels less than PBR. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate. Not only does the best available information indicate that neither the deep-set nor shallow-set longline fishery incidentally kills or seriously injures humpback whales at levels that would require a TRP to be developed and implemented. The 2009 SAR for the CNP stock of humpback whales, which became available after the 2010 LOF was prepared, shows that there is no mortality and serious injury of humpback whales incidental to the deep-set longline fishery, and the PBR for the stock is 20.4. Information discussed in the notice of the proposed permit and negligible impact determination shows that mortality and serious injury of CNP humpback whales incidental to the shallow-set longline fishery (0.2 whales per year) is less than 1 percent of the PBR of the stock.

Also, MMPA section 118(f) provides that if there is insufficient funding available to develop and implement a take reduction plan for stocks that interact with commercial Category I and II fisheries, the Secretary shall give highest priority to the development of TRP's for species or stocks whose level of incidental mortality and serious injury exceeds PBR, those that have small population size, and those that are declining most rapidly. NMFS has evaluated availability of TRT funding for the humpback whale under the statutory criteria and determined that there is insufficient funding available for a TRT. Accordingly NMFS concludes that MMPA section 118 does not require a TRP to address mortality and serious injury of CNP humpback whales incidental to either the deep-set or shallow-set longline fishery at this time.

A TRP for CNP humpback whales is a low priority, and MMPA section 118 does not require a TRP in this case. However, NMFS considered, as HSUS suggested, including humpback whales within the scope of the TRP being developed for false killer whales. NMFS is aware that interactions between odontocetes, including false killer whales, and these Hawaii-based longline fisheries appear related to depredation of bait or catch in the fisheries. Humpback whale entanglement is more likely due to accidental encounters with fishing gear than depredation. Accordingly, NMFS concluded that including humpback whales within the scope of the TRP would likely detract from the focus of the TRP, which is to reduce mortality and serious injury of false killer whales incidental to the deep-set longline fishery.

Dated: May 24, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–12916 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the next meeting of the Civil Nuclear Trade Advisory Committee (CINTAC). The members will discuss issues outlined in the following agenda.

DATES: The meeting is scheduled for: Tuesday, June 15, 2010, from 1 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Lopp, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave, NW., Washington, DC 20230. (Phone: 202–482–3851; Fax: 202–482–5665; e-mail: *Sarah.Lopp@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of

programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the June 15, 2010, CINTAC meeting is as follows:

1. Welcome and introduction of members attending for the first time.
2. Discussion of civil nuclear trade priority issues.
3. Discussion of subcommittee work progress on domestic competitiveness, technologies, treaties and regulations, advocacy, and talent and education.

Public Participation: The meeting will be open to the public and the room is disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Ms. Sarah Lopp at the contact information above by 5 p.m. EDT on Friday, June 11, 2010, in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Ms. Lopp and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EDT on Friday, June 11, 2010. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration (ITA) may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy and Environmental Industries, Room 4053, 1401 Constitution Ave NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Friday, June 11, 2010, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Thomas Sobotta,

Deputy Assistant Secretary for Manufacturing, Acting.

[FR Doc. 2010–12814 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW66

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, June 21, 2010 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411; fax: (207) 775–1066.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Enforcement of sectors; how to improve dockside monitoring; one landing per calendar day vs. 24 hours; discuss including two state enforcement people on the committee; marking of fixed fishing gear regulations and also discuss possibly reviewing and eliminating unnecessary or duplicative regulations.
2. Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 25, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–12935 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW65

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 16, 2010 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee(s agenda are as follows:

1. The Committee will review groundfish action items for possible inclusion in management measures including:

•Georges Bank yellowtail flounder rebuilding time frame

•New sector requests

•Update on status of pollock if preliminary results from the 2010 Stock Assessment Review Committee (SARC) are available

•General category scallop dredge exemption for yellowtail flounder in the Great South Channel

2. The Committee may also discuss these additional groundfish management issues:

•Party and charter boat limited entry control date

•Accountability measures

•Gulf of Maine winter flounder zero possession and allocation

•Permit banks

3. The Committee will consider the possible initiation of an amendment to the Fishery Management Plan relating to allocative effects and excessive control of fishing privileges. Groundfish fleet diversity issues and social and economic objectives will also be addressed.

4. Other business may also be discussed, including a review of seasonal rolling closures if available.

The Committee's recommendations will be delivered to the full Council at its meeting in Portland, ME on June 22–24, 2010.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 24, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–12803 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Correction to Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Correction

On May 12, 2010, the Department of Commerce ("the Department") published in the **Federal Register** the following notice: *Seamless Refined Copper Pipe and Tube From Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26726 (May 12, 2010) ("*Mexico Preliminary Determination*"). Subsequent to the publication of the notice in the **Federal Register,** we identified an inadvertent error in the *Mexico Preliminary Determination.* Specifically, the Department made an error by inadvertently modifying the text within the section titled "Scope of Investigation," which caused certain terms (*e.g.,* seamless, circular, and refined) to be deleted from portions of the scope language that was previously included in the *Initiation Notice. See Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 74 FR 55194, 55199 (October 27, 2009) ("*Initiation Notice*"). For reference, below is the correct scope language of the instant investigation.

Scope of Investigation

For the purpose of this investigation, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length.

The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to this

investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Conclusion

The Department clarifies that the "Scope of Investigation" section of the *Mexico Preliminary Determination* was unintentionally modified and no changes to the scope of this investigation have occurred pursuant to the *Mexico Preliminary Determination.* Therefore, the scope language stated in the *Initiation Notice* reflects the scope of this investigation. This notice is issued and published in accordance with sections 733(f) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: May 21, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. C1–2010–12959 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO45

Marine Mammals; receipt of application for permit amendment

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

ACTION: Notice.

SUMMARY: Notice is hereby given that Dr. Peter Tyack, Woods Hole Oceanographic Institution, Woods Hole, MA has applied for an amendment to Permit No. 14241 to conduct research on marine mammals.

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. 14241 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

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;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14241 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.

Permit No. 14241, issued on July 15, 2009 (74 FR 3668), authorizes the permit holder to conduct research on cetacean behavior, sound production, and responses to sound. The research methods include tagging marine mammals with an advanced digital sound recording tag that records the acoustic stimuli an animal hears and measures vocalization, behavior, and physiological parameters. Research also involves conducting sound playbacks in a carefully controlled manner and measuring animals' responses. The principal study species are beaked whales, especially Cuvier's beaked whale (*Ziphius cavirostris*), and large delphinids such as long-finned pilot whales (*Globicephala melas*), although other small cetacean species may also be studied. The locations for the field work are the Mediterranean Sea, waters off of the mid-Atlantic United States, and Cape Cod Bay. The permit is valid through July 31, 2014.

The permit holder is requesting the permit be amended to: (1) include authorization for collection of a skin and blubber biopsy sample from some animals that are already authorized to be tagged; (2) add new species for existing projects involving tagging, playbacks, and behavioral observations; and (3) modify and clarify tagging and playback protocols and mitigation for when dependent calves are present. The new species for the Mediterranean Sea-based project are Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked whale, short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale, Risso's dolphin (*Grampus griseus*), and false killer whale (*Pseudorca crassidens*). The new species for the project based off Cape Hatteras, North Carolina are True's beaked whale (*M. mirus*), Gervais' beaked whale (M. europaeus), Blainville's beaked whale, bottlenose dolphin (*Tursiops truncatus*), Risso's dolphin, short-beaked common dolphin (*Delphinus delphis*), and Cuvier's beaked whale. The amendment would be valid through the current expiration date of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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 24, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–12824 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW44

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in July, August, and September of 2010. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be held in 2010.

DATES: The Atlantic Shark Identification Workshops will be held July 8, August 5, and September 2, 2010.

The Protected Species Safe Handling, Release, and Identification Workshops will be held July 21, July 28, August 11, August 25, September 15, and September 22, 2010.

See SUPPLEMENTARY INFORMATION for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Jefferson, LA; Panama City, FL; and Wilmington, NC.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Clearwater, FL; Corpus Christi, TX; Wilmington, NC; Boston, MA; Manahawkin, NJ; and Kenner, LA.

See SUPPLEMENTARY INFORMATION for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 45 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances which are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. July 8, 2010, 12 p.m. - 5 p.m., Rosedale Branch Library, 4036 Jefferson Highway, Jefferson, LA 70121.
2. August 5, 2010, 12 p.m. - 5 p.m., National Marine Fisheries Service Library, 3500 Delwood Beach Road, Panama City, FL 32408.
3. September 2, 2010, 12 p.m. - 5 p.m., Comfort Inn (UNC-Wilmington), 151 South College Road, Wilmington, NC 28403.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 88 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. The certificate(s) are valid for 3 years. As such, vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses with longline or gillnet gear.

Workshop Dates, Times, and Locations

1. July 21, 2010, 9 a.m. - 5 p.m., Holiday Inn, 3535 Ulmerton Road, Clearwater, FL 33762.
2. July 28, 2010, 9 a.m. - 5 p.m., Holiday Inn, 5549 Leopard Street, Corpus Christi, TX 78408.
3. August 11, 2010, 9 a.m. - 5 p.m., Hilton Garden Inn, 6745 Rock Spring Road, Wilmington, NC 28405.
4. August 25, 2010, 9 a.m. - 5 p.m., Hilton Inn (at Boston Logan airport), 1 Hotel Drive, Boston, MA 02128.

5. September 15, 2010, 9 a.m. - 5 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08020.

6. September 22, 2010, 9 a.m. - 5 p.m., Hilton Inn (at New Orleans Louis Armstrong airport), 901 Airline Drive, Kenner, LA 70062.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry-sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005), and in New Orleans, LA (June 27, 2005), were issued a NOAA workshop certificate in December 2006 that was valid for 3 years. These workshop certificates have expired. Vessel owners and operators whose certificates expire prior to the next permit renewal or fishing trip must attend a workshop, successfully complete the course, and obtain a new certificate in order to fish with or renew their limited-access shark and limited-access swordfish permits. Failure to provide a valid NOAA workshop certificate could result in a permit denial.

Dated: May 24, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–12919 Filed 5–27–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Commerce: Trade Promotion Coordinating Committee Renewable Energy and Energy Efficiency Export Strategy To Support the National Export Initiative

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and request for comment.

SUMMARY: In order to support President Obama's National Export Initiative (NEI), the interagency Trade Promotion Coordinating Committee's (TPCC) Renewable Energy and Energy Efficiency Working Group is developing a U.S. Renewable Energy and Energy Efficiency Export Strategy (the Strategy) to guide U.S. government programs supporting U.S. renewable energy and energy efficiency companies wishing to compete for sales abroad. The Strategy focuses on increasing exports of goods and services related to renewable energy and energy efficiency. Not included in this initiative are all goods and services that relate to the transport sector, including biofuels and biofuel feedstock.

The TPCC Renewable Energy and Energy Efficiency Working Group seeks input from private businesses, trade associations, academia, labor organizations, non-governmental organizations, and other interested parties regarding foreign or domestic policies or conditions of competition that impede exports faced by exporters of the relevant goods and services; effectiveness or ineffectiveness of Federal government programs supporting U.S. exports of renewable energy and energy efficiency technology, including specific experiences with such Federal government programs; specific ways in which the Federal government can improve its programs to support exports of U.S. goods and services related to renewable energy and energy efficiency; Federal activities and programs that would benefit from increased interagency cooperation; and generally how the Federal government can better help U.S. businesses export more renewable energy and energy efficiency technologies.

This input will be used to help guide the TPCC in its formulation of the strategy that will support the NEI, with the goal of doubling U.S. exports by 2015.

DATES: Comments must be received by 11:59 p.m. on July 10, 2010, to be considered.

ADDRESSES: To provide input to the TPCC Renewable Energy and Energy Efficiency Working Group, please send comments by post, e-mail or fax to the attention of Julius Svoboda, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave., NW., Room 4053, Washington, DC 20230; 202–482–4152; e-mail *newenergy@trade.gov;* fax 202–482–5665. Electronic responses should be submitted in Microsoft Word format. Information identified as confidential will be protected to the extent permitted by law.

SUPPLEMENTARY INFORMATION: On March 11, 2010, President Obama issued Executive Order 13534, which created the NEI in order to enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States through the promotion of exports and to ensure the effective use of Federal resources in support of these goals, The Executive Order created the Export Promotion Cabinet, which coordinates with the TPCC, to provide the President a comprehensive plan within 180 days to carry out the goals of the NEI. In response to Executive Order 13534, and with a view to increasing the amount of U.S. exports related to Renewable Energy and Energy Efficiency, the TPCC Working Group on Renewable Energy and Energy Efficiency has agreed to prepare, in conjunction with other relevant TPCC Working Groups, a *National Renewable Energy and Energy Efficiency Export Strategy* for consideration by the Export Promotion Cabinet for inclusion in the NEI implementation plan. The Strategy will entail: (1) An evaluation of the current global renewable energy and energy efficiency energy market; (2) an analysis of overlaps and gaps in Federal government programs designed to boost exports related to renewable energy and

energy efficiency; and (3) goals of the TPCC Working Group on Renewable Energy and Energy Efficiency supporting the sector. The Strategy will be completed in September 2010 to coincide with the release of the first NEI report to the President.

The Trade Promotion Coordinating Committee—The TPCC is an interagency committee that coordinates the development of U.S. Government trade promotion policies and programs. The TPCC is composed of representatives from 20 Federal agencies. The Department of Commerce and the Department of Energy co-chair the TPCC Renewable Energy and Energy Efficiency Working Group. Other Working Group agencies include the Export-Import Bank, the Overseas Private Investment Corporation, the U.S. Trade and Development Agency, the Small Business Administration, the Departments of Agriculture, State, and Labor, and the Office of the U.S. Trade Representative.

The TPCC Renewable Energy and Energy Efficiency Working Group—The Renewable Energy and Energy Efficiency Working Group is a sub-group of the TPCC focused on the coordination and development of government-wide export assistance to goods and services related to renewable energy and energy efficiency. The Renewable Energy and Energy Efficiency Working Group held its first meeting on January 22, 2010.

The National Export Initiative—NEI is an Obama Administration initiative to improve conditions that directly affect the private sector's ability to export. The NEI is intended to meet the Administration's goal of doubling exports over the next 5 years by working to remove export barriers, by helping firms—especially small businesses—overcome the hurdles to entering new export markets, assisting with financing, and in general by pursuing a government-wide approach to export advocacy abroad, among other steps.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2010–12982 Filed 5–27–10; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion From the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agency.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 6/28/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to furnish the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List to be furnished by the nonprofit agencies listed:

Products

NSN: 7530–01–285–8355—Padded, yellow, 4 x 6" unruled self stick notes.
NSN: 7530–01–385–7560—Padded, bright, 1–1/2 x 2" self stick notes.
NPA: Association for the Blind & Visually Impaired & Goodwill Ind. of Greater Rochester, Rochester, NY.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A–List for the Total Government Requirement as aggregated by the GSA/FSS OFC SUP CTR—Paper Products.

Peel N Stick Kit

NSN: 7220–01–579–6870.
NSN: 7220–01–579–6875.
NSN: 7220–01–579–6876.
NSN: 7220–01–579–6877.
NSN: 7220–01–579–6880.
NPA: Louisiana Association for the Blind, Shreveport, LA.
Contracting Activity: Federal Acquisition Service, GSA/FSS Household and Industrial Furniture, Arlington, VA.
Coverage: B–List for the Broad Government Requirement as aggregated by the GSA/FSS Household and Industrial Furniture.

Pen, Ballpoint, Retractable

NSN: 7520–00–NIB–2091—3/PG, 1.0 mm medium point, blue ink.
NSN: 7520–00–NIB–2092—3/PG, 1.0 mm medium point, black ink.
NSN: 7520–00–NIB–2093—3/PG, 0.7 mm fine point, blue ink.
NSN: 7520–00–NIB–2094—3/PG, 0.7 mm fine point, black ink.
NSN: 7520–00–NIB–2097—6/PG, 1.0 mm medium point, black ink.
NSN: 7520–00–NIB–2098—6/PG, 1.0 mm medium point, blue ink.
Coverage: A–List for the Total Government Requirement as aggregated by the GSA/FSS OFC SUP CTR—PAPER PRODUCTS.
NSN: 7520–00–NIB–2099—6/PG, 1.0 mm medium point, asst. color ink—2 ea of 3 colors.
Coverage: B–List for the Broad Government Requirement as aggregated by the GSA/FSS OFC SUP CTR—Paper Products.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial

number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide a service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with a service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Food Service Attendant, Brunswick Naval Air Station: Building 201, New Brunswick, ME.
NPA: Pathways, Inc., Auburn, ME.
Contracting Activity: Dept. of the Navy, U.S. Fleet Forces Command, Norfolk, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–12898 Filed 5–27–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* June 28, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 12/18/2009 (74 FR 67176–67177), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide a service to the Government.

2. The action will result in authorizing small entities to provide a service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with this service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Contract Management Administrative Support Services Associated with Contract Closeout.
Service Locations: Specified Department of Defense (DoD) locations. Requiring activities and locations will be specified in this Notice or by Committee administrative action. Current DoD requiring activities and specified locations are Fort Sam Houston, TX; JCC/IA Garcia Building, San Antonio, TX; MICC–USAR–CENTER–FORT DIX, NJ (Offsite Location: 10360 Drummond Road Philadelphia, PA). Additional DoD requiring activities and specified locations will be identified in the Committee's Procurement List, available at *http://www.abilityone.gov.*
Contracting Activity: Mission & Installation Contracting Command Center, Fort Knox, KY.
NPA: NIB.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–12899 Filed 5–27–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 4, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–13076 Filed 5–26–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday June 25, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–13082 Filed 5–26–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., June 18, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–13086 Filed 5–26–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, June 16, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–13084 Filed 5–26–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 11, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–13079 Filed 5–26–10; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 2, 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 25, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–13064 Filed 5–26–10; 4:15 pm]

BILLING CODE 6355–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Review of MMS NEPA Policies, Practices, and Procedures for OCS Oil and Gas Exploration and Development

AGENCY: Council on Environmental Quality.

ACTION: Notice of Review and Request for Public Comment.

SUMMARY: On May 17, 2010, the Council on Environmental Quality (CEQ) informed the Department of the Interior (DOI) that CEQ was conducting a 30 day review National Environmental Policy Act (NEPA) policies, practices, and procedures for the Minerals Management Service (MMS) decisions for Outer Continental Shelf (OCS) oil and gas exploration and development.

This review of MMS NEPA policies, practices and procedures is being conducted as a result of the oil spill from the Deepwater Horizon well and drilling rig in the Gulf of Mexico. The purpose of this review is to ascertain how MMS applies NEPA in its management of Outer Continental Shelf oil and gas exploration and development and make recommendations for revisions. The scope of the review is intended to be holistic, *i.e.* from leasing decisions to drilling and production.

In line with CEQ's effort to engage the public in the NEPA process and the President's Open Government Initiative, this notice is also a solicitation for public comment on the review process undertaken by CEQ as well as on current MMS NEPA policies, practices, and procedures regarding Outer Continental Shelf oil and gas exploration and development. Public participation in this review effort will benefit this specific review process, the MMS NEPA implementation, CEQ's overall effectiveness in overseeing NEPA, and the environmental and social consequences of government activity.

DATES: Comments should be submitted as soon as possible on the CEQ review, recognizing that the review is to be completed June 17, 2010.

ADDRESSES: All relevant information related to MMS NEPA procedures and the review process is available at *http://www.whitehouse.gov/ceq/initiatives/nepa.* Comments on the procedures and review should be submitted electronically at the above URL or to *hgreczmiel@ceq.eop.gov* or in writing to Associate Director for NEPA Oversight, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, at (202) 395–5750.

SUPPLEMENTARY INFORMATION:

NEPA and Offshore Drilling

Enacted in 1970, NEPA mandates that Federal agencies consider the environmental impacts of their proposed actions during all stages of decision making, from planning to implementation. NEPA is a fundamental decision-making tool used to harmonize our economic, environmental, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA applies to every stage of Federal decision making related to offshore oil and gas exploration and development. When an agency proposes an action, it must determine if the action has the potential to affect the quality of the human environment. Agencies then apply one of three levels of NEPA analysis. They may: Prepare an Environmental Impact Statement (EIS) when the agency projects the proposed action has the potential for significant environmental impacts; apply a Categorical Exclusion (CE) when the agency has previously established a CE based on its determination that proposed action falls within the categories of actions described in the CE which the agency has found do not typically result in individually or cumulatively significant environmental effects or impacts; or the agency prepares an Environmental Assessment (EA) to determine whether it can make a Finding of No Significant Impact or proceed to prepare an EIS.

Under the Outer Continental Shelf Lands Act, MMS has implemented a process for oil and gas development consisting of the following stages: (1) Preparing a nationwide 5-year oil and gas development program, (2) planning for and holding a specific lease sale, (3) approving a company's exploration plan, and (4) approving a company's development and production plan. MMS is required to apply NEPA during each of these stages, beginning with the initial planning of outer continental shelf leasing and ending with a decision on a specific well. The sequence of NEPA analyses is informed by the CEQ Regulations Implementing the Procedural Requirements of the National Environmental Policy Act, 40 CFR parts 1500–1508 available at *http://ceq.hss.doe.gov/ceq_regulations/regulations.html.* Specifically, 40 CFR 1502.20, discusses "tiering," a strategy used to avoid repetitive discussions of

the same issues, and to prevent unnecessary duplication of work by reviewers, as the NEPA reviews progress from a broad program to a site specific action. In the case of the Gulf of Mexico leases, MMS prepared several tiered NEPA analyses (*see* NEPA environmental review documents available at *http://www.mms.gov/5-year/2007–2012BackgroundDocs.htm* and *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html*).

Environmental Impact Statements (EIS), the most intensive level of analysis, were prepared at two decision points. First, in April 2007, MMS prepared a broad "programmatic" EIS on the Outer Continental Shelf Oil and Gas Leasing Program for 2007–2012. Also, in April 2007, MMS prepared an EIS for the Gulf of Mexico OCS Oil and Gas Lease Sales in the Western and Central Planning Areas, the "multi-sale" EIS.

In October 2007, MMS completed another NEPA analysis, an Environmental Assessment (EA), under the multi-sale EIS, for Central Gulf of Mexico Lease Sale 206. This is the sale in which the lease was issued for the location that includes the Deepwater Horizon well. MMS previously approved BP's development operations based on a programmatic EA that MMS prepared in December 2002.

Finally, for the Deepwater Horizon well, MMS applied its existing Categorical Exclusion Review (CER) process prior to the decision to approve the Exploration Plan that included the drilling of the Deepwater Horizon well. The Categorical Exclusion used by MMS for Deepwater Horizon was established more than 20 years ago. Under section 11 of the Outer Continental Shelf Lands Act, 43 U.S.C. section 1340, MMS had 30 days to complete its environmental review and act on the application to permit drilling. The Administration, in its supplemental budget request sent to Congress on May 12, 2010, seeks to extend that 30-day timeline; however, this review will consider the existing statutory requirements applicable to MMS decisions for OCS oil and gas exploration and development.

The Role of CEQ in the NEPA Process

NEPA charges the Council on Environmental Quality (CEQ) with the authority and responsibility to guide Federal agencies on their implementation of the Act. In 1978, CEQ issued regulations implementing the procedural provisions of NEPA. These regulations apply to all Federal agencies and establish the basic framework for all NEPA analyses (available at *http://ceq.hss.doe.gov/ceq_regulations/regulations.html*). The regulations require Federal agencies to establish their own NEPA implementing procedures (*see* 40 CFR 1507.3), and to ensure that they have the capacity, in terms of personnel and other resources, to comply with NEPA (*see* 40 CFR 1507.2).

CEQ periodically issues guidance and other documents, such as guides and handbooks for NEPA. CEQ also convenes meetings with Federal NEPA contacts to present CEQ's interpretation of NEPA requirements and focus on how agencies can improve their NEPA analyses and documents. Through case law, the Federal courts and the Supreme Court have established that the agencies can rely on CEQ's interpretation of, and guidance on, NEPA.

Agencies establish their own NEPA implementing procedures which tailor the CEQ requirements to a specific agency's authorities and decisionmaking processes. MMS must comply with the Department of the Interior NEPA regulations (available at *http://www.doi.gov/oepc/nepafr.html*) and the MMS NEPA implementing procedures found in the Department of the Interior's Director's Manual 516 at Chapter 15 (available at *http://elips.doi.gov/app_DM/act_getfiles.cfm?relnum=3625*). CEQ provides assistance when agency-specific procedures, such as these DOI and MMS NEPA implementing procedures, are developed. An agency's NEPA procedures are not official until CEQ reviews the proposed procedures and determines that they are in conformity with NEPA and the CEQ regulations. Any subsequent revisions or changes to the agency procedures are subject to the same oversight process with CEQ. Periodically, CEQ also reviews the agency's NEPA implementing regulations and procedures. CEQ does not review every application of a Categorical Exclusion, every agency project, or the NEPA review for every agency project. The CEQ review will review the NEPA analyses conducted for the Deepwater Horizon well as well as the overall NEPA process MMS uses for OCS oil and gas exploration and development.

Discussion of the Request for Public Comment

NEPA itself emphasizes public involvement in government actions affecting the environment by requiring that the environmental impacts or effects associated with proposed actions be assessed and publicly disclosed. NEPA is steeped in the principle that public accountability and oversight makes government more effective. Public access to and participation in specific agency NEPA actions illuminates areas where agency reviewers may have overlooked or misinterpreted portions of a submitted EIS or EA.

Public participation in this review process allows CEQ to similarly tap into the collective wisdom of industry, academia, state, local, and tribal governments, and the rest of the private sector. CEQ is soliciting comments, questions, and other input about a number of specific issues focused on the NEPA review of OCS oil and gas exploration and development:

1. What are substantive issues and at what level should they be analyzed in each of the tiered NEPA submissions, from National 5-Year Oil and Gas Program to an individual well permit?

2. Does this sequence of permitting stages (and associate NEPA submissions) allow for comprehensive evaluation of all relevant issues?

3. What have been past industry and agency experiences with the use of categorical exclusions for OCS oil and gas activities?

4. Has the use of the CER process been an effective tool for reducing unnecessary paperwork without compromising the robustness of the NEPA analysis for OCS oil and gas activities?

5. To what degree has public engagement been a part of MMS NEPA practice, particularly as it deals with categorical exclusions?

6. What resources are available in Federal, tribal, state, and local government agencies with a stake in OCS oil and gas exploration and development to participate in NEPA reviews?

In addition to input on the above issues, general comments and questions are also welcome. Information relevant to this MMS NEPA policy review can be found on the CEQ Web site at *http://www.whitehouse.gov/ceq/initiatives/nepa.*

Public comments are requested as soon as possible in light of the June 17, 2010, deadline for the CEQ review.

Dated: May 25, 2010.

Nancy Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2010–13111 Filed 5–27–10; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 10–22]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal No. 10–22 with attached transmittal and policy justification.

Dated: May 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 19 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-22, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost $122 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Joanne Farmer

Joanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$ 55 million
Other	$ 67 million
TOTAL	$122 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 102 Mastiff/Mine Resistant Ambush Protected (MRAP) Cougar Category II 6X6 modified vehicles, tools and test equipment, maintenance support, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support.

(iv) Military Department: Navy (LUC)

(v) Prior Related Cases, if any:
FMS Case LTQ-$97M-31Jul06
FMS Case LTR-$99M-18Jan08
FMS Case LTS-$102M-25Apr08
FMS Case LTW-$34M-16Jul08
FMS Case LUA-$27M-4Jan10

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 19 May 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom – Mastiff/Mine Resistant Ambush Protected (MRAP) Vehicles

The Government of the United Kingdom has requested a possible sale of 102 Mastiff/MRAP Cougar Category II 6X6 modified vehicles, tools and test equipment, maintenance support, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $122 million.

The United Kingdom is a major political and economic power in NATO and a key democratic partner of the U.S. in ensuring peace and stability in this region and around the world.

The United Kingdom requests these capabilities to provide for the safety of its deployed troops in support of overseas contingency operations. This program will ensure the United Kingdom can effectively operate in hazardous areas in a safe, survivable vehicle, and enhance the United Kingdom's interoperability with U.S. forces. The United Kingdom is a staunch supporter of the U.S. in Iraq and Afghanistan. The United Kingdom's troops are deployed in Afghanistan, where United Kingdom and U.S. forces are currently utilizing Cougar Based MRAP vehicles. By acquiring these additional MRAP vehicles, the United Kingdom will be able to provide the same level of protection for its own forces as that provided by the United States for its forces. The United Kingdom will have no difficulty absorbing these vehicles into its Armed Forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Force Protection Industries, Inc., of Ladson, South Carolina. There are no known offset agreements proposed in connection with this potential sale.

The continued support of nine Field Service Representatives, currently providing in-theater maintenance support for the existing Mastiff vehicles until July 2010, will be extended until the UK can provide this support internally.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–12765 Filed 5–27–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Threat Reduction Advisory Committee

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Threat Reduction Advisory Committee (hereafter referred to as the Committee).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee is a discretionary Federal advisory committee established to provide independent advice and recommendations on matters relating to combating weapons of mass destruction to the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology and Logistics and the Director of the Defense Threat Reduction Agency on the following:

a. Reducing the threat posed by nuclear, biological, chemical, conventional and special weapons to the United States, its military forces, allies and partners;

b. Combating weapons of mass destruction to include non-proliferation, counter proliferation and consequence management;

c. Nuclear deterrence transformation;

d. Weapons effects; and

e. Other Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, and Defense Threat Reduction Agency mission-related matters.

The Under Secretary of Defense for Acquisition, Technology and Logistics shall be authorized to act upon the Committee's advice and recommendations.

The Committee shall be comprised of not more than 30 members who are eminent authorities in the fields of national defense, geopolitical and national security affairs, and weapons of mass destruction.

The Committee members shall be appointed by the Secretary of Defense and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employees.

With the exception of travel and per diem for travel, Committee members shall normally serve without compensation, unless the Secretary of Defense authorizes compensation for a particular member(s).

The Under Secretary of Defense for Acquisition, Technology and Logistics shall select the Committee's Chairperson from the Committee membership at large.

With DoD approval, the Committee is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not Committee members.

Subcommittee members, who are not Committee members, shall be appointed in the same manner as the Committee members.

The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Committee meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Threat Reduction Advisory Committee's membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Threat Reduction Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Threat Reduction Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Threat Reduction Advisory Committee Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Threat Reduction Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–12927 Filed 5–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Task Force on Sexual Assault in the Military Services

AGENCY: Department of Defense (DoD).

ACTION: Termination of federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), 41 CFR 102–3.55 and consistent with the Sunset Provisions of the National Defense Authorization Act for Fiscal Year 2005, subtitle K, section 576, Public Law 108–375, the Department of Defense gives notice that it is terminating the Defense Task Force on Sexual Assault in the Military Services, effective June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: May 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–12902 Filed 5–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces that the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel) will meet on June 24, 2010, in Washington, DC. The meeting is open to the public from 9 a.m. to 12 p.m., but seating is limited. A closed Administrative Work Meeting will be held from 8 a.m. to 9 a.m.

DATES: The open meeting will be held on June 24, 2010, from 9 a.m.–12 p.m. Prior to the open meeting the Panel will conduct an Administrative Work Meeting from 8 a.m. to 9 a.m. that is closed to the public.

ADDRESSES: The meeting will be held at the Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Stacia Spridgen, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, 2450 Stanley Road, Suite 208, Ft. Sam Houston, TX 78234–6102, Telephone: (210) 295–1271, Fax: (210) 295–2789, E-mail: *Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting

The Panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary.

Meeting Agenda

Sign-In; Welcome and Opening Remarks; Public Citizen Comments; Scheduled Therapeutic Class Reviews—Alpha Blockers for Benign Prostatic Hyperplasia, Antilipidemics I, Designated Newly Approved Drugs and Drugs recommended for non-formulary placement due to non-compliance with Fiscal Year 2008 National Defense Authorization Act, Section 703; Panel Discussions and Vote; and comments following each therapeutic class review.

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly.

Administrative Work Meeting

Prior to the public meeting the Panel will conduct an Administrative Work Meeting from 8 a.m. to 9 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center (*see* **ADDRESSES**). Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**). The Designated Federal Officer's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Public Comments

In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's Designated Federal Officer will have a "Sign-Up Roster" available at the Panel meeting, for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period no further public comments will be accepted. Anyone who signs up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation. Accordingly, the Panel recommends that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: May 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–12867 Filed 5–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0069]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Intelligence Agency proposes to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 28, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock 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 of 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. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records 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 DIA Privacy Act Coordinator, Records Management Section, 200 MacDill Blvd, Washington DC 20340.

The Agency proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion 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 a new or altered system report.

Dated: May 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions
LDIA 05–0001

SYSTEM NAME:

Human Resources Management System (HRMS) (August 19, 2009; 74 FR 41874).

REASON:

The records collected and maintained in this system are covered under OPM/GOVT–1, General Personnel Records (June 19, 2006; 71 FR 35342) and OPM/GOVT–5, Recruiting, Examining, and Placement Records (June 19, 2006; 71 FR 35351).

[FR Doc. 2010–12961 Filed 5–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the Elliott Bay Seawall Project, Seattle, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (USACE) will prepare an Environmental Impact Statement (EIS) for a proposed seawall replacement project along the Elliott Bay shoreline in Seattle, WA. The City of Seattle is the non-Federal sponsor for the project.

The Feasibility Study for the Elliott Bay Seawall is being conducted under the authority of Section 209 (Puget Sound and Adjacent Waters) of the Flood Control Act of 1962 (Pub. L. 87–874). The Reconnaissance Study was initiated following specific authorization by the Committee on Transportation and Infrastructure, U.S. House of Representatives, House Resolution 2704, dated September 25, 2002. The Feasibility Study was initiated in August 2004 with signing of a Feasibility Cost Sharing Agreement between U.S. Army Corps of Engineers, Seattle District (USACE) and the City of Seattle, Washington (City). The Feasibility Study authority was subsequently modified in Section 4096(a) of WRDA 2007 to include an evaluation of reducing future damages to the seawall from seismic activity.

The existing Elliott Bay Seawall (seawall) provides protection to Seattle's downtown waterfront from storm waves and the erosive tidal forces of Puget Sound. It supports Seattle's waterfront surface street, Alaskan Way and other critical transportation infrastructure (including the Burlington Northern—Santa Fe Railway main line) and utilities that serve downtown Seattle (including water, electric, gas/petroleum, steam, communications, sanitary sewers and storm water drainage). The Seawall also protects numerous commercial, public and residential structures and facilities, including the Washington State Ferry Terminal at Coleman Dock, Seattle's busiest fire station, the Seattle Aquarium, and the Port of Seattle. The seawall is 75 years old and is reaching the end of its useful design life. The timber elements of the structure have experienced significant decay and deterioration from continued exposure to storm waves and tides, leading to potential structural instability. Seawall structural instability, and the likely further deterioration from future waves and tidal forces, is putting a tremendous amount of public and private infrastructure, residential and business development, and transportation facilities at risk of being damaged from several different types of failure. An earthquake of moderate intensity and/or duration can cause liquefaction of the soils supported by the wall, resulting in loading conditions for which the structure was not designed. Failure of the seawall under any of these circumstances would result in a high risk to public safety and substantial environmental degradation from subsequent storm-generated waves and tidal forces.

The purpose of the proposed rehabilitation effort is to protect public safety, critical infrastructure and associated economic activities along the Elliott Bay shoreline from expected future damages associated with coastal storms, shoreline erosion and earthquake damage that could lead to failure of the existing seawall.

DATES: Submit comments by July 19, 2010 on the scope of issues to be addressed in the Environmental Impact Statement (DEIS).

ADDRESSES: Address all comments concerning this notice to Mr. Patrick Cagney, U.S. Army Corps of Engineers, Seattle District, P.O. Box 3755, Seattle, WA 98124–3755. Submit electronic comments and supporting data to *patrick.t.cagney@usace.army.mil*

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the DEIS may be directed to Mr. Patrick Cagney, telephone (206) 764–3654, email *patrick.t.cagney@usace.army.mil* .

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The Elliott Bay Seawall extends for a distance of approximately 7,166 feet along Seattle's waterfront, between Washington Street to the south and Broad Street to the north. The proposed action would involve an extensive structural rebuild or replacement of the seawall in order to reduce damage resulting from storms, tidal forces, erosion and earthquakes.

The proposed action was previously considered along with the proposed replacement of the State Route (SR) 99 Alaskan Way Viaduct, which runs parallel to a portion of the seawall. The SR 99 Alaskan Way Viaduct and Seawall Replacement Project Draft Environmental Impact Statement (AWVSRP DEIS) was issued by the U.S. Department of Transportation Federal Highway Administration (FHWA), Washington State Department of Transportation (WSDOT), and City of Seattle on April 9, 2004 (69 FR 18898). A Supplemental Draft Environmental Impact Statement (AWVSRP SDEIS 1) was issued by the same parties on July 28, 2006 (72 FR 42846). The AWVSRP DEIS and SDEIS 1 included evaluation of the rebuilding of the Alaskan Way Seawall because it is essential to the function of transportation facilities and is at risk of collapsing in a large earthquake. The geographic area covered in the AWVSRP DEIS and SDEIS 1 was virtually the same as the study area proposed by the USACE.

The USACE EIS will evaluate the seawall from a coastal storm and earthquake damage reduction perspective; the seawall is the primary focus of the analysis. The USACE is reviewing the existing body of work and coordinating closely with the city of

Seattle, FHWA, and WSDOT to incorporate all relevant material from their NEPA efforts, share information, and reduce duplication of efforts.

2. *Alternatives:* A number of seawall replacement alternatives are being considered including the no action alternative. Several structural, non-structural and construction technique options will be considered including soil improvement, secant piles, and buttress fill, among others; more than one option may be included in the preferred alternative. Additionally; in conjunction with any of the structural options, the seawall alignment will be considered; examining where the seawall face can be reconstructed in the existing alignment or if it can be pulled back landward. Similarly, habitat restoration and recreational access options will be considered with any of the structural options. Public input is specifically invited regarding the reasonableness of the build alternatives and whether any additional alternatives are appropriate for consideration.

3. *Scoping and Public Involvement:* An initial notice of intent for this project was issued on March 31, 2006 (71 FR 16293). Since that time, the scope of the project has changed to include the evaluation of seismic damages and to consider additional alternatives. This present notice of intent formally re-commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Native American Tribes, private organizations, and the public are invited to comment on the scope of the EIS. To date, the following issues of concern have been identified for in-depth analysis in the draft EIS: (1) Construction impacts, particularly those related to noise, transportation, and effects to businesses and residences within/adjacent to the construction zone; (2) impacts associated with potential variations of the existing seawall alignment; (3) potential impacts to historical properties; and (4) potential benefits to the Elliott Bay aquatic ecosystem.

4. *Scoping Meeting:* One public scoping meeting will be held to identify issues of major concern, identify studies that might be needed in order to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. This meeting will be held at the Bell Harbor International Conference Center, Pier 66 on Wednesday, June 16, 2010. An informal open house will be held between 4 and 5:30 p.m. A presentation to summarize the purpose of scoping and existing information will be made between 5:30 and 6 p.m. Then, testimony will be taken between 6 and 7 p.m. Verbal (maximum 3 minutes) or written comments will be accepted at the scoping meeting or written comments may be sent by regular or electronic mail to EIS Scoping Comments c/o Patrick Cagney (*see* **ADDRESSES**). Ongoing communication with agencies, Native American tribes, public interest groups, and interested citizens will take place throughout the EIS development through the use of public meetings, mailings, and the Internet. Additional meetings will be scheduled upon completion of the DEIS.

5. *Other Environmental Review Coordination and Permit Requirements:* The environmental review process will be comprehensive and will satisfy the requirements of both NEPA and the Washington State Environmental Policy Act (SEPA) per preparation of a joint NEPA/SEPA document with the City of Seattle. All other relevant Federal, State and local environmental laws will be complied with during the feasibility and/or design phases of the project.

Dated: May 20, 2010.

Anthony Wright,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2010–12878 Filed 5–27–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 2009 through December 31, 2009.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Laurel Nishi or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2009 through December 31, 2009. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: State Administration

○ Letters dated November 13, 2009 to Senator Lamar Alexander, Senator Richard M. Burr, Senator Tom Coburn, Senator Michael B. Enzi, Senator Judd Gregg, Senator Orrin G. Hatch, and Senator Johnny Isakson, regarding the Secretary's authority to adjust the statutory caps on State administration for Federal fiscal year 2009 under section 611 of the IDEA and Title I of the Elementary and Secondary Education Act of 1965, as amended, to help defray the costs of implementing the data collection requirements associated with the American Recovery and Reinvestment Act of 2009 (ARRA).

Topic Addressed: Use of Funds

○ Letter dated October 27, 2009 to National Association of Private Special Education Centers Executive Director and CEO Sherry L. Kolbe, clarifying when Part B, IDEA funds may be used for professional development activities for private school personnel and contractors serving children with disabilities placed in private schools by public agencies.

Section 612—State Eligibility

Topic Addressed: Maintenance of State Financial Support

○ Office of Special Education Programs Memorandum 10–5, dated December 2, 2009 to Chief State School

Officers and State Directors of Special Education, regarding the State funds that must be included in the calculation of State financial support for special education and related services.

Topic Addressed: Children in Private Schools

○ Letter dated December 8, 2009 to New York Attorney Lawrence D. Weinberg, regarding whether parents can obtain reimbursement under Part B of the IDEA for the cost of a private placement for a child not previously found eligible for special education and related services.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Maintenance of Effort

○ Letter dated October 29, 2009 to Learning Disabilities Association of Connecticut Board of Directors Secretary Diane Willcutts, regarding the use of ARRA Part B, IDEA funds by local educational agencies (LEAs) and LEA maintenance of effort requirements.

○ Letter dated November 13, 2009 to Iowa Department of Education Chief Lana Michelson and Legal Consultant Thomas A. Mayes, reaffirming the Department's position that a State educational agency (SEA) must prohibit an LEA from taking advantage of the LEA maintenance of effort reduction if the SEA identifies the LEA as having significant disproportionality.

Section 616—Monitoring, Technical Assistance, and Enforcement

Topic Addressed: State Determinations on the Performance of Each Local Educational Agency

○ Letter dated October 21, 2009 to Chief State School Officers and State Directors of Special Education urging States to maintain high standards and not compromise the determination process under section 616(d)(2) of the IDEA.

○ Letter dated October 30, 2009 to Montana Office of Public Instruction Director of Special Education Tim Harris, clarifying that an SEA must prohibit an LEA that receives a determination of "needs assistance," "needs intervention," or "needs substantial intervention" pursuant to section 616(d)(2) of the IDEA from taking advantage of the 50 percent LEA maintenance of effort reduction.

Part C—Infants and Toddlers With Disabilities

Section 635—Requirements for Statewide System

Topic Addressed: Complaint Resolution

○ Letter dated October 27, 2009 to Nevada Aging and Disability Services Division Part C Coordinator Wendy Whipple, regarding the obligation of the State lead agency to provide compensatory services under Part C of the IDEA for children who were denied early intervention services, even after they moved out of the State.

Section 639—Procedural Safeguards

Topic Addressed: Evaluations, Parental Consent, and Reevaluations

○ Letter dated November 13, 2009 to California Early Start Part C Coordinator Rick Ingraham, regarding when parental consent must be obtained for changes in the individualized family service plan.

Other Letters That Do Not Interpret the Idea But May Be of Interest To Readers

Topic Addressed: Seclusion and Restraint

○ Letter dated December 8, 2009 to Senator Christopher J. Dodd, Representative George Miller, and Congresswoman Cathy McMorris Rodgers, outlining principles for Congress to consider in developing legislation to limit the use of physical restraint and seclusion in schools and other educational settings that receive Federal funds.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: May 24, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–12946 Filed 5–27–10; 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 28, 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 25, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Striving Readers Comprehensive Literacy State Formula Grant Application.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 5,200.

Abstract: The Striving Readers Comprehensive Literacy program is authorized as part of the FY 2010 Consolidated Appropriations Act (Pub. L. No. 111–117) under the Title I demonstration authority (Part E, Section 1502 of the Elementary and Secondary Education Act (ESEA). The FY 2010 Appropriations Act provides $250 million under Section 1502 of the ESEA for a comprehensive literacy development and education program to advance literacy skills for students from birth through grade 12. The Act reserves $10 million for formula grants to assist States in creating or maintaining a State Literacy Team with expertise in literacy development and education for children from birth through grade 12 and to assist States in developing a comprehensive literacy plan. This request includes information collection activity covered under the Paperwork Reduction Act (PRA). The activities consist of a new application for an SEA to submit to the Department to apply for FY 2010 funds under the 2010 Appropriations Act.

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 4262. 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. 2010–12903 Filed 5–27–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Overview Information

Race to the Top Fund Assessment Program

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.395B (Comprehensive Assessment Systems grants) and 84.395C (High School Course Assessment Programs grants).

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On April 9, 2010, the Department of Education published in the **Federal Register** (75 FR 18171) a notice inviting applications for new awards for FY 2010 (NIA) for the Race to the Top Fund Assessment Program. This notice makes two corrections to the April 9 NIA.

FOR FURTHER INFORMATION CONTACT: James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C108, Washington, DC 20202–6400. Telephone: (202) 453–7246 or by e-mail: *racetothetop.assessment@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Correction

On page 18178, we provided a mailing address, telephone number, and fax number for the Education Publications Center (ED Pubs), from which prospective applicants can obtain an application package for either grant category under the Race to the Top Fund Assessment Program competition. The mailing address and fax number that we provided were incorrect. To correct these errors, the Department makes the following corrections to the April 9 NIA:

On page 18178, in the third column, under the heading

A. Address To Request Application Package:

1. Correct the third sentence to read: "To obtain a copy from ED Pubs, write, fax or call the following: Education Publications Center, P.O. Box 22207, Alexandria, VA 22304."

2. Correct the fifth sentence to read: "FAX: (703) 605–6794."

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5.

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Dated: May 25, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–12953 Filed 5–27–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Teacher Incentive Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.385 and 84.374.

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On May 21, 2010, the Department of Education published in the **Federal Register** (75 FR 28740) a notice inviting applications for new awards for FY 2010 (NIA) for the Teacher Incentive Fund. This notice makes a correction to the May 21 NIA.

FOR FURTHER INFORMATION CONTACT: April Lee, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E120, Washington, DC 20202. Telephone: (202) 205–5224, or by e-mail: *TIF@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Correction

On page 28745 of the May 21 NIA, we requested that applicants submit a short e-mail as a notice of intent to apply by June 1 to allow us to develop a more efficient process for reviewing grant applications. We incorrectly stated, however, that the "short e-mail should provide (1) the applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) all competitive preference priorities the applicant intends to address." We are correcting the May 21 NIA to provide applicants with the correct information about what the notice of intent to apply should include.

On page 28745, first column, first paragraph, under the heading *Notice of Intent to Apply,* the third sentence is corrected to read "This short e-mail should provide the applicant organization's name and address and whether the applicant intends to apply for the Evaluation or Main TIF competition."

Program Authority: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Pub. L. 110–161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Pub. L. 111–117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Pub. L. 111–5.

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Dated: May 25, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–12949 Filed 5–27–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC10–917–000 and IC10–918–000]

Commission Information Collection Activities; Comment Request; Extension

May 20, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collections and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collections described below.

DATES: Comments in consideration of the collections of information are due July 27, 2010.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket Nos. IC10–917–000 and IC10–918–000. For comments that only pertain to one of the collections, specify the appropriate collection and related docket number. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at: *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket Nos. IC10–917 and IC10–918. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone, toll-free, at: (866) 208–3676, or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@ferc.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: On February 17, 2007, the Commission issued Order No. 890 to address and remedy opportunities for undue discrimination under the *pro forma* Open Access Transmission Tariff (OATT) adopted in 1996 by Order No. 888.[1] Through Order No. 890, the Commission:

(1) Adopted *pro forma* OATT provisions necessary to keep imbalance charges closely related to incremental costs;

(2) Increased nondiscriminatory access to the grid by requiring public utilities, working through the North American Electric Reliability Corporation (NERC), to develop consistent methodologies for available transfer capability (ATC) calculation and to publish those methodologies to increase transparency.

(3) Required an open, transparent, and coordinated transmission planning process thereby increasing the ability of customers to access new generating resources and promote efficient utilization of transmission.

(4) Gave the right to customers to request from transmission providers, studies addressing congestion and/or integration of new resource loads in areas of the transmission system where they have encountered transmission problems due to congestion or where they believe upgrades and other investments may be necessary to reduce

[1] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

congestion and to integrate new resources.

(5) Required both the transmission provider's merchant function and network customers to include a statement with each application for network service or to designate a new network resource that attests, for each network resource identified, that the transmission customer owns or has committed to purchase the designated network resource and the designated network resource comports with the requirements for designated network resources. The network customer includes this attestation in the customer's comment section of the request when it confirms the request on the Open Access Same-Time Information System (OASIS).

(6) Required with regard to capacity reassignment that: (a) All sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service commences; (b) assignees of transmission capacity execute a service agreement prior to the date on which the reassigned service commences; and (c) transmission providers aggregate and summarize in an electric quarterly report the data contained in these service agreements.

(7) Adopted an operational penalties annual filing that provides information regarding the penalty revenue the transmission provider has received and distributed.

(8) Required creditworthiness information to be included in a transmission provider's OATT. Attachment L must specify the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required.

The Commission required a NERC/NAESB [2] team to draft and review Order No. 890 reliability standards and business practices. The team was to solicit comment from each utility on developed standards and practices and utilities were to implement each, after Commission approval. Public utilities, working through NERC, were to revise reliability standards to require the exchange of data and coordination among transmission providers and, working through NAESB, were to develop complementary business practices.

Required OASIS postings included:

(1) Explanations for changes in ATC values;

(2) Capacity benefit margin (CBM) reevaluations and quarterly postings;

(3) OASIS metrics and accepted/denied requests;

(4) Planning redispatch offers and reliability redispatch data;

(5) Curtailment data;

(6) Planning and system impact studies;

(7) Metrics for system impact studies;

(8) All rules.

Incorporating the Order No. 890 standards into the Commission's regulations benefits wholesale electric customers by streamlining utility business practices, transactional processes, and OASIS procedures, and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other electric industry business practices. These practices and procedures benefit from the implementation of generic industry standards.

The Commission's Order No. 890 regulations can be found in 18 CFR 35.28 (*pro forma* tariff requirements), and 37.6 and 37.7 (OASIS requirements).

Action: The Commission is requesting a three-year extension of the current FERC–917 and FERC–918 (Order No. 890) reporting requirements, with no change to the existing requirements.

Burden Statement: FERC–917 and FERC–918 are both included in OMB Control Number 1902–0233. The estimated annual public reporting burdens for FERC–917 (requirements in 18 CFR 35.28) and FERC–918 (requirements in 18 CFR 37.6 and 37.7) are reduced from the original estimates made three years ago. The reductions are due to the incorporation and completion of: (1) One-time *pro forma* tariff changes by utilities in existence at that time; (2) completed development and comment solicitation of the required NERC/NAESB reliability standards and business practices; and (3) the transfer of burden associated with the implementation of some of the NERC/NAESB business practices, in Order No. 729, issued November 11, 2009,[3] to the Commission's FERC–725A information collection (OMB Control Number 1902–0244). The estimated annual figures follow.

FERC Information collection	Annual No. of respondents	Average No. of reponses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1) × (2) × (3)
18 CFR 35.28 (FERC–917)				
Conforming tariff changes	6	1	25	150
Revision of Imbalance Charges	6	1	5	30
ATC revisions	6	1	40	240
Planning (Attachment K)	134	1	100	13,400
Congestion studies	134	1	300	40,200
Attestation of network resource commitment	134	1	1	134
Capacity reassignment	134	1	100	13,400
Operational Penalty annual filing	134	1	10	1,340
Creditworthiness—include criteria in the tariff	6	1	40	240
FERC–917—Sub Total Part 35				69,134

[2] NAESB is the North American Energy Standards Board.

[3] *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System,* Order No. 729, 74 FR 64884 (Dec. 3, 2009) 129 FERC ¶ 61,155.

The FERC–725A requirements (Mandatory Reliability Standards for the Bulk-Power System, which now includes the utilities' implementation) are separate and are not a subject of this Notice in Docket Nos. IC10–917 and IC10–918. The FERC–725A reporting and recordkeeping requirements in Order 729 (Docket No. RM08–19, et. al.) were approved by OMB (in ICR Number 200912–1902–005) on 3/12/2010.

FERC Information collection	Annual No. of respondents	Average No. of reponses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1) × (2) × (3)
18 CFR 37.6 & 37.7 (FERC–918)				
ATC-related standards:				
NERC/NAESB Team to develop	0	0	0	0
Review and comment by utility	0	0	0	0
Implementation by each utility [3]	0	0	0	[3] 0
Mandatory data exchanges	134	1	80	10,720
Explanation of change of ATC values	134	1	100	13,400
Reevaluate CBM and post quarterly	134	1	20	2,680
Post OASIS metrics; requests accepted/denied	134	1	90	12,060
Post planning redispatch offers and reliability redispatch data	134	1	20	2,680
Post curtailment data	134	1	10	1,340
Post Planning and System Impact Studies	134	1	5	670
Posting of metrics for System Impact Studies	134	1	100	13,400
Post all rules to OASIS	134	1	5	670
FERC–918—Sub Total of Part 37 Reporting Requirements				57,620
FERC–918—Recordkeeping Requirements	134	1	40	5,360
FERC–918—Sub Total of Reporting and Recordkeeping Requirements				62,980
Total FERC–917 and FERC–918 (Part 35 + Part 37, Reporting and Recordkeeping Requirements)				132,114

Total combined annual burden for FERC–917 and FERC–918 is 132,114 hours (126,754 reporting hours + 5,360 recordkeeping hours). This is a reduction of 24,922 hours from the combined FERC–917 and FERC–918 burden OMB previously approved.

Total combined estimated annual cost for FERC–917 and FERC–918 is $21,941,076.[4] This includes:

(1) Reporting costs of $14,449,956; (126,754 hours @ $114 an hour (average cost of attorney ($200 per hour), consultant ($150), technical ($80), and administrative support ($25)) and

(2) Recordkeeping (labor and storage) costs of $7,491,120; (labor = $91,120; 5,360 hours × $17/hour (file/record clerk @ $17 an hour) and off-site storage costs = $7,400,000; (8,000 sq. ft. × $925/sq. ft.).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to the collections of information; (5) searching data sources; (6) completing and reviewing the collections of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collections 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12853 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

[4] Using the hourly rate figures of the Bureau of Labor Statistics, occupational series and market rates as applicable, the hourly rate is a composite of the respondents who will be responsible for implementing and responding to the collection of information (support staff, engineering, and legal).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–000]

Improving Market and Planning Efficiency Through Improved Software; Notice of Agenda and Procedures for Staff Technical Conference

May 20, 2010.

This notice establishes the agenda and procedures for the staff technical conference to be held on June 2, 2010 and June 3, 2010, to discuss issues related to unit commitment software. The technical conference will be held from 8 a.m. to 5:30 p.m. (EDT) on June 2, 2010, and from 8 a.m. to 5 p.m. (EDT) on June 3, 2010 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend, and registration is not required.

The agenda for this conference is attached. The presentations will be technical in nature, and approximately 20 minutes in length with 5 to 10 minutes for questions. Equipment will

be available for computer presentations. Presenters who wish to include comments, presentations, or handouts in the record for this proceeding should file their comments with the Commission. Comments may either be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.*

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For further information about this conference, please contact:

Eric Krall (Technical Information), Office of Energy Policy and Innovation, (202) 502–6214, *Eric.Krall@ferc.gov;*

Tom Dautel (Technical Information), Office of Energy Policy and Innovation, (202) 502–6196, *Thomas.Dautel@ferc.gov.*

Kimberly D. Bose,

Secretary.

AGENDA FOR AD10–12 STAFF TECHNICAL CONFERENCE ON UNIT COMMITMENT SOFTWARE FEDERAL ENERGY REGULATORY COMMISSION

June 2, 2010	
8 a.m.	Richard O'Neill, FERC—Welcome and Introduction
8:20 a.m.	Session A—Unit Commitment Models in ISO Markets
	Andy Ott, PJM
	Mark Rothleder, California ISO
	Rana Mukerji, NYISO
9:25 a.m.	Session B—Experience, Challenges, and Future Directions in Unit Commitment Models
	Art Cohen and Chien-Ning Yu, ABB
	William Hogan, Harvard
11:40 a.m.	Lunch
12:40 p.m.	Boris Gisin, PowerGEM
1:50 p.m.	Session C—Advances in Hardware and Software
	Jeremy Bloom and John Gregory, IBM
	Alkis Vazacopoulos, FICO
3 p.m.	Session D—New Designs and Advanced Unit Commitment Models
	Kory Hedman, Arizona State University
	Jianhui Wang, Argonne National Laboratory
	Eugene Litvinov, J. Zhao, and T. Zheng ISO–NE
4:55 p.m.	Session E—Test Model Data Sets
	Avnaesh Jayantilal, Areva and Jim Waight, Siemens
	Richard O'Neill and Eric Krall, FERC
5:30 p.m.	Richard O'Neill, FERC—Day 1 Conclusion
June 3, 2010	
8 a.m.	Richard O'Neill, FERC—Day 2 Welcome
8:05 a.m.	Session F—Special Topics
	Paul Gribik and Li Zhang, Midwest ISO
	Gary Stern, Southern California Edison
9:25 a.m.	Session G—Variable Energy Resources and Demand Resources in Unit Commitment Models
	Erik Ela, National Renewable Energy Laboratory
	Jayant Kalagnanam, IBM
	Marija Ilic, Carnegie Mellon
	Dhiman Chatterjee, Midwest ISO
11:55 a.m.	Session H—Modeling Uncertainty and Flexibility in Unit Commitment Models
	David Sun, Alstom
12:30 p.m.	Lunch
1:20 p.m.	Jianhui Wang and Audun Botterud, Argonne National Laboratory
	Mohammad Shahidehpour, Illinois Institute of Technology
	Pablo Ruiz, CRA
	Avnaesh Jayantilal, Areva T&D
3:50 p.m.	Session I—Forecasting for Market Operations
	Audun Botterud, Argonne National Laboratory
	Victor M. Zavala, Emil Constantinescu, and Mihai Anitescu, Argonne National Laboratory
5 p.m.	Richard O'Neill, FERC—Conclusion and Next Steps

[FR Doc. 2010–12851 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13678–000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 21, 2010.

On March 4, 2010, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Dry Creek Canal Irrigation Hydroelectric Project. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A new reinforced concrete intake structure; (2) a new 36-inch-diameter, 2,600-foot-long [polyethylene and/or steel or PVC] penstock; (3) a new approximately 35-foot by 35-foot powerhouse, housing one turbine/generator unit (with an installed capacity of 500 kilowatts); (4) a new substation; and (5) a 100-foot long, 12.47 kilovolt transmission line which will interconnect with an existing Park Electric utility line. The estimated annual generation for this project is 1.7 gigawatt hours.

Applicant Contact: Jason M. Cohn, Project Engineer, Hydrodynamics, Inc., 521 East Peach St., Suite 2B, Bozeman, MT 59715.

FERC Contact: Kelly Wolcott, 202–502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13678) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12859 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11068–014]

Friant Power Authority Orange Cove Irrigation District; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

May 20, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to increase the installed capacity.

b. *Project No.:* 11068–014.

c. *Date Filed:* February 22, 2010, and supplemented on May 13, 2010.

d. *Applicant:* Friant Power Authority and Orange Cove Irrigation District.

e. *Name of Project:* Fishwater Release Hydroelectric Project.

f. *Location:* The project is located at the Bureau of Reclamation's Friant Dam on the San Joaquin River in Fresno County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Bill Carlisle, General Manager, Friant Power Authority, c/o South San Joaquin Municipal Utility District, P.O. Box 279, Delano, CA 93216; telephone (661) 725–0610.

Fergus Morrissey, Orange Cove Irrigation District, 1130 Park Boulevard, Orange Cove, CA 93646; telephone (559) 626–4461.

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and e-mail address: *linda.stewart@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with:* Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11068–014) on any comments or motions filed.

k. *Description of Request:* Friant Power Authority and Orange Cove Irrigation District (licensees) propose to construct a different powerhouse from the one authorized in the October 13, 2006 Order Amending License. Instead of constructing a new powerhouse containing a single turbine generating unit with an installed capacity of 1.8 megawatts (MW) and hydraulic capacity of 130 cubic feet per second (cfs), the licensees propose to construct a new powerhouse containing a single turbine generating unit with an installed capacity of 7.0 MW and hydraulic capacity of 370 cfs. The proposed new powerhouse would be constructed at a location different from the location authorized in the license.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "FISHWAY PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12852 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2211–004]

Duke Energy Indiana, Inc.; Indiana; Notice of Availability of Environmental Assessment

May 21, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Markland Hydroelectric Project, located at the U.S. Army Corps of Engineers' (Corps) existing Markland Locks and Dam on the Ohio River in Switzerland County, Indiana, and has prepared an Environmental Assessment (EA) for the project. Parts of the project occupy 6.21 acres of federal land administered by the Corps; Duke Energy Indiana, Inc. proposes changing the project boundary to include a total of 10.2 acres of federal land to accommodate new and existing project facilities.

The EA contains the staff's analysis of the potential environmental impacts of continued operation and maintenance of the project and concludes that relicensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text-only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2211–004 to all comments.

For further information, contact Dianne Rodman at (202) 502–6077.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12850 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2088–075]

South Feather Water and Power Agency; Notice of Availability of Environmental Assessment

May 20, 2010.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations, (18 CFR Part 380), Commission staff has prepared an environmental assessment (EA) regarding South Feather Water and Power Agency's (SFWPA) request to raise the dam crest and modify the spillway at Sly Creek Dam, part of the Sly Creek development of the South Feather Power Project (FERC No. 2088). Sly Creek is located on Sly Creek

Reservoir, which receives water from Lost Creek, and the Slate Creek and South Fork Feather River diversion tunnels in Butte, Yuba and Plumas counties, California.

SFWPA's Proposed Action includes: (1) Raising Sly Creek Dam approximately 10 feet through the use of mechanically stabilized earth walls constructed from approximately 20,000 cubic yards of fill from an onsite borrow area; (2) modifying the spillway crest structure; (3) replacing the spill gate; and (4) altering roadway approaches to the Sly Creek Dam crest and re-paving the road to improve drainage conditions in the adjacent campground and borrow site.

The EA contains Commission staff's analysis of the potential environmental effects of the Proposed Action and concludes that the Proposed Action, with the implementation of environmental protective measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission's Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–2088) in the docket number field to access the document. Additional information about the project is available from the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY, contact (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12858 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–25–000]

Consumers Energy Company; Notice of Baseline Filing

May 21, 2010.

Take notice that on May 17, 2010, Consumers Energy Company (Consumers) submitted a baseline filing of its Statement of Operating Conditions for the interruptible transportation services provided under section 311(a)(2) of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12861 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; Energy Efficiency and Conservation Block Grant Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: This document advises the public that a class deviation to the Department of Energy (DOE) Financial Assistance Rules, particularly the regulations that deal with programmatic changes, and DOE policies and procedures on the use of warranted Contracting Officers to administer financial assistance agreements, has been approved for the Energy Efficiency and Conservation Block Grant (EECBG) program. This class deviation gives authority to EECBG Program Managers to approve the following processes for financial assistance agreements made using Recovery Act funding to State, city, county, and Tribal recipients in support of the formula EECBG program: Administer financial assistance awards for approval of programmatic changes under the Changes section of the Financial Assistance Rules; review of subsequent budget submittals for consistency with the requirements of Office of Management and Budget's (OMB) Cost Principles for State, Local and Indian Tribal Governments (questions on allowability, allocability and reasonableness of budgets and individual cost elements will be forwarded to the Contracting Officer for adjudication), remove and/or modify National Environmental Policy Act (NEPA) restrictions, including guidance on NEPA requirements; and amend agreements for administrative activities such as lifting conditions based on approval of Strategies. The class deviation does not apply to non-formula awards.

DATES: This class deviation is effective June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Tyler Huebner, U.S. Department of Energy, Office of Weatherization and Intergovernmental Programs, Mailstop EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585–0121. E-mail: *tyler.huebner@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Determination

I. Background

The DOE, Office of Energy Efficiency and Renewable Energy (EERE), has experienced historic growth and unprecedented workload challenges as a result of the passage of the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act provides critical funding to be spent in support of the economy, creating jobs and serving the public purpose by advancing the development and adoption of renewable and energy efficiency technology.

The Recovery Act included conditions on the use of its funding for all awards. These conditions included

applying the Davis-Bacon Act to financial assistance and adding Buy American requirements for steel, iron and manufactured goods. In addition, the Recovery Act did not provide for waivers or deviations from any statutory or regulatory requirement normally associated with acquisitions and financial assistance activities. Of particular importance for the EECBG Program, waivers or deviations were not provided from the National Environmental Policy Act (NEPA) or the Office of Management and Budget (OMB) Guidance for Grants and Agreements.

Under the Recovery Act, EERE is charged with spending over $16 billion dollars across the entire EERE portfolio, including $2.7 billion for EECBG Program. The EECBG Program, funded for the first time by the Recovery Act, represents a Presidential priority to deploy the cheapest, cleanest, and most reliable energy technologies we have—energy efficiency and conservation—across the country. The EECBG Program, authorized in title V, subtitle E, of the Energy Independence and Security Act of 2007 (EISA), is intended to assist U.S. cities, counties, States, territories, and Indian Tribes to develop, promote, implement, and manage energy efficiency and conservation projects and programs designed to:

- Reduce fossil fuel emissions;
- Reduce the total energy use of the eligible entities; and
- Improve energy efficiency in the transportation, building, and other appropriate sectors.

See EISA section 542(b). Through formula and competitive grants, the EECBG Program empowers local communities to make strategic investments to meet the nation's long-term goals for energy independence and leadership on climate change.

In support of the EECBG Program, EERE and the procurement offices (Procurement) at the Golden Field Office, Oak Ridge Operations Office, and Yucca Mountain Project Office have been charged with managing over 2,200 block grants to cities, counties, States and Tribal governments. In order to obligate funds quickly and expedite the process of developing strategies and budgets, the majority of the grants were awarded on a partially conditioned basis. That is, awards were conditioned upon NEPA approval and included requirements for post-award submission of strategies and budgets. To lift all conditions so that grantees may expend all grant funds, awards must be amended at least once and often multiple times. While this practice of conditioning the awards may reduce the risk of misuse of Recovery Act funds, it creates a tremendous workload on the program and procurement offices.

Although numerous standard processes have been streamlined and/or waived, including lifting NEPA restrictions via a letter issued by the Contracting Officer (rather than through a grant amendment) and waiving approval of budget changes as authorized by 10 CFR 600.230(c), additional relief is necessary to ensure that the funds are released to the grantees expeditiously in accordance with the intent of the Recovery Act.

II. Discussion

According to DOE's Financial Assistance Rules, 10 CFR Part 600, and as reflected in the DOE's Guide to Financial Assistance, a warranted Contracting Officer is required to sign all financial assistance awards and amendments including awards to States, cities, counties and Tribes receiving formula funds as part of the EECBG program. For EECBG, this may require as many as 10,000 actions to release conditions fully on the awards and permit use of Recovery Act funds. Given the limited number of Contracting Officers within DOE and particularly within the procurement offices processing EECBG workload, there is a limit to the number of awards that can be made or amended in the near term under the current regulatory requirements and DOE policies.

EERE has examined the financial assistance award and administration process to determine what additional approaches can be used in the short term to support timely processing of the extraordinary workload while maintaining the due diligence and rigor that expenditures of public funds requires. EERE recommended that the DOE Senior Procurement Executive/Director, Office of Procurement and Assistance Management approve a class deviation to allow EECBG Program Managers to have the authority to approve the following processes:

(1) Administer financial assistance awards for approval of programmatic changes under 10 CFR 600.230(d);

(2) Review of subsequent budget submittals for consistency with the requirements of OMB Circular A–87. Questions on allowability, allocability and reasonableness of budgets and individual cost elements will be forwarded to the Contracting Officer for adjudication.

(3) Remove and/or modify NEPA restrictions, including guidance on NEPA requirements; and

(4) Amend agreements for administrative activities such as lifting conditions based on approval of Strategies.

In order to ensure that the grant file is complete and there is a record of approvals, the EECBG Program Manager approval must be in writing and the Contracting Officer must be copied on all such approvals.

Each program manager must have filed either a public financial disclosure report (SF 278) or a confidential financial disclosure report (OGE 450), depending upon the individual's position at the Department, and it must be confirmed that the individual does not have any conflicts of interest that have not been remedied. Prior to receiving a delegation as discussed herein, each program manager must have completed two financial assistance classes (Basic Financial Assistance and Cost Principles—*see* the Acquisition Career Management Program Manual for further information). EECBG must provide a written request to the Head of the Contracting Activity (HCA) for the Golden Field Office identifying the person, demonstrating satisfaction of these qualifications, and stating the need for the delegation. For awards administered by other than the Golden Field Office, that office's cognizant HCA will be asked to concur on the EECBG Program Manager's delegation of authority for awards under that office's purview.

Although there are risks that the funds may be used inappropriately, overall EECBG awards are generally low-risk awards. The awards are to cities, counties, States and Tribes which are generally low risk recipients. Many of the recipients have other Federal awards and have established processes that provide systemic support for proper use of Federal funds. The total dollar amount of each award is established by a formula that limits the DOE's liability for cost overruns or underestimation of costs included in the proposed budget. Risk is further limited as the grantee must first have an approved energy efficiency and conservation strategy pursuant to EISA 545(b) (hereafter, Strategy). Projects must be for an eligible activity under EISA 544 and require DOE approval for work to begin. Each entity expending over $500,000 in a fiscal year is subject to the Single Audit Act, and DOE has the right to perform other nonduplicative audits on the grants. Together, these measures limit the risk to DOE of misuse of funds.

To limit the risk of misuse of funds associated with the delegation of authority to approve certain post-award processes to EECBG Program Managers, the following actions remain unchanged:

(1) Contracting Officers will review the initial award package (including budget and proposed activities) and issue the initial award obligating the funds.

(2) The annual audit contained in OMB Circular A–133 remains in effect and will serve as additional oversight of expenditures.

(3) A NEPA Compliance Officer (NCO) will determine whether the NEPA requirements have been satisfied for a recipient's project.

The process for approving the actions that occur after a Contracting Officer has made the initial award is the following:

(1) Upon receiving a package from the recipient, the agreement's assigned Federal Technical Project Officer (TPO) determines if the package involves one of the actions listed above (*i.e.,* approval of the Strategy, award modification such as a scope change, or NEPA letter modification).

(2) If the TPO determines the package involves one of the above actions, (s)he completes a technical evaluation (or drafts a letter lifting the NEPA condition), along with a brief risk assessment of the grantee (*see* OWIP Monitoring Plan and the DOE Guide to Financial Assistance), completes a review of the recipient's budget consistent with OMB Circular A–87, and submits the documentation to the EECBG Program Manager.

(3) The cognizant EECBG Program Manager reviews the technical evaluation and risk assessment and either approves via signature, or requests the TPO to:

a. Revise the technical evaluation, and/or gather more information from the grantee;

b. Submit the package to a Specialist in Procurement for a peer-review prior to approval by the EECBG Program Manager or designee; or

c. Submit the package to Procurement for full review and approval by a Contracting Officer, per 10 CFR part 600.

(4) Following approval by the EECBG Program Manager, the TPO will maintain a file with information on the action including a memo explaining the change and any award documents (*e.g.,* budget). The TPO notifies Procurement of the completed action, providing a copy of the approval as noted above.

(5) As a part of the closeout process, a Contracting Officer will incorporate the EECBG Program Manager's approvals into the award so that the final electronic record is complete.

The competitive portion of the EECBG program is not included in this deviation request. The twenty-five awards made under what is now being called the Retrofit Ramp-Up program will not be following the same processes for full unrestricted use of funds.

This modified financial assistance administration process would provide for due diligence in review of initial and final scopes of the work performed under the EECBG formula, in keeping with the goals and objectives of the Recovery Act while operating in accordance with DOE's Financial Assistance Rules and OMB guidance on financial assistance.

III. Determination

At the request of the Office of EERE on May 12, 2010, the Senior Procurement Executive of the Department of Energy and as the Acting Director of the Office of Procurement and Assistance Management (OPAM), Patrick M. Ferraro, executed the "Determination and Findings to Deviate from 10 CFR Part 600" which authorizes a class deviation to Department of Energy policies and procedures as described therein. As required by 10 CFR 600.4(d), that Determination is set forth below, and will take effect on June 14, 2010.

Issued in Washington, DC, on May 21, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

U.S. Department of Energy

Office of Energy Efficiency and Renewable Energy

Energy Efficiency Conservation Block Grant Program Determination and Findings To Deviate From 10 CFR Part 600

In accordance with paragraph 2.8 of the delegation of authority from the Secretary of Energy to the Director, Office of Procurement and Assistance Management (OPAM) as Senior Procurement Executive of the Department of Energy, the Director may:

Enter into, approve, administer, modify, close-out, terminate and take such other actions as may be necessary and appropriate with respect to any financial assistance agreement, sales contract, or similar transaction, whether or not binding DOE to the obligation and expenditure of public funds. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority.

The DOE Financial Assistance Rules, at 10 CFR 600.4(c)(ii), authorize the Director of OPAM to approve or deny requests for a class deviation.

Findings

This memorandum presents all findings associated with U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE)'s request for a class deviation. EERE has experienced historic growth and unprecedented workload challenges as a result of the passage of the American Recovery and Reinvestment Act of 2009 (Recovery Act). Changes to normal procedures are required to meet the goals and objectives of the Recovery Act.

a. The Contracting Officer is defined in 10 CFR 600.3 as the DOE authorizing official to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

b. Recipients are required by 10 CFR 600.230 to obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 600.236 but does not apply to the procurement of equipment, supplies, and general support services.

c. The Recovery Act appropriated $2.7 billion dollars for the Energy Efficiency and Conservation Block Grant (EECBG) program. The EECBG is intended to assist U.S. cities, counties, States, territories, and Indian Tribes, to develop, promote, implement, and manage energy efficiency and conservation projects and programs designed to:

- Reduce fossil fuel emissions;
- Reduce the total energy use of the eligible entitles; and
- Improve energy efficiency in the transportation, building, and other appropriate sectors.

d. The EECBG program is carried out through the award of formula grants. The program regulations define the eligible applicants and the formula for the total amount of the awards. The competitive award portion of the EECBG is not included in this deviation.

e. The EECBG program has dramatically increased the workload placed on DOE procurement offices to award and administer the grants executed for the program.

f. Delegation of certain non-monetary administrative actions to DOE program managers will increase the speed of expenditures of Recovery Act funds under the EECBG to speed goals of the Recovery Act.

g. Appropriate controls, oversight and monitoring are available to decrease the risk of misuse of funds by the recipients without the Contracting Officers involvement in approval of programmatic changes and other administrative actions.

Determination

Based on the above findings and in accordance with the authority granted to me as the Senior Procurement Executive of the Department of Energy and as the Director of OPAM, I have determined that a class deviation to Department of Energy policies and procedures governing financial assistance is appropriate and necessary to meet the goals and objectives of the Recovery Act while at the same time providing required due diligence and rigor that support DOE's execution of its fiduciary responsibilities.

I have determined the deviation to 10 CFR Part 600, in particular 10 CFR 600.230, and DOE policies and procedures on the use of warranted Contracting Officers to administer financial assistance agreements is in the best interest of the EECBG program and the use of Recovery Act funds. The deviation is approved subject to the above findings and the process outlined in the attached memorandum.

This class deviation applies to financial assistance agreements made using Recovery Act funding to State, city, county or Tribal recipients in support of the EECBG program. It does not apply to non-formula awards.

This class deviation is not effective until fifteen days after a notice is published in the **Federal Register;** *see* 10 CFR 600.4(d).

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management.

[FR Doc. 2010–12886 Filed 5–27–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Posting Regarding Filing Procedures for Electronically Filed Tariffs

May 21, 2010.

Take Notice that the attached document "Filing Procedures For Electronically Filed Tariffs, Rate Schedules And Jurisdictional Agreements" has been posted on the eTariff Web site (*http://www.ferc.gov/docs-filing/etariff.asp*) under Commission Orders and Notices at *http://www.ferc.gov/docs-filing/etariff/com-order.asp*.

For further information, please contact Keith Pierce at 202–502–8525 or Andre Goodson at 202–502–8560, or through e-mail to *etariff@ferc.gov.*

Kimberly D. Bose,

Secretary.

Filing Procedures for Electronically Filed Tariffs, Rate Schedules and Jurisdictional Agreements

In Order No. 714,[1] the Commission adopted regulations requiring that, starting April 1, 2010, and for a transition period through September 30, 2010, all tariffs, rate schedules, and jurisdictional agreements, and revisions to such documents, filed with the Commission must be filed electronically according to a format provided in the Implementation Guide.[2] Based on issues that have arisen on some of the baseline tariff filings, and inquiries, this notice describes procedures for making electronic tariff filings.[3] Electronic tariff filings that do not comply with these requirements are subject to rejection.

• Once a Baseline Tariff Filing Has Been Made, All Tariff Filings Must be Made Electronically Pursuant to the Order No. 714 Guidelines.

Once a company makes its baseline tariff filing in compliance with Order No. 714, the company must make all subsequent filings of tariffs, rate schedules, and jurisdictional agreements in the Order No. 714 baseline tariff filing format. As provided in Order No. 714, this requirement is not limited to tariffs or to modifications of the baseline tariff filing, but encompasses all the company's other tariffs, rate schedules, and jurisdictional agreements, and all filings revising, withdrawing, or otherwise affecting such documents or the effective dates of such provisions. For example, natural gas negotiated rate agreements and non-conforming service agreements, electric rate schedules, transmission, power sale, and ancillary service agreements, interconnection agreements, and all other jurisdictional agreements are covered by this requirement. As described below, this requirement also applies to tariff filings related to periods earlier than the baseline filing. Once the Office of the Secretary accepts a company's baseline tariff filing for processing, the company should not make any further tariff related filings on paper or electronically in a format that does not comply with the electronic filing format required by Order No. 714.

• Required Tariff Documents To Be Included With an Electronic Tariff Filing.

As part of an electronic tariff filing, companies must include as tariff records 1) a copy of the proposed tariff provision, and 2) the plain text of the tariff provision. In addition as attachments, companies must include 3) a clean copy of the tariff provision and 4) the marked text of the provision (when required).

• Electronic Tariff Filings for Periods Earlier Than the Baseline Filing.

The electronic tariff software will not accept electronic tariff filings with tariff records that have a proposed effective date earlier than the effective date associated with the tariff identification number for the baseline filing. Companies may have outstanding compliance obligations or rates for prior, locked-in periods that need to be filed with the Commission or may need to propose changes to parts of a company's tariffs that were not part of the baseline tariff filing. Such filings should be made in the following manner:

○ The compliance or other provision applicable to the period after the baseline tariff filing has been accepted by the Secretary for processing must be made in the electronic tariff filing format required by Order No. 714.

○ Tariff provisions governing periods earlier than the baseline filing must be included either as part of the transmittal letter or as a separate attachment, unless the company and its customers have waived the need to file tariff provisions for the earlier periods.

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

[2] The data elements and communication protocol are described in the Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filing (Implementation Guide), *available at http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.*

[3] As indicated in Order No. 714, this phrase is intended to encompass rate schedule and jurisdictional agreement filings as well. Order No. 714, at P 13 n.11.

As an example, if a company with a baseline tariff effective April 15, 2010, has an outstanding compliance filing with an effective date of January 1, 2010, that the Commission accepts, the company must file the compliance tariff provisions as tariff records in accordance with the electronic file format of Order No. 714 with an effective date of April 15, 2010. The company also should file the tariff provisions with a January 1, 2010, effective date either as part of the transmittal letter or as a separate attachment.

• FASTR Requirements for Natural Gas Pipelines.

FASTR will be retired after the baseline tariff filings have been made and the current FASTR configuration for each company as of September 30, 2010, will be added to the Commission's database as historical records. Once a baseline tariff filing has been made, pipelines are no longer required to submit records in FASTR format. However, companies that wish to update their FASTR records for past periods may submit an electronic version in the FASTR ASCII file format as an attachment.

[FR Doc. 2010–12860 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TS04–179–000; TS10–1–000]

Cross-Sound Cable Company, LLC; Notice of Filing

May 21, 2010.

Take notice that on December 18, 2009, Cross-Sound Cable Company, LLC filed a motion notifying the Commission of certain changed circumstances and seeking confirmation that is still entitled to waiver of the standards of conduct requirements of Part 358.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12863 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1281–000]

Hudson Transmission Partners, LLC; Notice of Filing

May 20, 2010.

Take notice that on May 19, 2010, Hudson Transmission Partners, LLC filed an application requesting the Commission to grant it a limited waiver of PJM Interconnection, LLC, and time to post deferred security under section 212.4(c) and Attachment O, section 6.5 of the PJM Open Access Transmission Tariff, PJM OATT 212.4(c), Att. O 6.5 (the *pro forma* ISA).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 21, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12854 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–56–000]

Western Electric Coordinating Council; Notice of Institution of Proceeding and Refund Effective Date

May 20, 2010.

On May 20, 2010, the Commission issued an order that instituted a proceeding in Docket No. EL05–56–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the spot market energy price cap in the Western Electric Coordinating Council outside the California Independent System Operator Corporation. *Western Electric Coordinating Council,* 131 FERC ¶ 61,145 (2010).

The refund effective date in Docket No. EL10–56–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12855 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10–14–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Planned West to East—Overbeck to Leidy Project and Request for Comments on Environmental Issues

May 20, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the West to East—Overbeck to Leidy Project involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Elk, Jefferson, Clearfield, Cameron, and Clinton Counties, Pennsylvania. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on June 21, 2010. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 1.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

National Fuel plans to construct and operate about 78.4 miles of 24-inch-diameter pipeline and related facilities in Elk, Jefferson, Clearfield, Cameron, and Clinton Counties, Pennsylvania. National Fuel would also build two compressor stations totally 25,000 horsepower (hp) of compression and a new meter station. The West to East—Overbeck to Leidy Project would provide about 425,000 dekatherms per day (dth/d) of natural gas from the Marcellus producing area to the Leidy, Pennsylvania hub. According to National Fuel, its project would enable National Fuel to provide firm transportation services requested by producers from new and existing producer interconnects in the Marcellus Shale region in central Pennsylvania to the interstate pipeline hub of Leidy at Tamarack, Pennsylvania. The West to East—Overbeck to Leidy Project would consist of the following facilities:

- About 78.4 miles of 24-inch-diameter pipeline;
- The Elk Compressor Station in Elk County, totaling about 7,000 hp of compression;
- The Millstone Compressor Station in Jefferson County, totaling about 18,000 hp of compression;
- One new meter station at the Leidy Hub in Clinton County;
- Four mainline valve assemblies; and
- Access roads.

The general location of the project facilities is shown in Appendix 2.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb approximately 1,025 acres of land for the aboveground facilities and the pipeline. Following construction, approximately 425 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. About 97 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way. Over 71 percent of the planned pipeline route would cross public lands managed by the Allegheny National Forest, the Pennsylvania Bureau of Forestry, and the Pennsylvania Game Commission.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Blasting;
- Land use (including public lands);
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife, including migratory birds;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. See Appendix 1 for an overview of the Commission's Pre-Filing Environmental Review Process.

Our independent analysis of the issues will be presented in the EA. The

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the Army Corps of Engineers and the Allegheny National Forest have expressed their intention to possibly participate as a cooperating agency in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for the section 106 process, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[3] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before June 21, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF10–14–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "*Sign up*" or "*eRegister*". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 3).

Becoming an Intervenor

Once National Fuel files its application with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF10–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/*

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

EventCalendar/EventsList.aspx along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12862 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–459–South Carolina]

South Carolina Electric & Gas Company Saluda Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included In or Eligible for Inclusion In the National Register of Historic Places

May 20, 2010.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the South Carolina State Historic Preservation Officer (hereinafter, South Carolina SHPO), and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended* (16 U.S.C. section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Saluda Hydroelectric Project No. 516–459.

The programmatic agreement, when executed by the Commission and the South Carolina SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Saluda Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

South Carolina Electric & Gas Company, as licensee for Saluda Hydroelectric Project No. 516, the Catawba Indian Nation, and the Eastern Band of Cherokee Indians have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

John Eddins or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Rebekah Dobrasko or Representative, Review and Compliance Coordinator, Archives & History Center, 8301 Parklane Road, Columbia, SC 29223.

Tyler Howe or Representative, Eastern Band of Cherokee Indians, Qualla Boundary, P.O. Box 455, Cherokee, NC 28719.

Mr. William R. Argentieri or Representative, South Carolina Electric & Gas Company, 111 Research Drive, Columbia, South Carolina 29203.

Dr. Wenonah G. Haire or Representative, Catawba Indian Nation THPO, 1536 Tom Stevens Rd., Rock Hill, SC 29730.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

Any such motions may be filed electronically via the Internet. *See* 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12857 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR section 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–459]

South Carolina Electric and Gas Company; Saluda Hydroelectric Project; Notice of Teleconference With the National Marine Fisheries Service Regarding Preparation of a Biological Assessment for the Saluda Project

May 20, 2010.

On June 16, 2010, there will be a teleconference concerning the above referenced proceeding, initiated from Federal Energy Regulatory Commission (FERC) Headquarters, commencing at 2 p.m. (Eastern Standard Time [EST]) and concluding by 4 p.m. EST.

The purpose of the meeting is to gain a better understanding of why and what is being requested by the National Marine Fisheries Service (NMFS) regarding their request for FERC to prepare a biological assessment for shortnose sturgeon for the Saluda Hydroelectric Project. The South Carolina Electric and Gas Company will also participate in the teleconference.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to listen by telephone. The FERC contact for the Saluda Hydroelectric Project is Lee Emery. Please call Lee Emery at (202) 502–8379 by 4 p.m. EST, June 11, 2010, or by e-mail at *lee.emery@ferc.gov,* to receive specific instructions on how to participate in the teleconference.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12856 Filed 5–27–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9156–1]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Equivalent Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of one new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, one new equivalent method for measuring concentrations of lead (Pb) in total suspended particulate matter (TSP) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–5691, e-mail: *Kaushik.Surender@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of one new equivalent method for measuring Pb in TSP in the ambient air. This designation is made under the provisions of 40 CFR Part 53, as amended on November 12, 2008 (73 FR 67057–67059).

The new equivalent method for Pb is a manual method that uses the sampling procedure specified in the Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method), 40 CFR Part 50, Appendix B, with an alternative extraction and analytical procedure. The method is identified as follows:

EQL–0510–191, "Determination of Lead Concentration in TSP by Inductively Coupled Plasma Mass Spectrometry (ICP–MS) with Heated Ultrasonic Nitric and Hydrochloric Acid Filter Extraction."

In this method, total suspended particulate matter (TSP) is collected on glass fiber filters according to 40 CFR Appendix B to part 50, *EPA Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method),* extracted with a solution of nitric and hydrochloric acids, heated to 80 °C and sonicated for one hour, and brought to a final volume of 40 mL. The lead content of the sample extract is analyzed by Inductively Coupled Plasma-Mass Spectrometry (ICP–MS) based on EPA SW–846 Method 6020A.

The application for an equivalent method determination for this method was submitted by the Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 and was received by the Office of Research and Development on October 29, 2009.

The analytical procedure of this method has been tested in accordance with the applicable test procedures specified in 40 CFR Part 53, as amended on November 12, 2008. After reviewing the results of those tests and other information submitted in the application, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method for lead. The information in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the complete operating procedure (SOP) associated with the method and subject to any specifications and limitations specified in the procedure.

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R–94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program" EPA–454/B–08–003, December, 2008. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

Consistent or repeated noncompliance with the method procedure/SOP should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the technical aspects of the method should be directed to the applicant.

Dated: May 7, 2010.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 2010–12912 Filed 5–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8990–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 05/17/2010 Through 05/21/2010

Pursuant to 40 CFR 1506.9.

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its website at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the website satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100184, Draft EIS, NPS, 00, Brucellosis Remote Vaccination

Program for Bison Project, Implementation, Yellowstone National Park, ID, MT and WY, *Comment Period Ends:* 07/26/2010, *Contact:* Rick Wallen 307–344–2207

EIS No. 20100185, Draft EIS, USACE, CA, West Sacramento Levee Improvements Program, To Protect Human Health and Safety and Prevent Adverse Effect on Property and its Economy, 408 Permission, Yolo and Solano Counties, CA, *Comment Period Ends:* 07/12/2010, *Contact:* John Suazo 916–557–6719.

EIS No. 20100186, Draft EIS, FHWA, WA, WA–520 Bridge Replacement and HOV Program, To Build the New Pontoon Construction Facility, Gray Harbor and Pierce Counties, WA, *Comment Period Ends:* 07/12/2010, *Contact:* Allison Hanson 206–382–5279.

EIS No. 20100187, Draft EIS, BPA, WA, Whistling Ridge Energy Project, Construction and Operation of a 75-megawatt (MW) Wind Turbine Facility, City of White Salmon, Skamania County, WA, *Comment Period Ends:* 07/19/2010, *Contact:* Andrew M. Montano 503–230–4145 .

EIS No. 20100188, Final EIS, BLM, MT, Indian Creek Mine Expansion, Proposed Mine Expansion would include Quarry Areas, Mine Facilities, Ore Storage Sites, Soil Salvage Stockpiles, Haul Roads, and Overburden Disposal Areas, Issuing Operating Permit #00105 and Plan of Operation #MTM78300, Broadwater County, MT, *Wait Period Ends:* 06/28/2010, *Contact:* David Williams 406–533–7655 .

EIS No. 20100189, Final EIS, BLM, AK, LEGISLATIVE—Glacier Bay National Park Project, Authorize Harvest of Glaucous-Winged Gull Eggs by the Huna Tlingit,Implementation, AK, *Wait Period Ends:* 06/28/2010, *Contact:* Cherry Payne 907–697–2230.

EIS No. 20100190, Final EIS, USFS, OR, Westside Rangeland Analysis Project, Proposal to Allocate Forage for Commercial Livestock Grazing on Six Alternatives, Mud and Tope Creeks, Wallowa Valley Ranger District, Wallowa-Whitman National Forest, Wallowa County, OR, *Wait Period Ends:* 06/28/2010, *Contact:* Alicia Glassford 541–426–5689.

EIS No. 20100191, Draft EIS, FTA, AK, Hatcher Pass Recreation Area Access Trails, and Transit Facilities, To Develop Transportation Access and Transit-Related Infrastructure, Northern and Southern Areas, Hatcher Pass, AK, *Comment Period Ends:* 07/12/2010, *Contact:* Erin Green 206–220–7430.

EIS No. 20100192, Final EIS, FHWA, WA, East Lake Sammamish Master Plan Trail, Design and Construct an Alternative Non-Motorized Transportation and Multi-Use Recreational Trail, Funding and US Army COE Section 404 Permit, King County, WA, *Wait Period Ends:* 06/28/2010, *Contact:* Pete Jilek 360–753–9550.

EIS No. 20100193, Final EIS, FRA, CA, Adoption—March 2004 Transbay Terminal/Caltrain Downtown Extension/Redevelopment Program (Transbay Program) Phase 1, San Francisco, San Mateo and Santa Clara, CA, *Wait Period Ends:* 06/28/2010, *Contact:* Jerome Wiggins 415–744–3115 US DOT/FRA has adopted the FTA's FEIS #20040148, filed 03/26/2004. FRA was not a Cooperating Agency for the above FEIS. Recirculation of the document is necessary under Section 1506.3(b) of the CEQ Regulations.

EIS No. 20100194, Draft EIS, USFS, CA, Hi-Grouse Project, Proposes to Treat Ponderosa Pine and Mixed Conifer Stands to Improve Long-Term Forest Health and Reduce Fuels within the Goosenest Adaptive Management Area, Goosenest Ranger District, Klamath National Forest, Siskiyou Co, CA,*Comment Period Ends:* 07/12/2010, *Contact:* Wendy Dosrowalski 530–398–4391.

EIS No. 20100195, Final EIS, BR, CA, Cachuma Lake Resource Management Plan, Implementation, Cachuma Lake, Santa Barbara County, CA, *Wait Period Ends:* 06/28/2010, *Contact:* Jack Collins 559–349=4544.

EIS No. 20100196, Draft EIS, NPS, FL, Everglades National Park Tamiami Trail Modifications: Next Steps Project, To Restore More Natural Water Flow to Everglades National Parks and Florida Bay, FL, *Comment Period Ends:* 07/19/2010, Contact: Dan Kimball 305–242–7712.

EIS No. 20100197, Final EIS, USFS, WI, Honey Creek-Padus Project, Proposes to Harvest Timber, Regenerate Stands, Plant and Protect Tree Seedlings and Manage Access on Approximately 6,702 Acres, Lakewood-Laona Ranger District, Chequamegon-National Forest, Forest County, WI, *Wait Period Ends:* 06/28/2010, *Contact:* Marilee Houlter 715–276–6333.

EIS No. 20100198, Draft EIS, NOAA, WI, Lake Superior National Estuarine Research Reserves to be known as the Lake Superior Reserve Proposed Designation, To Provide Greater Protection, Research and Education Opportunities to 16,697 Acres of the St. Louis River Estuary, WI, *Comment Period Ends:* 07/12/2010, *Contact:* Laurie McGilray 301–713–3155 Ext. 158.

EIS No. 20100199, Draft EIS, USMC, 00, East Coast Basing of the F–35B Project, Construction, Demolition and/or Modification Airfield Facilities and Infrastructure, SC and NC, *Comment Period Ends:* 07/12/2010, *Contact:* Linda Blount 757–341–0491.

EIS No. 20100200, Final EIS, WAPA, SD, Deer Creek Station Energy Facility Project, Proposed 300-megawatt (MW) Natural Gas-Fired Generation Facility, Brookings County, SD, *Wait Period Ends:* 06/28/2010, *Contact:* Matt Marsh 406–247–7395.

Dated: May 25, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–12918 Filed 5–27–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on May 24, 2010 (75 FR 28806) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for June 10, 2010. This notice is to amend the agenda by adding an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4025, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The agenda for June 10, 2010, is amended by adding an item to the open session to read as follows:

Open Session

C. Reports

- Young, Beginning, and Small Farmer Mission Performance—2009 Results.

Dated: May 26, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–13102 Filed 5–26–10; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 25, 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 for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 27, 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 email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email 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 Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions

Number of Respondents and Responses: 500 respondents and 500 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 250 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1610 requires a permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. The data is used by FCC staff to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–12907 Filed 5–27–10 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 05–337; DA 10–910]

Comment Sought on the Puerto Rico Telephone Company, Inc. Petition for Reconsideration of the Commission's Universal Service High-Cost Insular Support Order

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on a petition filed by Puerto Rico Telephone Company, Inc. (PRTC) requesting that the Commission reconsider its decision declining to establish a new universal service high-cost support mechanism for non-rural insular carriers. PRTC says the Commission should expeditiously reconsider its decision and adopt an insular mechanism that will provide explicit universal service loop support to address its elevated costs to deploy wireline infrastructure.

DATES: Interested parties may file comments on the petition for reconsideration no later than June 14, 2010. Reply comments may be filed no later than June 22, 2010.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie King or Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In a public notice in this proceeding released on May 21, 2010, the Wireline Competition Bureau invites interested parties to comment on a petition filed by Puerto Rico Telephone Company, Inc. (PRTC) requesting that the Commission reconsider its decision declining to establish a new universal service high-cost support mechanism for non-rural insular carriers. In an order in WC Docket No. 05–337, CC Docket No. 96–45, and WC Docket No. 03–109 (75 FR 25113, May 7, 2010), the Commission concluded that dramatic increases in telephone subscribership in Puerto Rico over the last several years made it unnecessary to adopt a new high-cost support mechanism for non-rural insular carriers as proposed by PRTC.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or

before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ 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.

In addition, one copy of each pleading must be sent to each of the following:

• The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160; and

• Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; e-mail: *Charles.Tyler@fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *fcc504@fcc.gov;* phone: (202) 418–0530 or (202) 418–0432 (TTY).

Filings and comments are also 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. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (TTY), or by facsimile at (202) 488–5563.

Jennifer K. McKee,

Acting Division Chief, Telecommunications Access Policy Division, Federal Communications Commission.

[FR Doc. 2010–12932 Filed 5–27–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one altered Privacy Act system of records; revision of one routine use; and addition of one new routine use.

SUMMARY: Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended ("Privacy Act"), 5 U.S.C. 552a, the FCC proposes to alter one system of records, FCC/WTB–7, "Remedy Action Request System (RARS)." The FCC will alter the security classification; categories of individuals; the categories of records; the purposes for which the information is maintained; one routine use (and add a new routine use); the storage, retrievability, access, safeguard, and retention and disposal procedures; the record source categories; and make other edits and revisions as necessary to comply with the requirements of the Privacy Act.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before June 28, 2010. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, may submit comments on or before July 7, 2010. The proposed altered system of records will become effective on July 7, 2010 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed altered system to OMB and to both Houses of Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed alteration of one system of records maintained by the FCC, revision of one routine use, and addition of one new routine use. The FCC previously gave complete notice of the system of records (FCC/WTB–7, "Remedy Action Request System (RARS)" covered under this Notice by publication in the **Federal Register** on April 5, 2006 (71 FR 17234, 17273). This notice is a summary of the more detailed information about the proposed altered system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purposes for altering FCC/WTB–7, "Remedy Action Request System (RARS)," are to revise the security classification; to revise the categories of individuals; to revise the categories of records; to revise the purposes for which the information is maintained; to revise one routine use and add a new routine use; to revise the procedures for the storage, retrieval, access, safeguards, and retention and disposal of information; to revise the record source categories; and to make other edits and revisions as necessary to

update the information and to comply with the requirements of the Privacy Act.

The FCC will achieve these purposes by altering this system of records notice (SORN) with these changes:

Revision of the language explaining the Security Classification, for clarity and to add that the FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records;

Revision of the language regarding the categories of individuals covered by the system, for clarity and to add that the categories of individuals in the RARS system include individuals who request help using the FCC's licensing systems and related Commission research tools, information systems, and electronic databases, *i.e.,* Integrated Spectrum Auction Systems (ISAS), Antenna Registration System (ARS), and Commission Registration System (CORES), etc., and other subsystems included in, or as part of, these systems, etc.;

Revision of the language regarding the categories of records in the system, for clarity and to add that the categories of records in the RARS system include (1) requests for assistance by the requester's first name, last name, telephone number and extension, alternative telephone number and extension, fax number, e-mail address(es), computer operating system, Web browser, FCC Registration Number (FRN), and/or Individual Taxpayer Identification Number (ITIN), and personal security question and answer; and (2) records verifying identity information by the individual's first name, last name, contact telephone number, FRN, and/or ITIN, and personal security question and answer;

Revision of the language regarding the purposes for which the information is maintained, for clarity and to add that (1) the FCC staff uses the records in the RARS information system to record and process requests from individuals or groups for technical help, *i.e.,* technical questions, password requests, etc., using the FCC's licensing systems and related Commission research tool, information systems, and electronic databases; and (2) the FCC management uses the RARS information system software to ensure good customer service and problem resolution.

Revision of Routine Use (1) to add the Internet Web address at: *https://esupport.fcc.gov/request.htm*, which is where limited public access to certain records may be made available for public users:

Routine Use (1) Public Access—allows that the records in this system will be made available upon request for public inspection after redaction of information that could identify the correspondent, *i.e.,* name, telephone number, ITIN, and e-mail address. Limited public access to certain records may be available via the Internet at: *https://esupport.fcc.gov/request.htm.* This information includes the status of request, request ID number, and the agent's number who took the call or electronic request for support. Public users who have contacted FCC personnel via telephone, e-mail, or electronic submission may access the system to retrieve a status on the ticket assigned to their request. They will be given this ticket/request number generated by the Remedy Action Request System (RARS) upon submission of a request. This number may be entered into the appropriate field on the FCC Web site to check the status of the ticket. Only the status of that ticket will be released to the public by entering the ticket number—no personal or confidential information is available to the public;

Addition of a new Routine Use (6) to comply with OMB Memorandum M–07–16 (May 22, 2007) governing "breach notifications":

Routine Use (6) Breach Notification—allows disclosure to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission 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 the Commission 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 the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Revisions of the language regarding the policies and practices for storage of the records in the system, for clarity and to add that information in the RARS information system consists of electronic data, files, and records, which are housed in the FCC's computer network databases. Any paper documents that WTB receives are scanned into the electronic database upon receipt, then the paper documents are destroyed;

Revision of the language regarding the policies and practices for retrieving the records in the system, for clarity and to add that the electronic data, files, and records may be retrieved by searching electronically using a variety of parameters including the requester's name, entity name, licensee, applicant or unlicensed individual, call sign, file number, problem type, FRN, ITIN, e-mail address, and/or subject matter;

Revision of the language regarding the policies and practices for retrieving the records in the system, for clarity and to add that the electronic data, files, and records may be retrieved by searching electronically using a variety of parameters including the requester's name, entity name, licensee, applicant or unlicensed individual, call sign, file number, problem type, FRN, ITIN, e-mail address, and/or subject matter;

Revision of the language regarding the policies and practices for accessing and safeguarding the records in the system, for clarity and to add that the information in the RARS information system's electronic documents, files, and records is housed in the FCC's computer network databases. Access to the information in these databases is restricted to authorized WTB supervisors, staff, and contractors in WTB and to staff and contractors in the Information Technology Center (ITC), who maintain the FCC's computer network databases. Those who have access to the computer networks are assigned a secured log-in ID and password maintained in the RARS information system. Other employees and contractors may be granted access on a "need-to-know" basis. The network computers are located in secured areas, and they are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured, off-site location;

Revision of the language regarding the policies and practices for the retention and disposal of records in the system, for clarity and to add that the information in the RARS information system is maintained for 11 years after an individual ceases to be a user of the system. The electronic records, files, and data are destroyed physically (electronic storage media) or by electronic erasure. The paper documents are destroyed by shredding after they are scanned into the RARS information system's electronic databases.

Revision of the language regarding the records source categories, for clarity and to add that information in the RARS information system is provided by

RARS user customers who request assistance with the FCC's licensing systems and related Commission research tools, information systems, and electronic databases, *i.e.,* Integrated Spectrum Auctions System (ISAS), Antenna Registration System (ARS), and Commission Registration System (CORES), etc., and other subsystems included in, or as part of, these systems, etc.

The FCC's staff in WTB will use the information in the RARS information system to record and process requests from individuals or groups for technical help, *i.e.,* technical questions, password requests, etc., using the FCC's licensing systems and related Commission research tools, information systems and electronic databases; and the FCC management will use the RARS information system software to ensure good customer service and problem resolution.

This notice meets the requirement documenting the change to the systems of records that the FCC maintains, and provides the public, OMB, and Congress an opportunity to comment.

FCC/WTB–7

SYSTEM NAME:

Remedy Action Request System (RARS).

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in the RARS system include individuals who request help using the FCC's licensing systems and related Commission research tools, information systems, and electronic databases, *i.e.,* Integrated Spectrum Auctions System (ISAS), Antenna Registration System (ARS), and Commission Registration System (CORES), *etc.,* and other subsystems included in, or as part of, these systems, *etc.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the RARS system include:

1. Requests for assistance by the requester's first name, last name, telephone number and extension, alternative telephone number and extension, fax number, e-mail address(es), computer operating system, Web browser, FCC Registration Number (FRN), and/or Individual Taxpayer Identification Number (ITIN), and personal security question and answer.

2. Records verifying identity information by the individual's first name, last name, contact telephone number, FRN and/or ITIN, and personal security question and answer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 151, 154, 258, 301, 303, 309(e), 312, 362, 364, 386, 507 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 226, 258, 301, 303, 309(e), 312, 362, 364, 386, 507; and 29 U.S.C. 794, 794(d).

PURPOSE(S):

1. The FCC staff uses the records in the RARS information system to record and process requests from individuals or groups for technical help, *i.e.,* technical questions, password requests, *etc.,* using the FCC's licensing systems and related Commission research tools, information systems and electronic databases; and

2. The FCC management uses the RARS information system software to ensure good customer service and problem resolution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. *Public Access*—Records in this system will be made available upon request for public inspection after redaction of information that could identify the correspondent, *i.e.,* name, telephone number, ITIN, and e-mail address. Limited public access to certain records may be available via the Internet at: *https://esupport.fcc.gov/request.htm.* This information includes the status of request, request ID number, and the agent's number who took the call or electronic request for support. Public users who have contacted FCC personnel via telephone, e-mail, or electronic submission may access the system to retrieve a status on the ticket assigned to their request. They will be given this ticket/request number generated by the Remedy Action Request System (RARS) upon submission of a request. This number may be entered into the appropriate field on the FCC Web site to check the status of the ticket. Only the status of that ticket will be released to the public by entering the ticket number—no personal or confidential information is available to the public;

2. *Adjudication and Litigation*—Where by careful review, the agency determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

3. *Law Enforcement and Investigation*—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate Federal, State, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

4. *Congressional Inquiries*—When requested by a Congressional office in response to an inquiry by an individual made to the Congressional office for their own records; and

5. *Government-wide Program Management and Oversight*—When requested by the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

6. *Breach Notification*—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission 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 the Commission 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 the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the RARS information system consists of electronic data, files, and records, which are housed in the FCC's computer network databases. Any paper documents that WTB receives are scanned into the electronic database upon receipt, and then the paper documents are destroyed.

RETRIEVABILITY:

The electronic data, files, and records may be retrieved by searching electronically using a variety of parameters including the requester's name, entity name, licensee, applicant or unlicensed individual, call sign, file number, problem type, FRN, ITIN, e-mail address, and/or subject matter.

SAFEGUARDS:

The information in the RARS information system's electronic documents, files, and records is housed in the FCC's computer network databases. Access to the information in these databases is restricted to authorized WTB supervisors, staff, and contractors in WTB and to staff and contractors in the Information Technology Center (ITC), who maintain the FCC's computer network databases. Those who have access to the computer networks are assigned a secured log-in ID and password maintained in the RARS information system. Other employees and contractors may be granted access on a "need-to-know" basis.

The network computers are located in secured areas, and they are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured, off-site location.

RETENTION AND DISPOSAL:

The information in the RARS information system is maintained for 11 years after an individual ceases to be a user of the system. The electronic records, files, and data are destroyed physically (electronic storage media) or by electronic erasure.

Paper documents are destroyed by shredding after they are scanned into the RARS information system's electronic databases.

SYSTEMS MANAGER(S) AND ADDRESS:

Address inquiries to the Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

Information in the RARS information system is provided by RARS user customers who request assistance with the FCC's licensing systems and related Commission research tools, information systems, and electronic databases, *i.e.,* Integrated Spectrum Auctions System (ISAS), Antenna Registration System (ARS), and Commission Registration System (CORES), etc., and other subsystems included in, or as part of, these systems, *etc.*

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–12934 Filed 5–27–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 15, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Todd C. Green, individually to become the largest shareholder, and as member of the Green Family Control Group, which consists of Todd C. Green; Ramon J. Green, as trustee of the Ramon J. Green Trust No. 11–01 U/A dated November 26, 2001; and as co–trustee of the Beverly J. Green Trust No. 11–01 U/A dated November 26, 2001; Beverly J. Green, all in Springfield, Illinois, as co–trustee of the Beverly J. Green Trust No. 11–01 U/A dated November 26, 2001; Jeffrey J. Green, Peoria, Illinois; Jill A. Green, East Moline, Illinois, as trustee of the Jill A. Green Trust U/A dated April, 6, 2001; Gail A. Green, Peoria, Illinois, as trustee of the Gail A. Green Trust UTA dated March 23, 2009, and Green Enterprises, LP, Springfield, Illinois; to retain control of West Plains Investors, Inc., and thereby indirectly retain voting shares of Premier Bank of Jacksonville, both in Jacksonville, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Christopher Key Jordan and Crystal Lynn Jordan, both in Stigler, Oklahoma, as trustees of the Christopher Key Jordan 2008 Trust; and Kelly Dawn Jordan–Davis and Steven Scott Davis, both in Indianola, Oklahoma, as trustees of the Kelly Dawn Jordan–Davis 2008 Trust; to acquire voting shares of F.S.B. Properties, Inc., and thereby indirectly acquire voting shares of Farmers State Bank, both in Quinton, Oklahoma.

Board of Governors of the Federal Reserve System, May 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–12914 Filed 5–27–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Stafford Lester Scaff, Jr., and Anne Csercsics Scaff, both of Lake City, Florida, to retain current, and acquire additional, voting shares of First Columbia Bancorp, Inc., and thereby indirectly retain current, and accquire additional, voting shares of Columbia Bank, both of Lake City, Florida.

Board of Governors of the Federal Reserve System, May 24, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–12808 Filed 5–27–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of April 27 and 28, 2010

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on April 27 and 28, 2010.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to engage in dollar roll transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, May 21, 2010.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. 2010–12955 Filed 5–27–10; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on April 27 and 28, 2010, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

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 21, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Castle Creek Capital Partners III, LP, Castle Creek Capital III LLC, Eggemeyer Capital LLC, Ruh Capital LLC, and Legions IV Advisory Corp, all of Rancho Santa Fe, California; to acquire an additional 38.96 percent, for a total of 85.00 percent, of the voting shares of First Chicago Bancorp, and thereby indirectly acquire voting shares of First Chicago Bank & Trust Company, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, May 24, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–12807 Filed 5–27–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 15, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. NC Bancorp, Inc., Chicago, Illinois; to continue to engage *de novo* in making, acquiring, brokering or servicing loans or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Mission Community Bancorp, San Luis Obispo, California; Carpenter Fund Manager GP, LLC; Carpenter Fund Management, LLC; Carpenter Community Bancfund, L.P.; Carpenter Community Bancfund–A, L.P.; Carpenter Community Bancfund–CA, L.P.; CCFW, Inc.; and SCJ, Inc., all of Irvine, California; to acquire Mission Asset Management, Inc., San Luis Obispo, California, and thereby egnage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–12913 Filed 5–27–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10314, CMS–264–94, CMS–1728–94, CMS–10240 and CMS–P–0015A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Savings Program Protection from Medicaid Estate Recovery—State Plan Pre-print under Title XIX. *Form No:* CMS–10314 (OMB# 0938–New); *Use:* Section 115 of the Medicare Improvements for Patients and Providers Act (MIPPA)—2008, provides new protections from Medicaid estate recovery for limited categories of dual eligibles age 55 and over. To offer these protections, States have to amend their Medicaid State plans to reflect these new limits on estate recovery. To reduce paperwork burden and expedite this process, CMS is providing States with a pre-printed document (*i.e.,* a State plan preprint) which neither needs nor requires any insertion of language or even completion of a check-off box. As Section 115 simply mandates compliance (there is no option not to comply), States only need return the preprint page (as prepared by CMS) to CMS, as a requested amendment to their State Plan. This is a one-time only submission, with little burden imposition and complete electronic routing to and from States. *Frequency:* Reporting—Once; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 102. (For policy questions regarding this collection contact Nancy Dieter at 410–786–7219. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Independent Renal Dialysis Facility Cost Report; *Use:* The Independent Renal Dialysis Facility Cost Report, is filed annually by providers participating in the Medicare program to identify the specific items of cost and statistics of facility operation that independent renal dialysis facilities are required to report. *Form Number:* CMS–265–94 (OMB#: 0938–0236); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 5,508; *Total Annual Responses:* 5,508; *Total Annual Hours:* 275,400. (For policy questions regarding this collection contact Gail Duncan at 410–786–7278. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Use:* These cost report forms are filed annually by freestanding providers participating in the Medicare program to effect year end cost settlement for providing services to Medicare beneficiaries. The data submitted on the cost reports supports management of Federal programs. Providers receiving Medicare reimbursement must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors. The data from these cost reporting forms will be used for the purpose of evaluating current levels of Medicare reimbursement. *Form Number:* CMS–1728–94 (OMB#: 0938–0022); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 7,479; *Total Annual Responses:* 7,479; *Total Annual Hours:* 1,690,254. (For policy questions regarding this collection contact Angela Havrilla at 410–786–4516. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Data Collection for the Nursing Home Value-Based Purchasing (NHVBP) Demonstration; *Use:* The goal of the NHVBP Demonstration is to use financial incentives to improve the quality of care in nursing homes. The main purpose of the NHVBP data collection effort is to gather information that will enable CMS to determine which nursing homes will be eligible to receive incentive payments under the NHVBP Demonstration. Information will be collected from nursing homes participating in the demonstration on an ongoing basis. CMS will collect payroll-based staffing, agency staffing and resident census information to help assess the quality of care in participating nursing homes. CMS will determine which homes qualify for an incentive payment based on their relative performance in terms of quality. *Form Number:* CMS–10240 (OMB#: 0938–1039); *Frequency:* Quarterly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 178; *Total Annual Responses:* 712; *Total Annual*

Hours: 5,530. (For policy questions regarding this collection contact Ron Lambert at 410–786–6624. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey; *Use:* The Medicare Current Beneficiary Survey (MCBS) serves to measure what impact the changes have on the program and its beneficiaries. The MCBS is a comprehensive data collection effort that fills an information gap in the Centers for Medicare and Medicaid Services, and is depended on to help manage the program. Being able to examine various characteristics and to chart evolving trends offers policy makers a reliable tool for making informed decisions. The MCBS is used to identify potential new policy direction or modifications to the Medicare program and once those program enhancements are implemented, monitor the impact of those changes. The central goals of the MCBS are to determine medical care expenditures and sources of payment for all services, including copayments, deductibles, and non-covered services; to ascertain all types of health insurance coverage and relate coverage to actual payments; and to trace processes over time, such as changes in health status, spending down to Medicaid eligibility, and the impacts of program changes. *Form Number:* CMS–P–0015A (OMB#: 0938–0568); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 16,217; *Total Annual Responses:* 48,650; *Total Annual Hours:* 57,062. (For policy questions regarding this collection contact William Long at 410–786–7927. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *July 27, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 21, 2010.

Martique Jones,

Director, Regulations Development Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–12624 Filed 5–27–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Block Grant Reporting Requirements—ACF–700.

OMB No.: 0980–0241.

Description: The Child Care and Development Fund (CCDF) report requests annual Tribal aggregate information on services provided through the CCDF, which is required by the CCDF Final Rule (45 FR parts 98 and 99). Tribal Lead Agencies (TLAs) are required to submit annual aggregate data appropriate to Tribal programs on children and families receiving CCDF-funded child care services. The CCDF statute and regulations also require TLAs to submit a supplemental narrative as part of the ACF–700 report. This narrative describes child care activities and actions in the TLA's service area. Information from the ACF–700 and supplemental narrative report will be included in the Secretary's Report to Congress, as appropriate, and will be shared with all TLAs to inform them of CCDF-funded activities in other Tribal programs.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–700 Report	260	1	38	9,880

Estimated Total Annual Burden Hours: 9,880.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Dated: May 25, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–12877 Filed 5–27–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Organ Procurement and Transplantation Network and Scientific Registry of Transplant Recipients Data System (OMB No. 0915–0157)—Extension

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour system to facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to indicate the disease severity of transplant candidates, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used to develop transplant, donation and allocation policies, to determine if institutional members are complying with policy, to determine member specific performance, to ensure patient safety and to fulfill the requirements of the OPTN Final Rule. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

No revisions of the 26 data collection forms are proposed at this time; however, the OPTN is currently undergoing a review of the forms and expects to submit proposed revisions within the next year.

The annual estimate of burden is as follows:

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Deceased Donor Registration	58	216	12,528	0.7500	9,396.00
Death referral data	58	12	696	10.0000	6,960.00
Death Notification Referral—Eligible	58	161	9338	0.2000	1,867.60
Death Notification Referral—Imminent	58	168	9744	0.5000	4,872.00
Living Donor Registration	308	39	12,012	0.6500	7,807.80
Living Donor Follow-up	308	50	15,400	0.5000	7,700.00
Donor Histocompatibility	156	131	20,436	0.1000	2,043.60
Recipient Histocompatibility	156	196	30,576	0.2000	6,115.20
Heart Candidate Registration	127	35	4,445	0.5000	2,222.50
Lung Candidate Registration	68	42	2,856	0.5000	1,428.00
Heart/Lung Candidate Registration	51	2	102	0.5000	51.00
Thoracic Registration	127	36	4,572	0.7500	3,429.00
Thoracic Follow-up	127	320	40,640	0.6500	26,416.00
Kidney Candidate Registration	241	183	44,103	0.5000	22,051.50
Kidney Registration	241	83	20,003	0.7500	15,002.25
Kidney Follow-up*	241	742	178,822	0.5500	98,352.10
Liver Candidate Registration	129	109	14,061	0.5000	7,030.50
Liver Registration	129	58	7,482	0.6500	4,863.30
Liver Follow-up	129	519	66,951	0.5000	33,475.50
Kidney/Pancreas Candidate Registration	143	14	2,002	0.5000	1,001.00
Kidney/Pancreas Registration	143	7	1,001	0.9000	900.90
Kidney/Pancreas Follow-up	143	85	12,155	0.8500	10,331.75
Pancreas Candidate Registration	143	7	1,001	0.5000	500.50
Pancreas Registration	143	3	429	0.7500	321.75
Pancreas Follow-up	143	20	2,860	0.6500	1,859.00
Intestine Candidate Registration	44	7	308	0.5000	154.00
Intestine Registration	44	5	220	0.9000	198.00
Intestine Follow-up	44	28	1,232	0.8500	1,047.20
Post Transplant Malignancy	684	10	6,840	0.2000	1,368.00

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Total	463		522,815		278,765.95

* Includes an estimated 2,500 kidney transplant patients transplanted prior to the initiation of the data system.

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 25, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–12964 Filed 5–27–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0119]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 28, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0502. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002— (OMB Control Number 0910–0502)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 415 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350d), which requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA. Sections 1.230 through 1.235 of FDA's regulations (21 CFR 1.230 through 1.235) set forth the procedures for registration of food facilities. Information provided to FDA under these regulations will help the agency to notify quickly the facilities that might be affected by a deliberate or accidental contamination of the food supply.

Description of Respondents: The respondents to this information collection include owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. Domestic facilities are required to register whether or not food from the facility enters interstate commerce. Foreign facilities that manufacture/process, pack, or hold food also are required to register unless food from that facility undergoes further processing (including packaging) by another foreign facility before the food is exported to the United States. However, if the subsequent foreign facility performs only a minimal activity, such as putting on a label, both facilities are required to register.

FDA's regulations require that each facility that manufactures, processes, packs, or holds food for human or animal consumption in the United States register with FDA using Form FDA 3537 (§ 1.231). The term "Form FDA 3537" refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov*. The agency strongly encourages electronic registration because it is faster and more convenient. The system the agency has developed can accept electronic registrations from anywhere in the world 24 hours a day, 7 days a week. A registering facility will receive confirmation of electronic registration and its registration number instantaneously once all the required fields on the registration screen are filled in. However, paper registrations will be accepted. Form FDA 3537 is available for download for registration by mail, fax, or CD–ROM. Registration by mail may take several weeks to several months, depending on the speed of the mail system and the number of paper registrations that FDA will have to enter manually.

Information FDA requires on the registration form includes the name and full address of the facility; emergency contact information; all trade names the facility uses; applicable food product categories identified in § 170.3 (21 CFR 170.3), unless "most/all" human food categories "or none of the above mandatory categories" is selected as a response; and a certification statement that includes the name of the individual authorized to submit the registration form. Additionally, facilities are encouraged to submit their preferred mailing address; type of activity conducted at the facility; food categories not included under § 170.3, but which are helpful to FDA for responding to an incident; type of storage, if the facility is primarily a holding facility; and approximate dates of operation if the facility's business is seasonal.

In addition to registering, a facility is required to submit timely updates within 60 days of a change to any required information on its registration form, using Form FDA 3537 (§ 1.234), and to cancel its registration when the facility ceases to operate or is sold to new owners or ceases to manufacture/process, pack, or hold food for consumption in the United States, using Form FDA 3537a (§ 1.235).

In the **Federal Register** of March 16, 2010 (75 FR 12547), FDA published a 60-day notice requesting public comment on the proposed collection of

information. FDA received one letter, containing multiple comments, in response to the notice.

(Comment 1) One comment contended that it was unnecessary for companies to have to register their facilities with FDA.

(Response) FDA disagrees. In the Preliminary Regulatory Impact Analysis (PRIA) for the proposed rule (see the **Federal Register** of Feburary 3, 2003 (68 FR 5378 at 5387 to 5413)), FDA asserted that requiring registration of manufacturers/ processors, packers, and holders of food would aid in deterring and limiting the effects of foodborne outbreaks in four ways. One, by requiring registration, persons who might intentionally contaminate the food supply would be deterred from entering the food production chain. Two, if FDA is aware of a specific food threat, a registration database would make FDA better able to inform the facilities potentially affected by the threat. Three, FDA would be able to deploy more efficiently its domestic compliance and regulatory resources. Four, FDA inspectors, using prior notice and registration, would be better able to identify shipments offered for import for inspection.

Registering with FDA creates a paper trail, which would, even if the information in the registration were falsified, provide evidence that could link the registration to the false registrant. Persons who might attempt to intentionally contaminate the U.S. food supply would be deterred, by the creation of additional evidence that might be used against them, from starting a business in the food supply chain. Persons who might intentionally contaminate the food supply but refuse to register would be subject to criminal and civil sanctions and, if foreign, would risk having their product held at a U.S. port. With emergency contact information and product categories, FDA can quickly call or e-mail the emergency contact at both domestic and foreign facilities that may be targeted by a specific food threat. If FDA suspects a particular product is at risk, the agency can quickly identify which facilities to contact. This rapid communication ability will allow facilities to respond quickly to a threat and possibly limit the effect of a deliberate strike on the food supply, as well as public health emergencies due to accidental contamination of food.

(Comment 2) One comment stated that facilities that hold food should not be required to register.

(Response) FDA disagrees with the suggested change to its regulations. The agency's regulations implement the food facility registration requirements in section 305 of the Bioterrorism Act, which requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA.

(Comment 3) One comment stated that, to lessen the burden of the regulation, FDA should not require firms to update their registration information, but only to cancel their registration when the facility stops holding food.

(Response) FDA disagrees with the suggested change to its regulations. Requiring registrants to update the registration information for their facilities will directly enhance FDA's ability to satisfy the agency's obligation to maintain an up-to-date list of registered facilities, as required by section 415(a)(4) of the act. FDA has balanced the greater efficiency of the agency's having specific information regarding food manufactured/processed, packed, or held at each facility against the burden on facilities to submit initially and update this information as circumstances change. Without updated emergency contact information and product categories, the agency's ability to quickly call or e-mail the emergency contact at facilities that may be targeted by a specific food threat would be negatively impacted.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
New Facilities						
Domestic						
1.230–1.233	FDA 3537[2]	13,560	1	13,560	2.5	33,900
Foreign						
1.230–1.233	FDA 3537	23,370	1	23,370	8.5	198,645
New Facility Registration Subtotal						232,545
Previously Registered Facilities-Updates (Form 3537) and Cancellations (Form 3537a)						
1.234	FDA 3537	118,530	1	118,530	1	118,530
1.235	FDA 3537a	6,390	1	6,390	1	6,390
Updates or Cancellations to Existing Registration Subtotal						124,920
Total Hours Annually						357,465

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

[2] The term "Form FDA 3537" refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of new facility registrations, updates and cancellations received in the past 3 years. FDA received 12,681 new domestic facility registrations during 2006; 14,629 during 2007; and 13,378 during 2008. Based on this experience, FDA estimates the annual number of new domestic facility registrations will be 13,560. FDA estimates that listing the information required by the

Bioterrorism Act and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 2.5 hours per average domestic facility registration. The average domestic facility burden hour estimate of 2.5 hours takes into account that some respondents completing the registration may not have readily available Internet access. Thus, the total annual burden for new domestic facility registrations is estimated to be 33,900 hours (13,560 x 2.5 hours).

FDA received 25,513 new foreign facility registrations during 2006; 23,302 during 2007; and 21,281 during 2008. Based on this experience, FDA estimates the annual number of new foreign facility registrations will be 23,370. FDA estimates that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 8.5 hours per average foreign facility registration. The average foreign facility burden hour estimate of 8.5 hours includes an estimate of the additional burden on a foreign facility to obtain a U.S. agent, and takes into account that for some foreign facilities the respondent completing the registration may not be fluent in English and/or not have readily available Internet access. Thus, the total annual burden for new foreign facility registrations is estimated to be 198,645 hours (23,370 x 8.5 hours).

FDA received 114,199 updates to facility registrations during 2006; 128,070 during 2007; and 113,318 during 2008. Based on this experience, FDA estimates that it will receive 118,530 updates annually. FDA also estimates that updating a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. Thus, the total annual burden for updating all registrations is estimated to be 118,530 hours.

FDA received 5,703 cancellations of facility registrations during 2006; 5,578 during 2007; and 7,888 during 2008. Based on this experience, FDA estimates the annual number of cancellations will be 6,390. FDA also estimates that cancelling a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. Thus, the total annual burden for cancelling registrations is estimated to be 6,390 hours.

Dated: May 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13003 Filed 5–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0120]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Cosmetic Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by June 28, 2010..

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0599. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Labeling Regulations—(OMB Control Number 0910–0599)—Extension

The Federal Food, Drug, and Cosmetic Act (the act) and the Fair Packaging and Labeling Act (the FPLA) require that cosmetic manufacturers, packers, and distributors disclose information about themselves or their products on the labels or labeling of their products. Sections 201, 502, 601, 602, 603, 701, and 704 of the act (21 U.S.C. 321, 352, 361, 362, 363, 371, and 374) and sections 4 and 5 of the FPLA (15 U.S.C. 1453 and 1454) provide authority to FDA to regulate the labeling of cosmetic products. Failure to comply with the requirements for cosmetic labeling may render a cosmetic adulterated under section 601 of the act or misbranded under section 602 of the act.

FDA's cosmetic labeling regulations are published in part 701 (21 CFR part 701). Four of the cosmetic labeling regulations have information collection provisions. Section 701.3 requires the label of a cosmetic product to bear a declaration of the ingredients in descending order of predominance. Section 701.11 requires the principal display panel of a cosmetic product to bear a statement of the identity of the product. Section 701.12 requires the label of a cosmetic product to specify the name and place of business of the manufacturer, packer, or distributor. Section 701.13 requires the label of a cosmetic product to declare the net quantity of contents of the product.

FDA's cosmetic labeling regulations remain unchanged by this notice. FDA is publishing this notice in compliance with the PRA. This notice does not represent any new regulatory initiative.

In the **Federal Register** of March 16, 2010 (75 FR 12546), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter, containing multiple comments, in response to the notice. One comment expressed strong support for the labeling of cosmetics. Additional comments were outside the scope of the four collection of information topics on which the notice solicits comments and, thus, will not be addressed here.

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

TABLE 1.—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Disclosure	Total Annual Disclosures	Hours per Disclosure	Total Hours
701.3	1,518	21	31,878	1	31,878

TABLE 1.—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency of Disclosure	Total Annual Disclosures	Hours per Disclosure	Total Hours
701.11	1,518	24	36,432	1	36,432
701.12	1,518	24	36,432	1	36,432
701.13	1,518	24	36,432	1	36,432
Total					141,174

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

The hour burden is the additional or incremental time that establishments need to design and print labeling that includes the following required elements: A declaration of ingredients in decreasing order of predominance, a statement of the identity of the product, a specification of the name and place of business of the establishment, and a declaration of the net quantity of contents. These requirements increase the time establishments need to design labels because they increase the number of label elements that establishments must take into account when designing labels. These requirements do not generate any recurring burden per label because establishments must already print and affix labels to cosmetic products as part of normal business practices.

According to the 2001 census, there are 1,518 cosmetic product establishments in the United States (U.S. Census Bureau, *http://www.census.gov/epcd/susb/2001/us/US32562.HTM)*. FDA calculates label design costs based on stockkeeping units (SKUs) because each SKU has a unique product label. Based on data available to the Agency and on communications with industry, FDA estimates that cosmetic establishments will offer 94,800 SKUs for retail sale in 2010. This corresponds to an average of 62 SKUs per establishment.

One of the four provisions that FDA discusses in this information collection, § 701.3, applies only to cosmetic products offered for retail sale. However, the other three provisions, §§ 701.11, 701.12, and 701.13, apply to all cosmetic products, including non-retail professional-use-only products. FDA estimates that including professional-use-only cosmetic products increases the total number of SKUs by 15 percent to 109,020. This corresponds to an average of 72 SKUs per establishment.

Finally, based on the Agency's experience with other products, FDA estimates that cosmetic establishments may redesign up to one-third of SKUs per year. Therefore, FDA estimates that the annual frequency of response will be 21 (31,878 SKUs) for § 701.3 and 24 each (36,432 SKUs) for §§ 701.11, 701.12, and 701.13.

FDA estimates that each of the required label elements may add approximately 1 hour to the label design process. FDA bases this estimate on the hour burdens the Agency has previously estimated for food, drug, and medical device labeling and on the Agency's knowledge of cosmetic labeling. Therefore, FDA estimates that the total hour burden on members of the public for this information collection is 141,174 hours per year.

Dated: May 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13075 Filed 5–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0118]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 28, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0520. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—(OMB Control Number 0910–0520)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278 through 1.282 of FDA's regulations (21 CFR 1.278 through 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting FDA review after an article of food has been refused admission under section 801(m)(1) of the act or placed under hold under section 801(l) of the act; and § 1.285(i) (21 CFR 1.285(i)) sets forth the procedure for post-hold submissions. Advance notice of imported food allows FDA, with the support of the U.S.

Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies.

Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA's regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial System (ABI/ACS) (§ 1.280(a)(1)) or the FDA Prior Notice (PN) System Interface (Form FDA 3540) (§ 1.280(a)(2)). The term "Form FDA 3540" refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*. Prior notice must be submitted electronically using either ABI/ACS or the FDA PN System Interface. Information collected by FDA in the prior notice submission includes: The submitter and transmitter (if different from the submitter); entry type and CBP identifier; the article of food, including complete FDA product code; the manufacturer, for an article of food no longer in its natural state; the grower, if known, for an article of food that is in its natural state; the FDA Country of Production; the shipper, except for food imported by international mail; the country from which the article of food is shipped or, if the food is imported by international mail, the anticipated date of mailing and country from which the food is mailed; the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; the carrier and mode of transportation, except for food imported by international mail; and planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA's importer's entry notice, which has been approved under OMB control number 0910–0046. The information in FDA's importer's entry notice is collected electronically via CBP's ABI/ACS at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours are already accounted for in the importer's entry notice information collection, and the burden hour analysis in table 1 of this document reflects the reduced burden for prior notice submitted through ABI/ACS in the column labeled "Hours per Response."

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information if information changes after FDA has confirmed a prior notice submission for review (e.g., if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after FDA has confirmed a prior notice submission for review (§ 1.282(a)(1)(i) through (a)(1)(iii)). In the event that an article of food has been refused admission under section 801(m)(1) or placed under hold under section 801(l) of the act, §§ 1.283(d) and 1.285(j) set forth the procedure for requesting FDA review and the information required to be included in a request for review. In the event that an article of food has been placed under hold under section 801(l) of the act, § 1.285(i) sets forth the procedure for and the information to be included in a post-hold submission.

In accordance with 5 CFR 1320.8(d), in the **Federal Register** of March 16, 2010 (75 FR 12549), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter, containing multiple comments, in response to this notice. These comments were outside the scope of the four collection of information topics on which the notice solicits public comment and, thus, will not be addressed here.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section No.	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Prior Notice Submissions						
Prior Notice submitted through ABI/ACS						
1.280 through 1.281	None	6,500	1,290	8,385,000	0.15	1,257,750[2]
Prior Notice submitted through PN System Interface						
1.280 through 1.281	FDA 3540[3]	21,500	73	1,569,500	0.37	580,715
New Prior Notice Submissions Subtotal						1,838,465
Prior Notice Cancellations						
Prior Notice cancelled through ABI/ACS						
1.282	FDA 3540	6,500	3	19,500	0.25	4,875
Prior Notice cancelled through PN System Interface						
1.282 and 1.283(a)(5)	FDA 3540	21,500	3	64,500	0.25	16,125
Prior Notice Cancellations Subtotal						21,000
Prior Notice Requests for Review and Post-hold Submissions						
1.283(d) and 1.285(j)	None	1	1	1	8	8

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section No.	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1.285(i)	None	1	1	1	1	1
Prior Notice Requests for Review and Post-hold Submissions Subtotal						9
Total Hours Annually						1,859,474

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] To avoid double-counting, an estimated 396,416 burden hours already accounted for in the Importer's Entry Notice information collection approved under OMB control number 0910–0046 are not included in this total.
[3] The term "Form FDA 3540" refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years.

On November 7, 2008, FDA and CBP issued the prior notice final rule (73 FR 66294), which finalized the prior notice interim final rule (IFR) (68 FR 58894, October 10, 2003). From the IFR to the final rule, FDA removed a few of the required prior notice data elements. Specifically, submitters no longer need to include the fax number of the submitter and transmitter, the anticipated border crossing, the country of the carrier, or the 6-digit HTS code in their prior notices. Other changes include the addition of the registration number of the transshipper for articles of food for transshipment, storage and export, or manipulation and export; flexibility in submitting the registration number and the city and country of the manufacturer and shipper instead of full addresses of these entities; and the option of submitting the tracking number for articles of food arriving by express consignment instead of anticipated arrival information when the prior notice is submitted through PN System Interface (73 FR 66294 at 66402).

Accordingly, FDA has reduced its estimate of the hours per response for prior notices received through ABI/ACS from 10 minutes, or 0.167 hours, per notice, to 9 minutes, or 0.15 hours, per notice. FDA received 8,144,419 prior notices through ABI/ACS during 2007; 8,266,200 during 2008; and 5,221,549 as of August 26, 2009. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 1,290 prior notices annually, for a total of 8,385,000 prior notices received annually through ABI/ACS. FDA estimates the reporting burden for a prior notice submitted through ABI/ACS to be 9 minutes, or 0.15 hours, per notice, for a total burden of 1,257,750 hours. This estimate takes into consideration the burden hours already counted in the information collection approval for FDA's importer's entry notice, as previously discussed in this document.

FDA has also reduced its estimate of the hours per response for prior notices received through the PN System Interface from 23 minutes to 22 minutes. FDA received 1,744,287 prior notices through the PN System Interface during 2007; 1,662,033 during 2008; and 989,708 as of August 26, 2009. Based on this experience, FDA estimates that approximately 21,500 registered users of the PN System Interface will submit an average of 73 prior notices annually, for a total of 1,569,500 prior notices received annually through the PN System Interface. FDA estimates the reporting burden for a prior notice submitted through the PN System Interface to be 22 minutes, or 0.366 hours (rounded to 0.37 hours), per notice, for a total burden of 580,715 hours.

FDA received 16,215 cancellations of prior notices through ABI/ACS during 2007; 16,673 during 2008; and 16,045 as of August 26, 2009. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 2.64 (rounded to 3) cancellations annually, for a total of 19,500 cancellations received annually through ABI/ACS. FDA estimates the reporting burden for a cancellation submitted through ABI/ACS to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 4,875 hours.

FDA received 58,345 cancellations of prior notices through the PN System Interface during 2007; 63,779 during 2008; and 55,019 as of August 26, 2009. Based on this experience, FDA estimates that approximately 21,500 registered users of the PN System Interface will submit an average of 3.24 (rounded to 3) cancellations annually, for a total of 64,500 cancellations received annually through the PN System Interface. FDA estimates the reporting burden for a cancellation submitted through the PN System Interface to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 16,125 hours.

FDA has not received any requests for review under §§ 1.283(d) or 1.285(j) in the last 3 years (2007 through August 26, 2009); therefore, the agency estimates that one or fewer requests for review will be submitted annually. FDA estimates that it will take a requestor about 8 hours to prepare the factual and legal information necessary to prepare a request for review. Thus, FDA has estimated a total reporting burden of 8 hours.

FDA has not received any post-hold submissions under § 1.285(i) in the last 3 years (2007 through August 26, 2009); therefore, the agency estimates that one or fewer post-hold submissions will be submitted annually. FDA estimates that it will take about 1 hour to prepare the written notification described in § 1.285(i)(2)(i). Thus, FDA has estimated a total reporting burden of 1 hour.

Dated: May 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12866 Filed 5–27–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Administration; Matching Requirements on Grants Awarded Under Children's Bureau Funding Opportunity Announcement for Fiscal Year 2010

AGENCY: Division of Grants Policy, Office of Financial Services, Office of Administration, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice.

CFDA Number: 93.648.

Legislative Authority: Section 426 of the Social Security Act [42 U.S.C. 626(a)(2)].

SUMMARY: The Administration for Children and Families (ACF) hereby gives notice to the public that the following program within the Agency will administratively impose a matching requirement on grants awarded under the following program title and funding opportunity announcement for Fiscal Year 2010:

Program office	Funding opportunity number	Funding opportunity title	Fiscal year	Program title	CFDA number	Match percentage	Composition of match
Administration for Children, Youth and Families—Children's Bureau.	HHS–2010–ACF–ACYF–CA–0022.	Initiative to Reduce Long-Term Foster Care.	2010	Child Welfare Training.	93.648	10 percent of Total Approved Project Cost.	Cash and In-Kind.

Historically, ACF has found that the imposition of a matching requirement on awards under certain programs result in an increased level of community support and, often, a higher profile in the community. This can contribute to the success and sustainability of the project. The Fiscal Year 2010 funding opportunity announcement for the Initiative to Reduce Long-Term Foster Care program will advise applicants on the percentage of funds that must be contributed through non-Federal resources, the composition of the match, and whether the merit of the match will be taken into consideration as a criterion in the competitive review. The administratively imposed matching requirement will apply only to new grants and their continuation grants, awarded under funding opportunity announcement HHS–2010–ACF–ACYF–CA–0022.

This matching requirement does not represent an addition to any existing matching requirements on awards made under other funding opportunity announcements issued in Fiscal Year 2008 or before. The amount and acceptable types of non-Federal resources allowed is not negotiable. However, matching may be provided as direct or indirect costs. Specific information related to the matching requirement and the competitive review process will be provided in the published funding opportunity announcement. Any unmatched Federal funds will be disallowed. Costs borne by matching contributions are subject to the regulations governing allowability found under 45 CFR 74.23 and 45 CFR 92.24.

Notices of planned grant opportunities proposed by HHS's Operating Divisions are available at the HHS Forecast Web site. Each Forecast record contains actual or estimated dates and funding levels for grants that the agency intends to award during the fiscal year. Additional details about ACF planned FY 2010 funding opportunity announcements can be found on the Grants Forecast Web site at *http://www.hhs.gov/grantsforecast/.*

Published ACF funding opportunity announcements are available on *http://www.Grants.gov* and on the ACF Grant Opportunities Web page at *http://www.acf.hhs.gov/grants/index.html.*

FOR FURTHER INFORMATION CONTACT: Karen Shields, Grants Policy Specialist, Office of Administration, Division of Grants Policy, 370 L'Enfant Promenade, SW., 6th Floor East, Washington, DC 20447, or by telephone at 202–401–5112 or *karen.shields@acf.hhs.gov.*

February 24, 2010.

Tony Hardy,

Acting Deputy Assistant Secretary for Administration, Administration for Children and Families.

[FR Doc. 2010–12826 Filed 5–27–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; K–12 Diabetes Prevention Curriculum Development.

Date: June 16, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12923 Filed 5–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Education Panel.

Date: June 24–25, 2010.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20001.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; RFA AT–01–001 "Translational Tools For Clinical Studies of CAM Interventions".

Date: June 28–29, 2010.

Time: 7 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ray Bramhall, PhD, Scientific Review Officer, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–451–6570, *bramhallr@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; PA–10–067 "Research Project Grant (Parent R01)

Date: June 29, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ray Bramhall, PhD, Scientific Review Officer, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–451–6570, *bramhallr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 21, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12924 Filed 5–27–10; 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; NIAID Science Education Awards.

Date: June 23, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Nancy Lewis Ernst, PhD, Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

Date: July 14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–0985, *vijhs@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 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12938 Filed 5–27–10; 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; Research on Integrity in Collaborative Research.

Date: July 15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Roosevelt, Rockville, MD 20852.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1080, MSC 4874, Bethesda, MD 20892–4874, 301–435–0806.

(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 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12941 Filed 5–27–10; 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): Member Conflict Review, Program Announcement (PA) 07–318, 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: 1:30 p.m.–3 p.m., July 28, 2010 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, telephone: (304) 285–6143.

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 "Member Conflict Review, PA 07–318."

Contact Person for More Information: M. Chris Langub, PhD, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333; Telephone: (404)498–2543.

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 20, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12829 Filed 5–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Effectiveness of Empiric Antiviral Treatment for Hospitalized Community Acquired Pneumonia during the Influenza Season, Funding Opportunity Announcement (FOA) IP10–007, 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.–2 p.m., June 15, 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 "Effectiveness of Empiric Antiviral Treatment for Hospitalized Community Acquired Pneumonia during the Influenza Season, FOA IP10–007".

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293.

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 20, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12827 Filed 5–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1340–N]

Medicare Program; Public Meeting in Calendar Year 2010 for New Clinical Laboratory Tests Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for a specified list of new Clinical Procedural Terminology (CPT) codes for clinical laboratory tests in calendar year (CY) 2011. The meeting provides a forum for interested parties to make presentations and submit written comments on the new codes that will be included in Medicare's Clinical Laboratory Fee Schedule for CY 2011, which will be effective on January 1, 2011. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be further discussed at the meeting.

DATES: *Meeting Date:* The public meeting is scheduled for Thursday, July 22, 2010 from 9 a.m. to 2 p.m., Eastern Standard Time (E.S.T.).

Deadline for Registration of Presenters: All presenters for the public meeting must register by July 16, 2010.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than 5 p.m., E.S.T. on July 16, 2010.

Deadline for Submission of Written Comments: Interested parties may submit written comments on the proposed payment determinations by September 24, 2010, to the address specified in the **ADDRESSES** section of this notice.

ADDRESSES: The public meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new clinical laboratory tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act states that such new tests are any clinical diagnostic laboratory tests with respect to which a new or substantially revised Healthcare Common Procedures Coding System (HCPCS) code is assigned on or after January 1, 2005 (hereinafter referred to as, "new test" or "new clinical laboratory test"). Section 1833(h)(8)(B) of the Act sets forth the methods for determining payment bases for new tests. Pertinent to this notice, section 1833(h)(8)(B)(i) and (ii) of the Act requires the Secretary to make available to the public a list that includes new tests for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, to publish in the **Federal Register** a notice of a meeting to receive comments

and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for new tests. Section 1833(h)(8)(B)(iii) of the Act requires that we convene a public meeting not less than 30 days after publication of the notice in the **Federal Register**. These requirements are codified at 42 CFR part 414, subpart G.

A newly created Current Procedural Terminology (CPT) code can represent either a refinement or modification of existing test methods, or a substantially new test method. The preliminary list of newly created CPT codes for calendar year (CY) 2011 will be published on our Web site at *http://www.cms.hhs.gov/ClinicalLabFeeSched* upon publication of this notice in the **Federal Register**.

Two methods are used to establish payment amounts for new tests included in the CY 2011 Clinical Laboratory Fee Schedule. The first method, called "cross-walking," is used when a new test is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is then assigned to the related existing local fee schedule amounts and the related existing national limitation amount. Payment for the new test is made at the lesser of the local fee schedule amount or the national limitation amount.

The second method, called "gap-filling," is used when no comparable existing test is available. When using this method, instructions are provided to each Medicare carrier or Part A and Part B Medicare Administrative Contractor (MAC) to determine a payment amount for its geographic area(s) for use in the first year. These determinations are based on the following sources of information, if available: Charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. The carrier-specific amounts are used to establish a national limitation amount for the following years. For each new clinical laboratory test code, a determination must be made to either cross-walk or gap-fill.

II. Format

This meeting to receive comments and recommendations (including accompanying data on which recommendations are based) on the appropriate payment basis for the specified list of new CPT codes is open to the public. The on-site check-in for visitors will be held from 8:30 a.m., E.S.T. to 9 a.m., E.S.T., followed by opening remarks. Registered persons from the public may discuss and recommend payment determinations for specific new test codes for the CY 2011 Clinical Laboratory Fee Schedule.

Presentations must be brief and accompanied by three written copies. CMS recommends that presenters make copies available for approximately 50 meeting participants, since CMS will not be providing additional copies. Before the annual meeting on July 22, 2010, presentations must also be electronically submitted to CMS on or before July 2, 2010. Presentations should be sent via e-mail to Glenn McGuirk, at *Glenn.McGuirk@cms.hhs.gov.* Once the presentations are collected, CMS will post them on the Clinical Laboratory Web site at *http://www.cms.hhs.gov/ClinicalLabFeeSched.* Presenters should address the following items:

- New test code(s) and descriptor;
- Test purpose and method;
- Costs;
- Charges; and
- Make a recommendation with rationale for one of two methods (cross-walking or gap-fill) for determining payment for new tests.

Additionally, the presenters should provide the data on which their recommendations are based. Presentations that do not address the above five items may be considered incomplete and may not be considered by CMS when making a payment determination. CMS may request missing information following the meeting in order to prevent a recommendation from being considered incomplete.

A summary of the proposed new test codes and the payment recommendations that are presented during the public meeting will be posted on the CMS Web site by early September 2010 and can be accessed at *http://www.cms.hhs.gov/ClinicalLabFeeSched.*

In addition, the summary on the CMS Web site will also include a list of all comments received by August 6, 2010 (15 days after the meeting). The summary will also display our proposed payment determinations, an explanation of the reasons for each determination, and the data on which the determinations are based. Interested parties may submit written comments on the proposed payment determinations by September 24, 2010, to the address specified in the **ADDRESSES** section of this notice. Final payment determinations will be posted on our Web site in October 2010. Each determination will include a rationale, data on which the determination is based, and responses to comments and suggestions received from the public.

After the final payment determinations have been posted on our Web site, the public may request reconsideration of the payment determinations as set forth in 42 CFR 414.509. We also refer readers to the November 27, 2007 final rule (72 FR 66275 through 66280).

III. Registration Instructions

The Division of Ambulatory Services in CMS is coordinating the public meeting registration. Beginning June 22, 2010, registration may be completed on-line at the following Web address: *http://www.cms.hhs.gov/ClinicalLabFeeSched.* The following information must be submitted when registering:

- Name;
- Company name;
- Address;
- Telephone number(s); and
- E-mail address(es).

When registering, individuals who want to make a presentation must also specify on which new clinical laboratory test code(s) they will be presenting comments. A confirmation will be sent upon receipt of the registration. Individuals must register by the date specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. It is suggested that you arrive at the CMS facility between 8:15 a.m and 8:30 a.m., E.S.T. so that you will be able to arrive promptly at the meeting by 9 a.m., E.S.T. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 8:15 a.m., E.S.T. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the

grounds. Parking permits and instructions will be issued after the vehicle inspection.

• Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

V. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide the information upon registering for the meeting. The deadline for such registrations is listed in the **DATES** section of this notice.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 7, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–12458 Filed 5–27–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7018–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education

June 22, 2010.

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: *Meeting Date:* Tuesday, June 22, 2010 from 8:30 a.m. to 3 p.m., eastern daylight time (e.d.t.).

Deadline for Meeting Registration, Presentations and Comments: Tuesday, June 15, 2010, 5 p.m., e.d.t.

Deadline for Requesting Special Accommodations: Tuesday, June 8, 2009, 5 p.m., e.d.t.

ADDRESSES: *Meeting Location:* Hilton Washington Hotel Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Meeting Registration, Presentations, and Written Comments: Cindy Falconi, Acting Designated Federal Official (DFO), Division of Forum and Conference Development, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Falconi via e-mail at *Cindy.Falconi@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cindy Falconi, (410) 786–6452. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/FACA/04_APME.asp*) for additional information and updates on committee activities. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed * * * by law." Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options."

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1311(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2009 (74 FR 13442, March 27, 2009). The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

• To provide recommendations on the development and implementation of a national Medicare education program that describes benefit options under Medicare.

• To enhance the Federal government's effectiveness in informing the Medicare consumer.

• To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.

• To assemble an information base of best practices for helping consumers evaluate benefit options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Gwendolyn T. Bronson, SHINE/SHIP Counselor, Massachusetts SHINE Program; Yanira Cruz, PhD, President and Chief Executive Officer, National Hispanic Council on Aging; Stephen P. Fera, M.B.A., Vice President, Social Mission Programs, Independence Blue Cross; Nan-Kirsten Forte, Executive Vice President, Consumer Services, WebMD; Richard C. Frank, M.D., Director, Cancer Research, Whittingham Cancer Center; Cathy C. Graeff, R.Ph., M.B.A., Partner, Sonora Advisory Group; Carmen R. Green, M.D., Professor, Anesthesiology and Associate Professor, Health, Management, and Policy, University of Michigan; Jessie C. Gruman, PhD, President, Center for Advancing Health; Cindy Hounsell, J.D., President, Women's Institute for a Secure

Retirement; Kathy Hughes, Vice Chairwoman, Oneida Nation; Gail Hunt, President and Chief Executive Officer, National Alliance for Caregiving; Warren Jones, M.D., F.A.A.F.P., Executive Director, Mississippi Institute for Improvement of Geographic Minority Health; Sandy Markwood, Chief Executive Officer, National Association of Area Agencies on Aging; David W. Roberts, M.P.A., Vice President, Government Relations, Healthcare Information and Management System Society; Julie Boden Schmidt, M.S., Associate Vice President, Training and Technical Assistance, National Association of Community Health Centers; Rebecca P. Snead, Chief Executive Officer and Executive Vice President, National Alliance of State Pharmacy Associations and APME Chair; Donna Yee, PhD, Chief Executive Officer, Asian Community Center of Sacramento Valley; Deeanna Jang, Policy Director, Asian and Pacific Islander American Health Forum; Andrew Kramer, M.D., Professor of Medicine, Division of Health Care Policy and Research, University of Colorado, Denver; John Lui, PhD, M.B.A., Executive Director, Stout Vocational Rehabilitation Institute.

The agenda for the June 22, 2010 meeting will include the following:

- Recap of the previous (March 31, 2010) meeting.
- Subgroup Committee Work Summary.
- Medicare Outreach and Education Strategies.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 13, 2010.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–12457 Filed 5–27–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates:

8 a.m.–6 p.m., June 23, 2010.
8 a.m.–3 p.m., June 24, 2010.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent "Oz" Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on: Evidence based recommendations; human papillomavirus (HPV) vaccines; 13-valent pneumococcal conjugate vaccine; meningococcal vaccine; hepatitis vaccines; a vaccine supply update; respiratory syncytial virus immunoprophylaxis vaccine; rotavirus vaccines; pertussis vaccine; and influenza vaccines. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Antonette Hill, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–8905.

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 Substance and Disease Registry.

Dated: May 20, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12818 Filed 5–27–10; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships To Advance the National Occupational Research Agenda (NORA)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: "Partnerships to Advance the National Occupational Research Agenda (NORA)".

Public Meeting Time and Date: 10 a.m.–4 p.m. EDT, June 16, 2010.

Place: Patriots Plaza, 395 E. Street, SW., Conference Room 9000, Washington, DC 20201.

Purpose of Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the NORA Sector Councils on their progress, priorities, and implementation

plans to date, including the NORA Construction, Manufacturing, Public Safety, Services, and Wholesale and Retail Trade Councils. Updates will also be given on cross-sector activities in the areas of Healthy People 2020 and the WorkLife Initiative. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an e-mail to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation by Web meeting (requirements include: Computer, internet connection, and telephone, preferably with 'mute' capability) or in person. An e-mail confirming registration will include the details needed to participate in the Web meeting. Non-US citizens are encouraged to participate in the web meeting. Non-US citizens who do not register to attend in person on or before June 2, 2010, will not be granted access to the meeting site and will not be able to attend the meeting in-person due to mandatory security clearance procedures at the Patriots Plaza facility.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html.*

Since 2006, NORA has been structured according to industrial sectors. Eight major sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the web and town hall meetings, ten NORA Sector Councils have been working to define sector-specific strategic plans for conducting research and moving the results into widespread practice. During 2008–2009, most of these Councils have posted draft strategic plans for public comment. Seven have posted finalized National Sector Agendas after considering comments on the drafts. For more information, see the link above and choose "Sector-based Approach," "NORA Sector Councils," "Sector Agendas" and "Comment on Draft Sector Agendas" from the right-side menu.

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, PhD, NORA Coordinator, E-mail *noracoordinator@cdc.gov,* telephone (202) 245–0665.

Dated: May 20, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–12743 Filed 5–27–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 20, 2010, from 8 a.m. to 3 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Nicole Vesely, c/o Melanie Whelan, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6100, Silver Spring, MD 20993–0002, FAX: 301–847–8737, to reach by telephone before June 8, 2010, please call 301–827–7001; to reach by telephone after June 8, 2010, please call 301–796–9001, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 20, 2010, the committee will discuss supplemental biologics license applications (sBLAs) 125085/191 and 192 for AVASTIN (bevacizumab), manufactured by Genentech, Inc. The two proposed indications (uses) for this product are: (1) First-line treatment of a subgroup of women with metastatic breast cancer known as HER2-negative breast cancer, in combination with the chemotherapy drug docetaxel; and (2) first-line treatment of HER2-negative metastatic breast cancer in combination with one of two classes of chemotherapy drugs, known as taxanes and anthracyclines, or with the chemotherapy drug, capecitabine. In addition to the discussion of these two indications, the committee will also consider the impact of the submitted studies on the conversion from accelerated to regular approval of the indication for the treatment, in combination with the chemotherapy drug paclitaxel, of patients who have not received chemotherapy for their locally recurrent or metastatic HER2 negative breast cancer.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 6, 2010. Oral presentations from the public will be scheduled between approximately 12:30 p.m. to 1:30 p.m. Those desiring to make formal oral presentations should

notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 25, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 28, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 25, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–12870 Filed 5–27–10; 8:45 am]

BILLING CODE 4160–01–S

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; Review of proposals received in response to NIH–NHLBI–HB–11–02.

Date: June 22, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3137, Bethesda, MD 20817 (Telephone Conference Call) .

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2666, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Genetics Autoimmunity.

Date: June 22, 2010.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call) .

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@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 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12942 Filed 5–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 23–24, 2010.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, Washington, DC 20005.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12940 Filed 5–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2316–N]

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Medicaid and CHIP Programs; Meeting of the CHIP Working Group—June 14, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (DHHS); Employee Benefits Security Administration (EBSA), Department of Labor (DOL).

ACTION: Notice.

SUMMARY: This notice announces the second meeting of the Medicaid, Children's Health Insurance Program ("CHIP"), and Employer-Sponsored Coverage Coordination Working Group

(referred to as the "CHIP Working Group"). The CHIP Working Group will meet to address objectives specified under section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009. This meeting is open to the public.

DATES: *Meeting Date:* Monday, June 14, 2010 from 9 a.m. to 5 p.m., Eastern Standard Time (*e.s.t.*).

Deadline for Registration without Oral Presentation: June 12, 2010, 12 p.m., *e.s.t.*

Deadline for Registration of Oral Presentations: June 10, 2010, 12 p.m., *e.s.t.*

Deadline for Submission of Oral Remarks and Written Comments: June 10, 2010, 12 p.m., *e.s.t.*

Deadline for Requesting Special Accommodations: June 10, 2010, 12 p.m., *e.s.t.*

ADDRESSES: *Meeting Location:* The meeting will be held at the Grand Hyatt Washington, 1000 H Street NW., Washington, DC 20001.

Submission of Testimony: Testimonies should be mailed to Stacey Green, Designated Federal Official (DFO), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop C2–04–04, Baltimore, MD 21244–1850, or contact the DFO via e-mail at *stacey.green@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Stacey Green, DFO, Centers for Medicare & Medicaid Services, Health and Human Services at (410) 786–6102, or Amy Turner, Employee Benefits Security Administration, DOL at (202) 693–8335. News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the Internet at *http://www.cms.hhs.gov/FACA,* or *http://www.dol.gov/ebsa/CHIP.html* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces the second meeting of the Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group ("CHIP Working Group"). The Secretary of Health and Human Services and the Secretary of Labor are required under section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111–3), enacted February 4, 2009, to jointly establish a CHIP Working Group. The membership of the group is based on nominations submitted in response to a **Federal Register** solicitation notice published on May 1, 2009 (74 FR 20323). The CHIP Working Group will meet two times to develop a model coverage coordination disclosure form for group health plan administrators to send to States upon request regarding benefits available under the plan. This notice will enable States to determine the availability and cost-effectiveness of providing premium assistance to individuals eligible for benefits under titles XIX or XXI of the Social Security Act (the Act) to enable them to enroll in group health plans. The CHIP Working Group will identify and report on the impediments to the effective coordination of coverage available to families that include employees of employers that maintain group health plans and members who are eligible for medical assistance under title XIX of the Act or child health assistance or other health benefits coverage under title XXI of the Act.

Not later than August 5, 2010, the CHIP Working Group must submit to the Secretary of Labor and the Secretary of Health and Human Services the model coverage coordination disclosure form and the report containing recommendations for appropriate measures for addressing the impediments to the effective coordination of coverage.

II. Meeting Format and Agenda

The meeting will commence with welcoming remarks from the CHIP Working Group by Departmental representatives. In addition, the agenda will focus on the following:

- Introductions from Chair and Co-Chair.
- Review of the draft model coverage coordination disclosure form for plan administrators of group health plans. The draft form is available for members of the public to review at *http://www.dol.gov/ebsa/CHIP.html.* To submit written comments, follow the instructions listed in the **ADDRESSES** section of this notice.
- Review of report containing recommendations for appropriate measures for addressing the impediments to the effective coordination of coverage between group health plans and title XIX and XXI State plans.
- An opportunity for public comment and testimony.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual or organizational stakeholders that represent the focus area of the CHIP Working Group wishing to present a 5-minute oral testimony on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral testimonies may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to CHIP Working Group members for review before the meeting by the date listed in the "DATES" section of this notice.

III. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

Individuals requiring sign language interpretation or other special accommodations must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).)

Dated: May 21, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Dated: May 21, 2010.

Michael L. Davis

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

[FR Doc. 2010–12952 Filed 5–27–10; 8:45 am]

BILLING CODE 4120–01–P–4510–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Migrant and Seasonal Farmworkers Study

AGENCY: Office of Head Start.

ACTION: Notice of Public Comment.

SUMMARY: The following Notice of Public Comment is in response to Section 649(f) Sub-Section (3) of the 2007 Head Start School Readiness Act (the Act) requiring the Secretary to publish in the **Federal Register** a plan of how the Secretary will carry out

section 649 Sub-Section (f) Sub-Paragraph (1) and shall provide a period for public comment.

DATES: To ensure consideration, written comments must be submitted on or before 60 days after this notice is published.

To Comment on This Document, or for Further Information Contact: MigrantFederalRegister@HeadStartinfo.org.

SUPPLEMENTARY INFORMATION: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, Section 649 [42 U.S.C. 9801]—Sub-Section 649(h)(1)(A–B), notice is hereby given of a plan to conduct a set of activities designed to focus on the Migrant and Seasonal Farmworker Head Start-eligible population. As required by the Act, the Secretary shall work in collaboration with providers of Migrant and Seasonal Head Start programs, the Secretary of Agriculture, the Secretary of Labor, the Bureau of Migrant Health, and the Secretary of Education to undertake the activities addressed in this notice. *The notice is required to present:* (1) A plan to "collect, report, and share data, within a coordinated system, on children of migrant and seasonal farmworkers and their families, including health records and educational documents of such children, in order to adequately account for the number of children of migrant and seasonal farmworkers who are eligible for Head Start services and determine how many of such children receive the services;" (2) a plan to "identify barriers that prevent children of migrant and seasonal farmworkers who are eligible for Head Start services from accessing Head Start services;" and (3) "develop a plan for eliminating such barriers, including certain requirements relating to tracking, health records, and educational documents, and increasing enrollment."

Migrant and Seasonal Head Start (MSHS) Plans

(1) Collaboration across Federal agencies in order to adequately account for the number of children of migrant and seasonal farmworkers who are eligible for Head Start services and determine how many of such children receive the services.

Interagency Meetings. On December 5, 2008, ACF convened a meeting of representatives from the United States (U.S.) Department of Education (ED), Office of Elementary and Secondary Education, Office of Migrant Education; the U.S. Department of Labor, Employment and Training Administration; and the U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), Office of Migrant Health; the HHS Administration for Children and Families, Office of Head Start (OHS), Migrant and Seasonal Head Start, and the Office of Planning, Research and Evaluation. The purpose of the meeting was to engage these agencies in discussing their efforts in collecting, reporting, and sharing data and lessons learned to enhance coordination among agencies at the Federal, State, and local levels. This meeting resulted in the organization of a series of Interagency Roundtables on Migrant and Seasonal Farmworkers.

The Roundtables will look at:

- Data collection efforts affecting migrant and seasonal farmworker children and their families, including efforts to maintain and coordinate their health and education records: How are data efforts pursued and maintained? How are data collected and reported? What are the lessons learned from previous attempts at coordinating data collection efforts?
- Accounting for the number of eligible children/workers, as well as the number of children/workers who receive services: How do various organizations identify gaps in their services? How can these approaches be improved? and
- Identifying barriers that prevent eligible migrant and seasonal farmworkers and their families from accessing migrant and seasonal services: How can these barriers be reduced, ameliorated or eliminated?

After a first planning meeting with agencies involved, the first Roundtable was held in April 2009 and focused on the Department of Education's Migrant Student Information Exchange (MSIX) and the Department of Labor's National Agricultural Worker's Survey (NAWS). The second half of the day involved active discussions between the Federal representatives, addressing the topical questions in light of the presented information. An additional meeting was held on March 17, 2010.

Systematic Data Collection: Accounting for the Number of Children Eligible

Farmworkers are eligible for MSHS services based on mobility, employment, age of the children, and income. For the eligibility of migrants, the family must be primarily engaged in agricultural work and have changed geographical locations within the past 24 months in pursuit of agricultural work. For seasonal farmworkers eligible for MSHS, the parents must be primarily engaged in farmwork but need not have changed geographical locations within the past 24 months. For both migrant and seasonal farmworkers, acceptable farmwork includes production and harvesting of tree and field crops. Production and harvesting of tree and field crops include preparing the soil, planting, cultivating, picking, packing, canning, and processing. Agricultural work that supports the crop production such as irrigation, crop protection, and operation of farm machinery are also included. Production and harvesting of greenhouse and nursery products may also be included. Eligible children range in age from newborn up to compulsory school age. Income requirements for families are based on poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services. The income of migrant and seasonal eligible families must be primarily derived from agricultural work.

As OHS has been asked to account for the total number of MSHS-eligible children, it reviewed the data collection resources of other Federal agencies that are also currently serving or observing migrant and seasonal farmworkers. These included the Enumeration Studies of Migrant Health; Reports of Migrant Health Clinics; Data Transferring Efforts of Migrant Education; and the National Agricultural Workers Survey (NAWS) of the Department of Labor.

The methodology of the Enumeration Profiles (Larson Assistance Services, Vashon Island; 1990; 2001; 2002) was very individualized per State and involved intensive effort. The results presented estimates of the number of farmworkers within a State and, when possible, by county and across age groups. The resulting profile estimations were based on secondary data analyses and the opinions of invested experts; the validity and reliability of the information was therefore undermined by the inherent variations in quality and quantity of data from State to State.

There are 154 Federally funded migrant health center (MHC) entities, sponsored by the Office of Migrant Health, that collectively operate more than 500 satellite service sites that comprise a loosely knit network of independent organizations serving migrant and seasonal farmworkers. Their annual reports present the national and State number of farmworkers served by the clinic sites: *http://bphc.hrsa.gov/uds/2007data/National/migrant/NationalTable3Amhc.htm.* However, methodological and definitional issues currently undermine the possibility of using Migrant Health Clinic data to

account for numbers of MSHS-eligible nationally. The HRSA definition of farmworkers eligible for service is similar to the MSHS definition in terms of the types of farmwork allowable and the mobility requirements. However, HRSA does not require the whole family to engage in agricultural work or to change geographical location in order to receive services. Methodologically, programs do not consistently share data across sites, so the cumulative count of individuals served may include workers who are counted more than one time as they migrate for work. Further, information about the entire family is not reported for each individual, so siblings that might be eligible for MSHS are not identified. Finally, migrant clinics are scattered across the U.S., but their distribution does not necessarily reflect a geographically representative profile of farmworkers in the U.S.

Migrant Education of ED uses an extensive network of recruiters to actively identify eligible students in each area. The Migrant Education program uses a data transferring system to coordinate records across schools for children of migrant farmworkers. Again, definitional and methodological issues reduce the usefulness of these data for identifying the number of MSHS-eligible nationally. Migrant Education services are available for children who traveled with their families within the past three years for purposes of a family member's temporary or seasonal employment with agricultural, fishing, farming or logging. Further, Migrant Education recruiters are primarily interested in identifying eligible three-year-olds through high school aged. Given these definitions, the number of children eligible for Migrant Education will differ markedly from those eligible for MSHS.

OHS also reviewed an additional established methodology for accounting for the national population of migrant and seasonal farmworkers: The National Agricultural Worker's Survey (NAWS). NAWS is a national, random sample survey of crop farmworkers in the continental U.S. that is housed at the U.S. Department of Labor (DOL). The data is collected directly from agricultural workers, on an annual basis, using field survey methods. Estimates and data from this effort have been used by HRSA, Migrant Education, and DOL-Farmworkers Job Programs.

Topics covered by NAWS have included farmworker work histories and tasks, as well as health and housing. The survey methodology is complex, with sampling occurring three times per year to capture seasonal and geographic variations in the farmworker population. NAWS interviewers travel to randomly selected counties, contacting an annual sample of approximately 500 agricultural employers to obtain cooperation for the survey. At the randomly selected agricultural establishments, interviewers draw a random sample of farmworkers and then administer the questionnaire. DOL calculates estimates of each State's share of the Migrant Seasonal Farmworkers population based on a formula that includes several data sources, including the Census of Agriculture, U.S. Department of Agriculture's (USDA) Quarterly Agricultural Labor Survey and NAWS. Strengths and weaknesses of each of these datasets are outlined in Steirman, Kissam, and Nakamoto, 1998.

Estimating the national number of eligible MSHS children using NAWS data is a multi-step process. The first step is to calculate a size estimate for the national farmworker population (typically done using either the USDA Farm Labor Survey or the USDA Census of Agriculture). The second step is to identify the percent of the farmworker population eligible for MSHS and the average number of infant through pre-school aged children per family (using three-year averages of NAWS data regarding percentages of farmworker families meeting eligibility requirements). From steps one and two, it is possible to estimate the national average of eligible migrant and seasonal children. To further refine these numbers to agricultural regions, it is necessary to incorporate data regarding the proportion of farmworkers within each region (USDA Farm Labor Survey), and multiply the national average of eligible by these proportions.

Upon review of these methods, the NAWS methodology was identified as an established, carefully designed, large scale approach to estimating numbers of agricultural workers nationally and by agricultural regions. Beginning in February 2008, ACF partnered with DOL to use this established survey to gather a national estimate of MSHS-eligible children (both migrant and seasonal). Estimates for seven multi-state agricultural regions will also be calculated. In June 2009, the results from the pilot year of NAWS will be made available to OHS for review and discussion. Further minor refinement of the NAWS–MSHS questions will be ongoing, to ensure that children who match to the MSHS definition of eligible can be accurately identified.

Additional Systematic Data Collection: Design for MSHS Survey

A team of researchers, led by CDM, Inc., contracted in September 2007, to design the methodology for an MSHS Survey. The plans will detail multiple options for gathering descriptive data at varied levels of the MSHS organization (*i.e.,* program, center, staff, children and/or families). The development activities included gathering of insight and suggestions from program staff, administrators and families who are currently or previously served by MSHS. Topics that could be addressed by the survey and the methods outlined for gathering the data have been substantially shaped and refined by this input from program stakeholders. After completion of the contract and review by ACF leadership, the report for the Design for MSHS Survey project will be placed online in late 2010.

(1) A Plan To Identify Obstacles and Barriers

Focus Groups. As a first step in developing a plan to identify barriers, ACF consulted with MSHS advocates, grantees, families and researchers attending the thirty-eighth and thirty-ninth Annual Migrant and Seasonal Head Start Conferences in Washington, D.C. Potential themes regarding obstacles and barriers will be explored by providing venues that will allow opportunities for comment by key stakeholders. These discussions will be used to seek examples of high-quality recruitment and outreach efforts, details of families' and programs' perceptions of barriers, and potential solutions for reducing or eliminating barriers. The information gained through these venues is being analyzed and will be made available to Federal partners, Migrant and Seasonal Head Start grantees, and advocacy groups for comment and validation.

Efforts for additional discussions with stakeholders are continually explored.

Systematic Data Collection: Identification of Obstacles and Barriers

As discussed extensively above, the NAWS is a national, random sample survey of crop farmworkers in the continental U.S. that is housed at DOL. Beginning in February 2008, ACF partnered with DOL to pilot a questionnaire supplement to NAWS, aimed at families with children under the age of six. The questionnaire supplement asks about:

- Child care options used by the parents in recent months,
- Reasons for those choices,
- Parents' knowledge of MSHS,

• Families' participation in MSHS, and

• Any perceived obstacles to participation.

The resulting information can be collected for multiple cycles of NAWS data, identifying potential issues in various agricultural regions over the course of the seasons. If continued for multiple years, it should be possible to identify trends in farmworker family child care use for their young children and family perceptions of MSHS.

Systematic Data Collection: Incorporation of Related Questions in Design of MSHS Survey

The design options for the MSHS Survey will include components that OHS could use to gather information regarding obstacles and barriers. Possible routes identified thus far include record reviews that could provide insight (*e.g.,* review of local community needs assessments and program recruitment methods); gathering staff and parent opinions regarding obstacles and barriers to MSHS participation; or direct interviews with community partners and local advocacy organizations. The design contract will illuminate methodological and logistical considerations for collecting these types of data, and will be useful as OHS considers future data collection strategies.

(1) A Plan for Eliminating Identified Barriers and for Increasing Enrollment of Eligible Children

Based on the information obtained from the Migrant and Seasonal Roundtables, and input from MSHS grantees, families, researchers, and private organizations involved in advocating for Migrant and Seasonal families, ACF will develop a plan that will articulate barriers identified through (1) and (2) above, propose methods for dealing with them that are within ACF's legislative purview, and incorporate methods that require action by other Federal agencies or statutory changes. The plan for eliminating identified barriers will form the basis for a strategy to increase the enrollment of eligible children in MSHS, as appropriate.

Dated: May 21, 2010.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2010–12795 Filed 5–27–10; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–648, Revision of an Existing Information Collection Request; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–648, Medical Certification for Disability Exceptions. OMB Control No. 1615–0060.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 1, 2010, at 75 FR 5099, allowing for a 60-day public comment period. USCIS received comments from three commenters. The comments and USCIS' response can be found in the supporting statement on www.regulations.gov.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 28, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0060 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–648. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form N–648 issued by the medical professional to substantiate a claim for an exception to the requirements of section 312(a) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 24, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–12816 Filed 5–27–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–22]

Notice of Proposed Information Collection: Comment Request; Section 202 Supportive Housing for the Elderly Application Submission Requirement

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: July 27, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *leroy.mckinneyjr@hud.gov* or telephone (202) 402–5564 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 202 Supportive Housing for the Elderly Application Submission Requirement.

OMB Control Number, if applicable: 2502–0267.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for the elderly within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

Agency form numbers, if applicable: HUD–92015–CA, HUD–96010, HUD 92041, SF–424, SF–424–Supplemental, SF–LLL, HUD–2880, HUD–2990, HUD–2991, HUD–92042, HUD–96010, HUD–96011, & HUD–2994–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 12,001; the number of respondents is 300 generating approximately 300 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 30 minutes to 21.5 hours.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 25, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–12970 Filed 5–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 20, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–12574 Filed 5–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14989–B, F–14989–C, F–14989–E2, F–14989–G2, F–14989–K2, F–14989–L2; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision approving the conveyance of the surface estate for certain lands to Danzhit Hanlaii Corporation, pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Danzhit Hanlaii Corporation. The lands are in the vicinity of Circle, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 13 N., R. 16 E.,
Secs. 1 to 14.

Containing approximately 8,753 acres.

T. 10 N., R. 17 E.,
Secs. 9, 10, and 11;
Secs. 14 to 23;
Sec. 29.

Containing approximately 8,750 acres.

T. 12 N., R. 17 E.,
Secs. 33 and 34.

Containing approximately 1,280 acres.
Aggregating approximately 18,783 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 28, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may contact the BLM by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–12840 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2009–N185; BAC–4311–K9–S3]

Nomans Land Island National Wildlife Refuge, Town of Chilmark, MA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft comprehensive conservation plan (CCP) and draft environmental assessment (EA) for Nomans Land Island National Wildlife Refuge (NWR) for a 30-day public review and comment period. In this draft CCP/EA, we describe three alternatives, including our Service-preferred Alternative C, for managing this refuge for the next 15 years. Also available for public review and comment is the draft wilderness review, which is included as Appendix C in the draft CCP/EA.

DATES: To ensure our consideration of your written comments, please send them by June 28, 2010. We will also hold at least one public meeting in Chilmark, Massachusetts, during the 30-day review period to receive comments and provide information on the draft plan. We will announce and post details about public meetings in local news media, via our project mailing list, and on our regional planning Web site, *http://www.fws.gov/northeast/planning/nomansland/ccphome.html.*

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Agency Web site: View or download the draft document at *http://www.fws.gov/northeast/planning/nomansland/ccphome.html.*

Electronic mail: *northeastplanning@fws.gov.* Include "Nomans Land Island NWR CCP/EA" in the subject line of the message.

U.S. Postal Service: Eastern Massachusetts NWR Complex, 73 Weir Hill Road, Sudbury, MA 01776.

In-Person Drop-off, Viewing, or Pickup: Call 978–443–4661 to make an appointment during regular business hours at the above address.

Facsimile: Attn: Carl Melberg, 978–443–2898.

FOR FURTHER INFORMATION CONTACT: Carl Melberg, Planning Team Leader, at 978–443–4661 extension 32.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Nomans Land Island NWR in Chilmark, Massachusetts, which we started with the notice of intent (NOI) that was published in the **Federal Register** (73 FR 76376) on December 16, 2008. We prepared the draft CCP in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Act). This refuge is one of eight refuges in the Eastern Massachusetts NWR Complex.

Nomans Land Island NWR is a 628-acre roadless island located approximately 3 miles south of Martha's Vineyard, Massachusetts. It was established for the conservation and management of migratory birds. The Service first began managing a portion of the eastern side of the island in 1975 as an "overlay" refuge under a Joint Management Agreement between the U.S. Department of the Interior and the U.S. Department of the Navy (DoN), while it was still under DoN ownership. In 1998, management responsibility for the island was transferred to the Service and became Nomans Land Island NWR.

This island has a unique history, from use by Native Americans as a summer camp, to sheep grazing when the island was privately owned in the 1800s, to use as a bombing range to train DoN pilots during and after World War II. The refuge provides diverse habitats that include intertidal, freshwater wetland, grassland and shrubland habitats, and serves an important role for nesting landbirds and colonial waterbirds and as a stopover habitat for migratory birds and raptors such as the peregrine falcon.

Public access has never been allowed on the refuge due to unexploded ordnance (UXO), therefore, none of the six priority uses of the National Wildlife Refuge System (NWRS) established by Congress in the Act occur on the island. Off-site interpretation opportunities exist with potential partners such as the Town of Chilmark, the Wampanoag Tribe of Gay Head (Aquinnah) (the Tribe), and the Aquinnah Cultural Center.

Background

The CCP Process

The Act requires us to develop a CCP for each national wildlife refuge. The purpose for developing CCPs is to provide refuge managers with 15-year plans for achieving refuge purposes and the mission of the NWRS, in conformance with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify priority wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years, in accordance with the Act.

The Wilderness Review

Service planning policy (602 FW 3) requires that we conduct a wilderness review in association with the development of a refuge CCP, pursuant to the Wilderness Act (16 U.S.C. 1131 *et seq.*). The purpose of the wilderness review is to identify and describe wilderness values and evaluate appropriate management alternatives. The wilderness review process has three phases: Inventory, study, and recommendation. After first identifying lands and waters that meet the minimum criteria for wilderness during the inventory phase, the resulting wilderness study areas (WSAs) are further evaluated to determine if they merit recommendation from the Service to the Secretary of the Interior (Secretary) for inclusion in the National Wilderness Preservation System (NWPS).

Public Outreach

There is a long planning history for this CCP. On February 24, 1999, a NOI to prepare a CCP and environmental impact statement (EIS) for what was then known as Great Meadows NWR Complex, of which Nomans Land Island NWR is a part, was printed in the **Federal Register**. In 2001, we determined it was not feasible to prepare one plan for eight refuges, and on February 15, 2001, another notice was printed in the **Federal Register** indicating that a CCP/EIS would be prepared for Monomoy, Nantucket, and Nomans Land Island NWRs. However, no work was done on those plans at that time. On December 13, 2004, another NOI was printed in the **Federal Register** to indicate that the planning process for Nomans Land Island NWR and Monomoy NWR was being re-initiated, and that comments already received under previous notices would be considered. In 2008, because of the different issues facing the refuges, the Service determined it to be more efficient to proceed separately with the Nomans Land Island NWR CCP/EA.

Scoping began in 1999 with public meetings and the solicitation of public comments via planning workbooks. In April 2005, two scoping meetings were held in Chilmark, Massachusetts. Interagency, stakeholder, and public scoping was re-initiated through partner and public meetings held on October 14, 2008, at the Chilmark Library, followed by a comment period ending November 14, 2008. Federal and State natural resource agency staff, current and potential refuge partners, and members of the general public attended these meetings. During these meetings, we asked attendees specific questions about their views on the refuge's wildlife and habitat values, how they view the refuge, and their suggestions for future refuge management.

Some of the key issues we identified were the management of migratory birds and their habitats including shrubland, rocky shoreline and wetlands, coordination with the DoN to ensure safety, UXO removal, enforcement of no public access, better communication with the public about the refuge and our management activities, and protection of cultural resources.

CCP Alternatives, Including Selected Alternative

We developed three management alternatives based on the purposes for establishing the refuge, its vision and goals, and the issues and concerns identified by the public, State agencies, the Tribe, and the Service during the planning process. The alternatives have some actions in common, such as protecting and monitoring fish and wildlife species, managing the extensive shrubland habitat, controlling invasive plants and wildlife diseases, protecting cultural resources, planning for limited Tribal use of the island, developing a partnership agreement with the Tribe, maintaining a no public use policy, and distributing refuge revenue sharing payments to the Town of Chilmark.

Other actions distinguish the alternatives. The draft CCP/EA describes the alternatives in detail, and relates them to the issues and concerns identified. Highlights are as follows:

Alternative A (Current Management)

This alternative is the "No Action" alternative required by NEPA. Alternative A defines our current management activities, and serves as the baseline against which to compare the other alternatives. Our current habitat management focuses on allowing natural processes and prescribed burns conducted by the DoN for UXO removal operations to maintain the diversity of the maritime shrubland habitat that supports migratory and nesting birds of conservation concern such as the eastern towhee and gray catbird. Other than some invasive species management, only natural processes affect the ponds and wetlands on the refuge that provide important breeding habitat for Virginia rail and other species of conservation concern.

We would continue to maintain the 15 acres of herbaceous upland and 100 acres of intertidal beach and rocky shore to provide suitable habitat conditions for nesting American oystercatcher, piping plover, and terns, as well as other shorebird, colonial waterbird, and seabird species identified as species of conservation concern. We would continue to enforce the no public access policy along the shoreline to prevent public use activities that may pose safety risks due to UXO.

We would continue to work with our partners to monitor these habitats for invasive plants and disease, and we would treat the vegetation to fight invasive species if we have available funding and staffing. Our biological monitoring and inventory program and habitat and trail management would continue at its current minimal level, and would be limited by safety concerns and UXO removal conducted by the DoN.

We would continue to protect cultural resources by strengthening our relationships with the Tribe and the Chilmark Historical Commission. We would consult with the DoN Regional Archeologist prior to any ground-disturbing activities.

Our visitor services programs would not change, as minimal off-site interpretation now occurs via our Web site and virtual tour. Our staffing and facilities would remain the same. Existing staff for the refuge complex would remain in place, and the headquarters would remain at the Sudbury, Massachusetts office. No new staff would be hired specifically for this refuge.

Alternative B (Enhanced Management and Habitat Diversity)

In this alternative, the Service takes a more active role in managing habitats, research, monitoring, and inventorying its priority natural and cultural resources.

We would coordinate with the DoN on all management activities and provide additional trails for monitoring and management access throughout the island. Under this alternative, we would establish a fire-based management regime with prescribed burns to maintain 400 acres of desired shrubland habitat conditions in order to support focal nesting bird species and provide critical shrubland stop-over habitat for migrating landbirds and butterflies. We would also explore the potential to introduce the New England cottontail on the refuge in support of regional recovery efforts for this species of State and regional conservation concern.

We would manage the 15 acres of herbaceous upland vegetation that provides habitat for shorebirds and terns, and the 100 acres of marine intertidal beach and rocky shore habitats to benefit marine mammals and nesting and migrating shorebirds. We

would manage the 100 to 150 acres of freshwater wetland communities to support breeding marsh birds and native plant and animal communities, and control non-native invasive species and predators as necessary to support nesting focal species of conservation concern. We would create a habitat map for the refuge, and conduct inventories, research, and monitoring on rare and special concern species.

Since no public use is allowed, we would increase visitor services programming off-site with environmental education and interpretation by developing partnerships with the Tribe, Town of Chilmark, and the Aquinnah Cultural Center. We would work with partners to conduct shoreline surveys for archeological resources at risk from erosion and develop protocols for collection and repository of artifacts and remains.

We would increase refuge complex staff by three new positions—Biological, Visitor Services, and Law Enforcement. Under this alternative, we would focus on strengthening partnerships with the Tribe for ceremonial access. We would also increase access and management throughout the refuge with the cooperation of the DoN.

Alternative C (Natural Processes Emphasis-Service Preferred Alternative)

This alternative is the one we propose as the best way to manage this refuge over the next 15 years. It includes an array of less active management actions that, in our professional judgment, works best toward achieving the refuge purposes, our vision and goals, and the goals of other State and regional conservation plans. We also believe it most effectively addresses the key issues that arose during the planning process. Lastly, it is the most realistic, given the relatively modest increase in staffing and funding that is anticipated over the next 15 years.

This alternative acknowledges that the refuge meets the minimum criteria for a WSA. Under this alternative, a Nomans Land Island WSA would be recommended as suitable for designation and inclusion in the NWPS. The analysis of environmental consequences is based on the assumption that Congress would accept the recommendation and designate Nomans Land Island NWR as wilderness. The Nomans Land Island WSA would be managed according to the provisions of the Wilderness Act and Service Wilderness Stewardship Policy (610 FW 1–3). The wilderness area would be managed to accomplish refuge purposes and the NWRS mission, while also preserving wilderness character and natural values for future generations. Use of motorized vehicles, motorized equipment, mechanical transport on the island would be allowed for emergency purposes, and when necessary to meet minimum requirements for the administration of the area as wilderness, and to accomplish refuge purposes. The island would continue to be accessible by motorboat.

The information and analyses in the CCP/EA would be used to compile a wilderness study report and legislative EIS to accompany the wilderness recommendation. Since Congress has reserved the authority to make final decisions on wilderness designation, the wilderness recommendation is a preliminary administrative determination that would receive further review and possible modification by the Director, the Secretary, or the President. We would conduct some survey, inventory, research, and monitoring of focal species such as common and roseate terns, and would implement necessary measures to protect any colonies larger than 50 pairs. We would work with partners on specific priority efforts, such as analyzing the feasibility of New England cottontail introduction. We would track vegetation changes and invasive species, and control those that threaten healthy ecosystems. Under Alternative C, we would primarily allow coastal processes of wind and wave action to shape the refuge habitats, but would consider using fire to maintain shrubland stopover habitat for migratory birds, if necessary. We would focus our efforts to provide quality habitat on the refuge for landbirds, including raptors, during fall migration.

This alternative resembles Alternative A in its minimal management approach, refuge administration, and facilities. We would provide oversight and coordination to the DoN contaminant and UXO cleanup, pursue a partnership agreement with the Tribe that provides, in part, access to the refuge for ceremonial purposes, and work with partners on cultural resource protection.

As with Alternative B, we would enhance visitor services to provide additional off-site opportunities for interpretation and communication, since no public access is allowed on the refuge. Staffing would remain the same as in Alternative A.

Public Meetings

The public will have the opportunity to provide input at one public meeting in Chilmark, Massachusetts. We will release mailings, news releases, and announcements electronically and provide information about opportunities for public review and comment on our Web site and in local newspapers with the contact information below. You can obtain the schedule from the planning team leader or project leader (*see* **ADDRESSES**). You may also submit comments anytime during the planning process by mail, electronic mail, or facsimile (**SEE ADDRESSES**). For specific information, including dates, times, and locations, contact the planning team leader (*see* **ADDRESSES**) or visit our Web site at *http://www.fws.gov/northeast/planning/nomansland/ccphome.html*.

Public Availability of Comments

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

Dated: April 26, 2010.

James G. Geiger,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 2010–12669 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY930000 L16100000.DS0000]

Notice of Intent To Prepare an Environmental Impact Statement and Resource Management Plan Amendments for the Casper, Kemmerer, Pinedale, Rock Springs, Newcastle, and Rawlins Field Offices, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Wyoming State Office intends to prepare Resource Management Plan (RMP) amendments with an associated Environmental Impact Statement (EIS) for the Casper, Kemmerer, Pinedale, Rock Springs, Newcastle, and Rawlins Resource Management Plans (RMPs) and by this

notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The RMP amendments will revise sage-grouse and sagebrush management direction in the existing Casper, Kemmerer, Pinedale, Rock Springs, Newcastle, and Rawlins RMPs to incorporate policies set forth in BLM Wyoming Instruction Memoranda (IM) 2010–012 and 2010–013. The IMs may be accessed at the following Web address: *http://www.blm.gov/wy/st/en/programs/wildlife.html.*

DATES: This notice initiates the public scoping process for the RMP amendments with associated EIS. Comments on issues may be submitted in writing until June 28, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and the BLM Web site at: *http://www.blm.gov/wy/st/en/programs/Planning/amendments/sage-grouse.html.* In order to be included in the Draft RMP amendments, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft RMP amendments.

ADDRESSES: You may submit comments on issues and planning criteria related to the Casper, Kemmerer, Pinedale, Rock Springs, Newcastle, and Rawlins RMP amendments by any of the following methods:

- *Web site: http://www.blm.gov/wy/st/en/programs/Planning/amendments/sage-grouse.html*;
- *E-mail: Sagegrouse_Amendment_WY@blm.gov*;
- *Fax:* (307) 352–0329; and
- *Mail:* BLM Wyoming State Office (WY 930), 5353 Yellowstone Rd., Cheyenne, Wyoming 82003.

Documents pertinent to this proposal may be examined at the Casper, Kemmerer, Pinedale, Rock Springs, Newcastle, and Rawlins field offices.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Bill Hill, Deputy State Director, Resources Policy and Management; at (307) 775–6113; 5353 Yellowstone Road, Cheyenne, Wyoming 82003; e-mail: *Sagegrouse_Amendment_WY@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Wyoming State Office intends to prepare RMP amendments with an associated EIS for the Casper, Kemmerer, Pinedale, Rock Springs, Newcastle, and Rawlins RMPs, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Converse, Goshen, Natrona, and Platte counties (Casper Field Office); Lincoln, Sweetwater, and Uinta counties (Kemmerer Field Office); Sublette, Lincoln, and Fremont counties (Pinedale Field Office); Albany, Carbon, Laramie, and Sweetwater counties (Rawlins Field Office); Sweetwater, Sublette and Fremont counties (Rock Springs Field Office); and Niobrara, Weston and Crook counties (Newcastle Field Office) in Wyoming. The planning area encompasses approximately 15 million acres of public land. 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 planning process. Preliminary issues for the planning area have been identified by BLM personnel; Federal, state, and local agencies; and other stakeholders. The issues include: Sagebrush habitat management practices directly applicable to protection of the sage grouse, sagebrush habitat management science directly applicable to protection of the sage grouse, and the effects of sagebrush habitat management on other public land resources. Preliminary planning criteria include: Incorporation of sage-grouse policies in Wyoming IMs 2010–012 and 2010–013; incorporation of the policies established by the Wyoming Governor's Executive Order on sage-grouse (Wyoming EO 2008–2), as appropriate; and consideration of and consistency with the BLM National Sage-Grouse Habitat Conservation Strategy (November 2004). The RMP amendment process will comply with NEPA, the Federal Land Policy and Management Act (FLPMA), and other applicable laws and policies. You may submit comments on issues and planning criteria in writing or orally to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments within 30 days after the last public meeting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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 minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan amendments, and will place them into one of three categories:

1. Issues to be resolved in the amendments;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of these amendments.

The BLM will provide an explanation in the Draft RMP amendments/EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the amendments. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The BLM will use an interdisciplinary approach to develop the amendments in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Donald A. Simpson,

State Director.

[FR Doc. 2010–12838 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07200–L51100000.GN0000 LVEMCE070000 252X; MTM78300]

Notice of Availability of the Final Environmental Impact Statement for the Graymont Western U.S., Inc. Proposed Mine Expansion, Broadwater County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, a Final Environmental Impact Statement (EIS)

has been prepared for the Graymont Western U.S., Inc. Proposed Mine Expansion. The mine permit is administered by the Bureau of Land Management (BLM) Butte Field Office and the Montana Department of Environmental Quality (DEQ). Operations on public lands in the permit area are on mining claims located in accordance with the General Mining Law of 1872, as amended.

DATES: The Final EIS will be available for review for 30 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. A Record of Decision will be prepared following the 30-day public availability period.

ADDRESSES: Copies of the Final EIS have been sent to affected Federal, State, and local government agencies and to interested parties. Copies of the Final EIS are available for public inspection at the Montana Department of Environmental Quality, 1520 East 6th Avenue, Helena, MT 59620–0901 and the Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, MT 59701. Interested parties may also review the Final EIS on the internet at *http://www.deq.mt.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Hallsten, Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620–0901, or David Williams, Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, MT 59701.

SUPPLEMENTARY INFORMATION: Graymont Western U.S., Inc. submitted a Plan of Operations on February 22, 2006, to the BLM and the DEQ to expand its existing limestone quarry operation, which is located on unpatented mining claims on public lands west of Townsend, Montana. This proposal is a continuation of mining along a prominent limestone ridge which forms the crest of the "Limestone Hills." The Notice of Intent to prepare the EIS was published in the **Federal Register** on May 18, 2007, and the Notice of Availability of the Draft EIS was announced in the **Federal Register** on December 19, 2008. Mining was originally permitted in the area beginning in 1981 and has continued since that time. The principal concern, developed through public meetings and agency review, was potential loss of mule deer and bighorn sheep habitat and winter-browse vegetation, principally mountain mahogany. The Final EIS evaluated three alternatives: No Action, the Proposed Action, and Alternative A, Modified Pit Backfill. The No Action Alternative would limit mine disturbance to the currently permitted 735 acres of disturbance, and the mine would continue to operate until it reached the permitted limits, probably in 7 to 12 years. The Proposed Action Alternative would allow for an additional 1,313 acres of disturbance and allow operations to continue for 35 to 50 years. The Modified Pit Backfill Alternative modifies reclamation at the site to provide for more diverse topography and soils that favor winter-browse species but does not change the proposed disturbance acreage or years of future operations.

Richard M. Hotaling,

Butte Field Manager.

[FR Doc. 2010–12789 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Solicit Nominations: Steens Mountain Advisory Council, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Call for Nominations.

SUMMARY: The Secretary is requesting nominations for four representatives for the Steens Mountain Advisory Council (SMAC). The Council will advise the Secretary on planning in the Steens Mountain Cooperative Management and Protection Area (CMPA), through the Bureau of Land Management (BLM).

DATES: Submit nomination packages on or before: June 28, 2010.

ADDRESSES: Send completed Advisory Council nominations to Burns District BLM Office; 28910 Highway 20 West; Hines, Oregon 97738–9424. Nomination forms are also available at the Burns District Office.

FOR FURTHER INFORMATION CONTACT: Christi Courtemanche, BLM, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, (541) 573–4541 or *Christi_Courtemanche@blm.gov.*

SUPPLEMENTARY INFORMATION: The SMAC was appointed by the Secretary of the Interior on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399). The SMAC's purpose is to provide representative counsel and advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area. The BLM is publishing this notice under Section 9 (a)(2) of the Federal Advisory Committee Act, to request nominations from the public for membership on the SMAC. Nomination forms may be obtained from the BLM Burns District Office. Applicants must be qualified through education, training, knowledge, or experience to give informed advice regarding an industry, discipline, or interest to be represented. Nominees must also demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from serving on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils. Any individual may nominate himself/herself or others to serve on the Council. Nomination applications may be obtained at the Burns District BLM Office or by going to *http://www.blm.gov/or/districts/burns/index.php.* All nomination applications should include reference letters and/or recommendations from the represented interests or organizations, and any other information explaining the nominee's qualifications (e.g., resume, curriculum vitae). *Nominations may be made for the following categories of interest:*

- A person with No Financial Interest in the CMPA to represent statewide interests (appointed from nominees submitted by the Governor of Oregon);
- A person who holds a Federal Grazing Permit for lands in the CMPA (appointed from nominees submitted by the County Court of Harney County);
- A member and representative of the Burns Paiute Tribe (appointed from nominees submitted by the Burns Paiute Tribe);
- A person who participates in Mechanized or Consumptive Recreation, such as hunting, off-road driving, hang gliding, or parasailing in the CMPA (appointed from nominees submitted by the Oregon State Director of the BLM);

The specific category the nominee wishes to represent should be identified in the nomination letter. The BLM Burns District Office will collect the nomination forms and reference letters and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and the BLM). The BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

Members of the SMAC are appointed to 3-year terms. All positions will expire in October 2013. Members serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Federal employees. The SMAC shall meet only

at the call of the Designated Federal Official, but not less than once a year.

Kenny McDaniel,

District Manager.

[FR Doc. 2010–12841 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 8, 2010. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments are also being accepted on the following properties being considered for removal pursuant to 36 CFR 60.15. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 14, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Rillito Race Track at the J. Rukin Jelks Stud Farm Historic Site, 4502 N First Ave and 1090 E River Rd, Tucson, 10000351

ARKANSAS

Baxter County

Mountain Home Commercial Historic District, Roughly bounded on the N by E 5th St, E 9th St on the S, S St on the E, and Hickory St on the W, Mountain Home, 10000348

CALIFORNIA

Santa Clara County

Palo Alto Medical Clinic, 300 Homer Ave, Palo Alto, 10000357

CONNECTICUT

Litchfield County

Hollister, Homestead, The, 294–300 Nettleton Hollow Rd, Washington, 10000350

DISTRICT OF COLUMBIA

District of Columbia

Earley, John J., Office and Studio, 2131 G St, NW, Washington, 10000367

Everglades, The, (Apartment Buildings in Washington, DC, MPS) 2223 H St, NW, Washington, 10000368

Flagler, The, (Apartment Buildings in Washington, DC, MPS) 736 22nd St, NW, Washington, 10000369

Keystone, The, (Apartment Buildings in Washington, DC, MPS) 2150 Pennsylvania Ave, NW, Washington, 10000370

Milton Hall, (Apartment Buildings in Washington, DC, MPS) 2222 I St, NW, Washington, 10000371

Munson Hall, (Apartment Buildings in Washington, DC, MPS) 2212 H St, NW, Washington, 10000372

ILLINOIS

Woodford County

Eureka College Campus Historic District, 300 College Ave, Eureka, 10000365

MISSOURI

St. Louis Independent City

North Broadway Wholesale and Warehouse District, 1400–1600 and 1609–1629 N Broadway, St. Louis, 10000352

NEW JERSEY

Hunterdon County

Rosemont Rural Agricultural District, County Routes 519 and 604; Sanford Rd; Covered Bridge Rd, Delaware, 10000354

Monmouth County

Allenhurt Residential Historic District, Roughly bounded by the Atlantic Ocean, Main St, Cedar Ave, Hume St, and Elberon Ave, Allenhurst, 10000353

NEW YORK

Chenango County

Chenango Canal Prism and Lock 107, (Historic and Engineering Resources of the Chenango Canal MPS) River Rd, Chenango Forks, 10000359

Greene County

Rushmore Farm, 8748 US 9W, Athens, 10000364

Monroe County

Alcoa Care-free Home, 1589 Clover St, Rochester, 10000358

Fernwood Park Historic District, (Rochester Plan Veterans Housing TR) Bounded by Fernwood Ave, Woodman Park, Culver Rd, and Waring Rd, Rochester, 10000360

Norton Village Historic District, (Rochester Plan Veterans Housing TR) Norton St., Norton Village Ln, Village Way, and Veteran St, Rochester, 10000362

Ramona Park Historic District, (Rochester Plan Veterans Housing TR) Ramona Park, Rochester, 10000363

Onondaga County

Niagra Hudson Building, The, 300 Erie Blvd W, Syracuse, 10000361

NORTH DAKOTA

Nelson County

Old Settler's Pavilion, 63 Pavilion Rd, Pekin, 10000366

VERMONT

Rutland County

St. Stanislaus Kostka School and Convent House, (Educational Resources of Vermont MPS) 95 & 113 Barnes St, West Rutland, 10000349

In the interest of preservation the comment period for the following action has been waived or shortened to (3) three days.

CALIFORNIA

Marin County

Dipsea Trail, The, Throckmorton Ave, Sequoia Valley Rd., Panoramic Hwy., State Rt 1, Mill Valley and Stinson Beach, 10000356

[FR Doc. 2010–12837 Filed 5–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–N098; 80221–1112–0000–F2]

Proposed Issuance of an Incidental Take Permit to Energy Northwest for Construction and Operation of the Radar Ridge Wind Project LLC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct 30-day public scoping period and prepare an Environmental Impact Statement (EIS).

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), intend to prepare an Environmental Impact Statement (EIS), under the National Environmental Policy Act (NEPA) regarding an application from Radar Ridge LLC for an incidental take permit for take of the threatened marbled murrelet (*Brachyramphus marmoratus*) in accordance with the Endangered Species Act of 1973, as amended (Act). Radar Ridge LLC is proposing to construct and operate the Radar Ridge Wind Project near Naselle, Washington.

The project would consist of up to 32 wind turbines with a generating capacity of 82 megawatts (MW) of electricity. Power generated by the wind turbines would be transmitted to the existing Bonneville Power Administration substation at Naselle, Washington. We are furnishing this notice to announce the initiation of a 30-day public scoping period, during which we invite other agencies, and the public, to provide comments on the range of alternatives and scope of issues to be included in the EIS.

DATES: *Comments:* To ensure consideration, please submit your comments by June 28, 2010.

Public Meeting Dates and Locations

1. Tuesday, June 15, 2010, 7–9 p.m. at the USFWS office at 510 Desmond Dr., Lacey, WA 98503.

2. Wednesday, June 16, 2010, 7–9 p.m. at Naselle High School, 793 State Route 4, Naselle, WA 98638.

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

1. *U.S. mail or hand delivery to:* Mr. Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503–1263; or

2. *E-mail to: radarridgewindproject@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ostwald, at (360) 753–9564, e-mail at *Mark_Ostwald@fws.gov,* or on the Internet at *http://www.fws.gov/wafwo.*

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2)(A) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), Radar Ridge LLC is preparing a habitat conservation plan in support of an application for a permit from the USFWS to incidentally take the marbled murrelet in conjunction with the construction, operation, maintenance, and decommissioning of the Radar Ridge Wind Project. The marbled murrelet is listed as threatened under the Act. The USFWS has determined that an EIS should be prepared under NEPA as part of the USFWS consideration of the permit application. The USFWS will be the lead agency (40 CFR 1501.5) for preparation of the EIS. The Bonneville Power Administration (BPA) is a cooperating agency (40 CFR 1501.6) in the NEPA process. The EIS will analyze the impacts of both agencies' proposed actions: USFWS's issuance of an incidental take permit, and BPA's approval of an interconnection to its transmission facilities.

Background

Radar Ridge LLC is requesting an incidental take permit for a period of 40 years to authorize incidental take of marbled murrelets in conjunction with the construction, operation, maintenance, and decommissioning of the Radar Ridge Wind Project.

The project is proposed in a rural, forested area approximately 10 miles north of the Columbia River and 12 miles east of the Pacific Ocean. The small community of Naselle, Washington, is approximately 3 miles south of the project. Radar Ridge ranges in elevation from approximately less than 1,000 feet to 1,900 feet. Some of the ridge has gravel roads that are used for logging or assessing the existing communication facility at the south end of the ridge. The ridge also contains an operating gravel quarry used by the Washington State Department of Natural Resources (WDNR) as a source of gravel for its roads. The forests on the ridge within the project area are generally second growth conifer forests, mostly younger than 60 years old.

Construction for the project will require forest clearing, upgrade of existing roads, construction of new roads, a new project substation on the ridge, and a new overhead transmission line (adjacent to an existing BPA power-line) from the project substation to an existing BPA substation in Naselle, Washington. Within the project area, up to 32 wind turbines would be located in a single row along the approximately 4.35-mile ridge-top. The project footprint is approximately 500 feet wide by 4.35 miles long on the top of the ridge. The wind turbines will be set on towers up to 265 feet tall with a possible rotor diameter ranging from 254 to 333 feet. Using the largest diameter rotor, the maximum total wind turbine height from tower base to blade tip would be 430 feet. The project might also include one permanent freestanding (no guy wires) meteorological tower with a height equivalent to the wind turbine tower/hub height.

The Radar Ridge Wind Project is planned on forest lands owned and managed by the WDNR in Pacific County, southwest Washington. These lands are currently included in the 1997 WDNR Forest Practices Habitat Conservation Plan (HCP), which covers 1.8 million acres of forest land. The marbled murrelet, northern spotted owl (*Strix occidentalis*), and several other listed species are covered by the WDNR HCP. The WDNR HCP provides the WDNR with incidental take coverage for forest management activities and some non-timber activities. Wind energy is not a covered activity of the WDNR HCP. Consequently, Radar Ridge LLC is developing a separate HCP to address incidental take of marbled murrelets that could result from the Radar Ridge Wind Project.

Radar Ridge Wind Project LLC, a wholly owned subsidiary of Energy Northwest, has received a 40-year conditional lease for the project from the WDNR that covers approximately 3,360 acres. It is the WDNR's opinion that it has the unilateral right to terminate the lease if, in the State's opinion, the proposed activity poses too large a risk and could jeopardize its continued operation of the Forest Practices HCP, Incidental Take Permit and Implementation Agreement with the USFWS and the National Marine Fisheries Service.

Radar Ridge Wind Project LLC, a wholly owned subsidiary of Energy Northwest, has received a 40-year conditional lease for the project from the WDNR that covers approximately 3,360 acres. It is the WDNR's opinion that it has the unilateral right to terminate the lease if, in the State's opinion, the proposed activity poses too large a risk and could jeopardize its continued operation of the Forest Practices HCP, Incidental Take Permit and Implementation Agreement with the USFWS and the National Marine Fisheries Service.

The WDNR Forest Practices HCP and Incidental Take Permit provides incidental take coverage for the marbled murrelet for the WDNR. When the WDNR HCP was written in 1997, there was not sufficient information available on the conservation needs of the marbled murrelet on WDNR lands. For that reason the WDNR developed an interim HCP strategy for this species. The interim conservation strategy required the DNR to do a habitat relationship study and locate marbled murrelet occupied sites on their lands (HCP, page IV. 39). Once the necessary steps of the interim strategy were completed, the WDNR would transition to a long-term marbled murrelet conservation strategy (HCP, page IV. 40).

The WDNR HCP states that the long-term conservation strategy would "*result in a comprehensive, detailed landscape-level plan that would help meet the recovery objectives of the USFWS, contribute to the conservation efforts of the President's Northwest Forest Plan, and make a significant contribution to maintaining and protecting marbled murrelet populations in western Washington over the life of the HCP.*" The WDNR has completed the interim strategy for southwest Washington and the Olympic Peninsula and is now

required to develop a long-term conservation strategy to be consistent with their HCP.

To help develop a scientifically credible long-term marbled murrelet conservation strategy, the WDNR convened a science team to develop murrelet conservation recommendations for WDNR lands in southwest Washington and the Olympic Peninsula. This team published their findings in 2008 as a report entitled *Recommendations and Supporting Analysis of Conservation Opportunities for the Marbled Murrelet Long-Term Conservation Strategy.* This report rated the 13,748-acre Nemah Block as the most important WDNR landscape in southwest Washington for marbled murrelet conservation. The proposed wind project would be located on Radar Ridge, which is within the Nemah block. To date, the WDNR has not completed its final long-term conservation strategy for the marbled murrelet.

To our knowledge, there is no forest on the ridge-top within the project footprint that resembles mature or old growth forest that might provide nesting habitat for the marbled murrelet. However, through the use of radar surveys, Radar Ridge LLC has documented the presence of marbled murrelets flying over the ridge, primarily above proposed wind turbine heights, both during the summer breeding season and during the winter. There are 89 murrelet-occupied nest sites within 30 miles of the project area and the northwest end of the project is within approximately 1,800 feet of the South Nemah Natural Resources Conservation Area, the highest known marbled murrelet nesting use site in Washington. While the project footprint does not appear to have any suitable nesting habitat for the species, marbled murrelets have been documented flying over the project location, likely commuting to and from nest sites. Some of these birds would be at risk of collision with the wind project.

Environmental Impact Statement

We will conduct an environmental review of the permit application, including the HCP. We will prepare an EIS in accordance with NEPA requirements, as amended (40 U.S.C. 4321 *et seq.*), and NEPA implementing regulations (40 CFR 1500–1508), and in accordance with other Federal laws and regulations, and the policies and procedures of the USFWS for compliance with those regulations.

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider all comments we receive in complying with the requirements of NEPA and in the development of the HCP and ITP. We particularly seek comments concerning:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable alternative could have on endangered and threatened species;

(2) Other reasonable alternatives, and their associated effects;

(3) Measures that would minimize and mitigate potentially adverse effects of the proposed project;

(4) Baseline environmental conditions in and adjacent to the project;

(5) Biological information regarding the marbled murrelet;

(6) Monitoring and adaptive management that might be relevant to the project;

(7) Other plans or projects that might be relevant to this project;

(8) Pertinent information concerning wind energy and wildlife response; and

(9) Pertinent information concerning wind energy and its relationship to the human environment.

The EIS will analyze the effects that the various alternatives would have on the marbled murrelet as well as all other aspects of the human environment, including but not limited to geology and soils, land use, air quality, water quality, wetlands, socioeconomics, recreation, cultural resources, noise, visual resources, climate change, and cumulative impacts from the proposed action. A notice of availability is expected to be published in the **Federal Register** in early 2011 and the DEIS will be circulated for public review and comment. The USFWS will consider and respond to comments received on the draft EIS in the final EIS. The final EIS is expected to be published sometime later in 2011. The USFWS and BPA will each document their decision in a Record of Decision following completion of the final EIS.

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in public meetings should contact Mark Ostwald (*see* **FOR FURTHER INFORMATION CONTACT**) as soon as possible. To allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Dated: May 10, 2010.

Carolyn A. Bohan,

Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 2010–12906 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–10–L13100000–FI0000–P; MTM 98343]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease MTM 98343

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Kykuit Resources, LLC timely filed a petition for reinstatement of competitive oil and gas lease MTM 98343, Fergus County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16–2/3 percent. The lessee paid the $500 administration fee for the reinstatement of the lease and the $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). *We are proposing to reinstate the lease, effective the date of termination subject to:*

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16–2/3 percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2010–12843 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–10–L13100000–FI0000–P; MTM 97526 and MTM 97527]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases MTM 97526 and MTM 97527, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Panther Energy Company, LLC timely filed a petition for reinstatement of competitive oil and gas leases MTM 97526 and MTM 97527, Richland County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of each lease and the $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). *We are proposing to reinstate the lease, effective the date of termination subject to:*

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2010–12845 Filed 5–27–10; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–519]

China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request from the United States Senate Committee on Finance (Committee) dated April 19, 2010, the U.S. International Trade Commission (Commission) instituted investigation No. 332–519, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy,* for the purpose of preparing the second of two reports requested by the Committee, and has scheduled a public hearing in connection with investigations relating to both reports for June 15–16, 2010.

DATES: June 1, 2010: Deadline for filing requests to appear at the public hearing.

June 3, 2010: Deadline for filing pre-hearing briefs and statements.

June 15, 2010: Public hearing (continued on June 16 if needed).

June 22, 2010: Deadline for filing post-hearing briefs and statements.

November 16, 2010: Deadline for filing all other written submissions.

May 2, 2011: Transmittal of report to the Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Alexander Hammer (*alexander.hammer@usitc.gov,* 202–205–3271) or Katherine Linton (*katherine.linton@usitc.gov,* 202–205–3393) or Deputy Project Leader Jeremy Wise (*jeremy.wise@usitc.gov,* 202–205–3190) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov).* Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Commission has instituted this investigation for the purpose of preparing the second report requested by the Committee. Based on an analysis of data and other information from available sources, including a survey of U.S. firms, and the application of the analytical frameworks outlined in the first report, in the second report, the Commission will:

- Describe the size and scope of reported IPR infringement in China;
- Provide a quantitative analysis of the effect of reported IPR infringement in China on the U.S. economy and U.S. jobs, including on a sectoral basis, as well as potential effects on sales, profits, royalties, and license fees of U.S. firms globally, to the extent primary data can be collected; and
- Discuss actual, potential, and reported effects of China's indigenous innovation policies on the U.S. economy and U.S. jobs, and quantify these effects, to the extent feasible.

As requested by the Committee, the Commission will deliver this second report by May 2, 2011. The Commission will deliver its first report by November 19, 2010. The report on the first investigation, No. 332–514, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy,* will describe the principal types of reported IPR infringement in China, describe China's indigenous innovation policies, and outline analytical frameworks for determining the quantitative effects of the infringement and indigenous innovation policies on the U.S. economy as a whole and on sectors of the U.S. economy, including lost U.S. jobs. The Commission published its notice of institution of that investigation in the **Federal Register** of May 10, 2010 (75 FR 25883); a copy may be viewed on the Commission's Web site at *http://www.usitc.gov/secretary/fed_reg_notices/332/332_514_institution05052010.pdf.*

Public Hearing: The Commission will hold a public hearing in connection with both investigations at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on June 15, 2010 (continuing on June 16, 2010, if needed). Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., June 1, 2010, in accordance with the requirements in the "Submissions" section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., June 3, 2010; and all

post-hearing briefs and statements should be filed not later than 5:15 p.m., June 22, 2010. Briefs and statements should identify the investigation to which the brief or statement pertains, including both if that is the case. In the event that, as of the close of business on June 1, 2010, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after June 4, 2010, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating at the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions concerning this investigation should be addressed to the Secretary, and should be received not later than 5:15 p.m., November 16, 2010. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the Committee stated that it intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: May 25, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–12947 Filed 5–27–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–017]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 8, 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. Nos. 731–TA–1043–1045 (Review) (Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before June 22, 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 25, 2010.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–12965 Filed 5–26–10; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed collection; comments requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS' Rural Law Enforcement National Training Assessment.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register Volume 75, Number 56, Pages 14183–14184, on March 24, 2010, allowing a 60 day comment period.

The purpose of this notice is to allow for 30 days for public comment until June 28, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS' Rural Law Enforcement National Training Assessment.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

It is estimated that approximately 6569 respondents biannually will complete the form within 27 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2954.5 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–12939 Filed 5–27–10; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 25, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin A. King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Claim for Compensation by Dependents Information Reports.

OMB Control Number: 1240–0013.

Agency Form Numbers: CA–5; CA–5b; CA–1031; and CA–1074.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,358.

Total Estimated Annual Burden Hours: 870.

Total Estimated Annual Costs Burden (Operation and Maintenance): $638.

Description: These reports request information from the survivors of deceased Federal employees which verify dependents status when making a claim for benefits and on a periodic basis in accepted claims. Some of the forms are used to obtain information on claimed dependents in disability cases. For additional information, see related notice published in the **Federal Register** on January 28, 2010 (75 FR 4587).

Agency: Office of Workers' Compensation Programs (OWCP).

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Certification By School Official.

OMB Control Number: 1240–0031.

Agency Form Number: CM–981.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 300.

Total Estimated Annual Burden Hours: 50.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: CM–981 is completed by a school official to verify whether a Black Lung beneficiary's dependent, aged 18 to 23, qualifies as a full-time student. For additional information, see related notice published in the **Federal Register** on January 28, 2010 (75 FR 4585).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–12944 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 24, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin A. King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Type of Review: Revision and Extension of a currently approved collection.

Title of Collection: Death Gratuity.

OMB Control Number: 1240–0017.

Agency Form Numbers: CA–40; CA–41; and CA–42.

Affected Public: Individuals or Households and Federal Government.

Total Estimated Number of Respondents: 2,600.

Total Estimated Annual Burden Hours: 659.

Total Estimated Annual Costs Burden (Operation and Maintenance): $12.

Description: The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, was enacted on January 28, 2008. Section 1105 of Public Law 110–181 amended the Federal Employees' Compensation Act (FECA) creating a new section 8102a effective upon enactment. This section establishes a new FECA death gratuity benefit of up to $100,000 for eligible beneficiaries of federal employees and Non-Appropriated Fund Instrumentality employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. Section 8102a also permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001, in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. Form CA–40 requests the information necessary from the employee to accomplish this variance. Form CA–41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Further, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. CA–42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death. For additional information, see related notice published in the **Federal Register** on January 28, 2010 (75 FR page 4586).

Agency: Office of Workers' Compensation Programs (OWCP).

Type of Review: Revision and Extension of a currently approved collection.

Title of Collection: Claim for Reimbursement-Assisted Reemployment.

OMB Control Number: 1240–0018.

Agency Form Number: CA–2231.

Affected Public: Business or other for-profits.

Total Estimated Number of Respondents: 25.

Total Estimated Annual Burden Hours: 50.

Total Estimated Annual Costs Burden (Operation and Maintenance): $47.

Description: To aid in the employment of Federal employees with disabilities related to an on-the-job injury, employers submit the Form CA–2231 to claim reimbursement for wages paid under the assisted reemployment project. This information allows for a prompt decision on payment. For additional information, see related notice published in the **Federal Register** on February 18, 2010 (75 FR page 7291).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–12832 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,494]

Johns Manville, Engineered Products Division, Spartanburg, SC; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 2, 2010, a petitioner 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 April 16, 2010. The Notice of Determination will soon be published in the **Federal Register**.

The initial investigation resulted in a negative determination based on the finding that imports of polyester non-woven fabrics did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information pertaining to the operations and customer base of 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 14th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12894 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,861]

Stanley Furniture Company, Inc., Including On-Site Leased Workers From Ameristaff Employment and Staffing Solutions, Stanleytown, VA; 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 May 5, 2010, applicable to workers of the subject firm. The Department's Notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of household furniture and furnishings. Workers of the subject firm were eligible to apply for Trade Adjustment Assistance (TAA) under TA–W–62,313A (expired on October 30, 2009). On-site leased workers, however, were not covered under TA–W–62,313A.

Based on these findings, the Department is amending this certification to clarify that workers of the subject firm who were partially or totally separated from employment on or before October 30, 2009 must apply for TAA under TA–W–62,313A, that workers of the subject firm who are separated on or after October 31, 2009 through May 5, 2012 must apply for TAA under TA–W–72,861, and that leased workers from Ameristaff Employment and Staffing Solutions working on-site at the subject firm who are partially or totally separated from employment on or after November 16, 2008 through May 5, 2012 must apply for TAA under TA–W–72,861.

The amended notice applicable to the TA–W–72,861 is hereby issued as follows:

All workers of Stanley Furniture Company, Inc., Stanleytown, Virginia, who became totally or partially separated from employment on or after October 31, 2009 through May 5, 2012, and all on-site leased workers from Ameristaff Employment and Staffing Solutions, who became partially or totally separated from employment on or after November 16, 2008 through May 5, 2012, and all workers in the group threatened with total or partial separation from employment on May 5, 2010 through May 5, 2012, 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 13th day of May, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12889 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,805, TA–W–71,805A]

Autosplice, Inc. Including On-Site Leased Workers From Select Temporary Services and Payrolling.Com, San Diego, CA; Including an Employee in Support of Autosplice, Inc. San Diego, CA, Working Out of Farmingdale, NY; 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 28, 2009, applicable to workers of Autosplice, Inc., including on-site leased workers from Select Temporary Services and Payrolling.com. The notice was published in the **Federal Register** December 11, 2009 (74 FR 65795).

At the request of a State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electrical connectors used in medical, transportation, automotive, consumer goods, telecommunication and industrial applications.

New information shows that a worker separation has occurred involving an employee in support of the San Diego, California location of Autosplice, Inc., working out of Farmingdale, New York. Ms. Pamela J. Sokol provided sales and marketing functions supporting the San Diego, California production facility of the subject firm.

Based on these findings, the Department is amending this certification to include an employee in support of the San Diego, California facility working out of Farmingdale, New York.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of electrical connectors used in for medical, transportation, automotive, consumer goods, telecommunication and industrial applications to Mexico.

The amended notice applicable to TA–W–71,805 is hereby issued as follows:

"All workers of Autosplice, Inc., including on-site leased workers from Select Temporary Services and Payrolling.com, and including an employee in support of Autosplice, Inc., San Diego, California working off site in Farmingdale, New York (TA–W–71,805A), who became totally or partially separated from employment on or after July 23, 2008 through October 28, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 18th day of May 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12896 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,810]

B.G. Sulzle, Inc., Currently Known as Angiotech America, Inc., Including On-Site Leased Workers From Contemporary Personnel Services (CPS), Staffworks and Tyteffco Industries, North Syracuse, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on August 7, 2007, applicable to workers of B.G. Sulzle, Inc., including on-site leased workers from Contemporary Personnel Services and Staffworks, North Syracuse, New York. The notice was published in the **Federal Register** on August 27, 2007 (72 FR 49024). The notice was amended on September 12, 2008 to include workers wages are report under a separated Unemployment Insurance (UI) tax account for Angiotech America, Inc. The notice as published in the **Federal**

Register on September 23, 2008 (73 FR 54860).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of stainless steel surgical needles.

New information shows that workers leased from Tyteffco Industries were employed on-site at the North Syracuse, New York location of B.G. Sulzle, Inc. The Department has determined that these workers were sufficiently under the control of B.G. Sulzle, Inc. to be considered leased workers.

Based on this finding, the Department is amending this certification to include workers leased from Tyteffco Industries working on-site at the North Syracuse, New York location of the subject firm.

The intent of the Department's certification is to include all workers employed at B.G. Sulzle, Inc., North Syracuse, New York who were adversely affected by increased imports of stainless steel surgical needles.

The amended notice applicable to TA–W–61,810 is hereby issued as follows:

All workers of B.G. Sulzle, Inc., currently known as Angiotech America, Inc., including on-site leased workers from Contemporary Personnel Services (CPS), Staffworks, and Tyteffco Industries, North Syracuse, New York, who became totally or partially separated from employment on or after July 9, 2006, through August 7, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of May 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12892 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,762]

Chrysler, LLC, Sterling Heights Assembly Plant Including On-Site Leased Workers From Caravan Knight Facilities Management LLC and Resource Technologies, Sterling Heights, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 27, 2009, applicable to workers of Chrysler, LLC, Sterling Heights Assembly Plant, Sterling Heights, Michigan. The notice was published in the **Federal Register** on May 18, 2009 (74 FR 23214). The notice was amended on June 29, 2009 to include on-site leased workers of Caravan Knight Facilities Management LLC. The notice was published in the **Federal Register** on July 14, 2009.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assembled the Chrysler Sebring, Chrysler Sebring Convertible and the Dodge Avenger.

New information shows that workers leased from Resource Technologies were employed on-site at the Sterling, Michigan location of Chrysler, LLC, Sterling Heights Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Resource Technologies working on-site at the Sterling, Michigan location of Chrysler, LLC, Sterling Heights Plant.

The amended notice applicable to TA–W–65,762 is hereby issued as follows:

"All workers of Chrysler, LLC, Sterling Heights Plant, including on-site leased workers from Caravan Knight Facilities Management LLC and Resource Technologies, Sterling, Michigan, who became totally or partially separated from employment on or after March 8, 2008, through April 27, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC this 14th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12893 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,705]

Arcelor Mittal, Including On-Site Leased Workers From Adecco, ESW, Inc., Guardsmark, Hudson Global Resources, Multi Serv and Quaker Chemical, Hennepin, IL; 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 26, 2010, applicable to workers of Arcelor Mittal, including on-site leased workers from Adecco, ESW, Inc., Guardsmark, Hudson Global Resources, Hennepin, Illinois. The notice was published in the Federal Register on April 23, 2010 (75 FR 21355). The notice was amended on April 27, 2010 to include on-site leased workers from Multi Serv. The notice was published in the **Federal Register** on May 12, 2010 (75 FR 26793)

At the request of the State, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities in production of hot and cold rolled steel.

The company reports that workers leased from Quaker Chemical were employed on-site at the Hennepin, Illinois location of Arcelor Mittal. 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 Quaker Chemical working on-site at the Hennepin, Illinois location of Arcelor Mittal.

The amended notice applicable to TA–W–71,705 is hereby issued as follows:

All workers Arcelor Mittal, including on-site leased workers from Adecco, ESW, Inc., Guardsmark, Hudson Global Resources, Multi Serv and Quaker Chemical Hennepin, Illinois, who became totally or partially separated from employment on or after July 6, 2008, through March 26, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 17th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12895 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of May 10, 2010 through May 14, 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–72,288: Caterpillar, Americas Operations Division—Aurora Plant, Aurora, IL: September 8, 2008.

TA–W–72,331: Industrial Nut Corporation, Sandusky, OH: September 12, 2008.

TA–W–72,347: Genesis Furniture Industries, Inc., Spruce Pine, NC: September 10, 2008.

TA–W–72,711: Wire Products Company, Inc, Cleveland, OH: October 27, 2008.

TA–W–73,362: Leggett and Platt, Inc., Adjustable Bed Division, Winchester, KY: January 20, 2009.

TA–W–71,046: Dresser Waukesha, Division of Dresser, Inc. Leased Workers from Stivers Staffing Services, Waukesha, WI: June 5, 2008.

TA–W–72,472: Crane Merchandising Systems, North American Vending Solutions, Leased Workers Labor Ready, Michener etc., Bridgeton, MO: September 30, 2008.

TA–W–73,027: Picture Source, Leased Workers From Labor Works, Seattle, WA: November 25, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–72,411: Emerson Power Transmission, Division of Emerson Electric Co., Leased Workers from Challenge Industries etc, Ithaca, NY: September 21, 2008.

TA–W–73,047: United States Steel Corporation, Minnesota Ore Operations Division, Leased Workers from Manpower, Inc., Keewatin, MN: December 7, 2008.

TA–W–71,229: Diamond Chain Company, Division of Amsted Industries, Leased Workers from Manpower, Indianapolis, IN: June 11, 2008.

TA–W–71,636: Tri-Way Manufacturing, Inc., D/B/A Tri-Way Mold and Engineering, Roseville, MI: June 29, 2008.

TA–W–72,284: Intermatic Incorporated, Intermatic Distribution Center, American Staffing Resource, Spring Grove, IL: September 10, 2008.

TA–W–72,781: World Color (USA), LLC, Formerly Know As Quebecor World, Leased Workers from Randstad Temporary, Covington, TN: November 4, 2008.

TA–W–73,017: Clark Equipment Company, Bobcat Division, Bismarck, ND: December 2, 2008.

TA–W–73029A: Faurecia Exhaust Systems, West Plant, Troy, OH: December 7, 2008.

TA–W–73,029: Faurecia Exhaust Systems, East Plant, Troy, OH: December 7, 2008.

TA–W–73,112: Sundance Spas, Inc., Leased Workers from Personnel Plus, Chino, CA: December 15, 2008.

TA–W–73,183: Halliburton Company, Carrolton Mfg. & Technology, Leased Workers from Kelly Services, Icon, Carrolton, TX: December 16, 2008.

TA–W–73,409: Sumitomo Electric Wiring Systems, Inc., A Subsidiary of Sumitomo Electric Industries, LTD., Wiring Harness Division, Bowling Green, KY: February 2, 2009.

TA–W–73,742: Covidien, Medical Supplies Division, Leased Workers Kelly Services, First Choice Staffing, Oriskany Falls, NY: March 17, 2009.

TA–W–73,792: Kenkel Corporation, Adhesives Division, Leased Workers from Spherion and Agile 1, Buffalo, NY: March 17, 2009.

TA–W–73,120: SPX Corporation, Flow Technology Division, Buffalo, NY: December 16, 2008.

TA–W–73,558: Robert Bosch, LLC, On Leased Workers form Bosch Management Services NA, Quaker Chemical etc., Johnson City, TN: February 23, 2009.

TA–W–71450A: Hewlett Packard Company, Imaging and Printing Group, World Wide Product Data Management Operation, Fort Collins, CO: June 24, 2008.

TA–W–71,450: Hewlett Packard Company, Imaging and Printing Group, World Wide Product Data Management Operation, Boise, ID: June 24, 2008.

TA–W–72,602: AT&T Operations, Inc., Network Management Center, Leased Wkrs Artech Information Systems, LLC, Greenwood Village, CO: October 8, 2008.

TA–W–72,706: Berry Company, Local Insight Media Holdings, Inc., FKS Local Insight Yellow Pages, Erie, PA: June 22, 2008.

TA–W–73,135: Hewlett-Packard Company, Enterprise Business, Storage Works Division, Solutions Platform Division, Marlboro, MA: December 15, 2008.

TA–W–73,218: International Business Machines Corporation (IBM), ITD Business Unit, Division 7, E-mail and Collaboration Group, etc., Armonk, NY: January 6, 2009.

TA–W–73,289: Rainbow Play Systems Incorporated, Albert Lea, MN: January 14, 2009.

TA–W–73,423: The Berry Company LLC, Local Insight Media Holdings etc., Miamisburg, OH: February 1, 2009.

TA–W–73,424: The Berry Company LLC, A Subsidiary of Local Insight Media Holdings, Inc., Cincinnati, OH: February 1, 2009.

TA–W–73,425: The Berry Company LLC, Local Insight Media Holdings, Dayton, OH: February 1, 2009.

TA–W–73,563: International Business Machines (IBM), Global Business Services, Division 6C, Application Services), Sterling Forest, NY: February 24, 2009.

TA–W–72,378: Dow Jones & Company, Inc., Information Technology Department, Aerotech, Monmouth Junction, NJ: September 22, 2008.

TA–W–72,570: Michaels Stores, Inc., Accounts Payable Office, Tata Consulting Services, Grand Prairie, TX: October 5, 2008.

TA–W–73,371: The State Media Company, Finance Division, Leased Workers from John Shell Associates and Roper etc., Columbia, SC: January 22, 2009.

TA–W–73,727: Berry, Local Insight Media Holdings, Inc., Leased Workers from Kelly Services, Honolulu, HI: March 10, 2009.

TA–W–73,728: The Berry Company, LLC, Local Insight Media Holdings, Inc., FKS Local Insight Yellow Pages, St. Peters, MO: March 10, 2009.

TA–W–73,729: The Berry Company, LLC (LIYP), Local Insight Media Holdings, Inc., FKS Local Insight Yellow Pages, La Crosse, WI: March 10, 2009.

TA–W–73,730: The Berry Company, LLC (LIYP), Local Insight Media Holdings, Inc., FKS Local Insight Yellow Pages, Federal Way, WA: March 10, 2009.

TA–W–73,732: The Berry Company, LLC, Local Insight Media Holdings, Inc., FKS Local Insight Yellow Pages, Rochester, NY: March 10, 2009.

TA–W–73,733: The Berry Company, LLC, Local Insight Media Holdings, Inc., FKA Local Insight Yellow, Matthews, NC: March 10, 2009.

TA–W–73,519: SV Probe, Inc., Gilbert, AZ: February 16, 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–71,829: Cameron Measurement Systems, Including leased Workers of Express Personnel, Duncan, OK: June 27, 2008.

TA–W–72,022: Heidtman Steel Products, Incorporated, Leased Workers from Phoenix Personnel, Erie, MI: July 13, 2008.

TA–W–72,406: Innovative Wood Products, Inc., Taylorsville, NC: September 16, 2008.

TA–W–72,444: Toppan Photomasks, Inc., Santa Clara, CA: September 23, 2008.

TA–W–73,276: Vail Forest Area, Division of Western Timberlands, Weyerhaeuser NR, Rainier, WA: January 12, 2009.

TA–W–73,398: Fuel Total Systems Company Ltd, Fuel Total Systems, California Corporation, Manpower, Lathrop, CA: February 1, 2009.

TA–W–73,502: McFarland Logging, Clinton, MT: February 10, 2009.

TA–W–72,001A: Briggs-Shaffner Acquisition Company, Simpsonville, SC: August 6, 2008.

TA–W–72,001: Briggs-Shaffner Acquisition Company, Simpsonville, SC: August 6, 2008.

TA–W–72,391: Ranal, Inc., DBA Ranal, Inc., On-Site Independent Contractors, Auburn Hills, MI: September 20, 2008.

TA–W–73,043: Weyerhaeuser Company NR, Albany Trucking Division, Weyerhaeuser Co, Albany, OR: December 4, 2008.

TA–W–73,260: Supplier Link Services, Including Leased Workers of Superior Staffing, Lafayette, CA: January 12, 2009.

TA–W–73,261: Toyota Logistics Services, Leased Workers from Harbor Services, Vascor LTD, Aerotek, Inc., etc., Fremont, CA: January 12, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–73,531: Titanium Metal Corporation, Toronto, OH.

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–72,477: Peterbilt Motors Company, Nashville Plant, Madison, TN.

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–71,900: MacGregor Golf North America, Macgregor Golf Company, Albany, GA.

TA–W–72,154: Elcam, Inc., Clearfield, PA.

TA–W–72,229A: Microfibres, Inc., Belden, MS.

TA–W–72,229: Microfibres, Inc., Winston Salem, NC.

TA–W–72,350: Gits Manufacturing Company, Creston, IA.

TA–W–72,793: Gates Corporation, Fluid Power Division, Boone, IA.

TA–W–72,881: Smart Paper, Hamilton, OH.

TA–W–71,306: Sprint Nextel, Service and Repair Division, Grand Prairie, TX.

TA–W–71,836: Interstate Lift Trucks, Inc., Interlift Enterprises, Inc., Cleveland, OH.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–72,508: American Axle and Manufacturing, Detroit, MI.

TA–W–72,714: General Motors Company, Paint and Polymers Engineering Division, Warren, MI.

TA–W–73,068: Grede Foundries, Incorporated, Vassar Foundry, Vassar, MI.

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–73,661: Maersk Agency USA, Inc., Charlotte, NC.

I hereby certify that the aforementioned determinations were issued during the period of May 10, 2010 through May 14, 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 20, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12891 Filed 5–27–10; 8:45 am]

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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 26, 2010 through May 7, 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–72,943: General Motors, LLC, f/n/s General Motors Corporation, Hamtramck Assembly Plant, Detroit, MI: November 23/2008

TA–W–73,294: Elizabeth Carbide Die Co., McKeesport, PA: January 5, 2009.

TA–W–73,358: Red Wing Shoe Company, Inc., Danville, KY: January 15/2009

TA–W–71,503A: ArcelorMittal USA Inc., Long Products Division, Leased Workers of Adecco, East Chicago, IN: June 29/2008

TA–W–71,503B: ArcelorMittal USA Inc., Indiana Harbor East Division, Leased Workers of ACMS, Adecco, Advansys, etc., East Chicago, IN: June 29, 2008

TA–W–71,558: Atlas Pressed Metals, Leased Workers from Spherion, DuBois, PA: June 18, 2008

TA–W–71,652: Cooper Tools, Hicksville, OH: July 13, 2008

TA–W–71,928: Broward Casting Foundry, Ft. Lauderdale, FL: August 4, 2009

TA–W–71,956: Anvil International, Inc., Beck Manufacturing, Aurora, OH: July 22, 2008

TA–W–72,149: Knight Celotex, LLC, A Subsidiary of Knight Industries, LLC, Lisbon Falls, ME: August 22, 2008

TA–W–72,177: Heus Manufacturing, LLC, New Holstein, WI: August 19, 2008

TA–W–72,187: Accuride—Cuyahoga Falls, Aluminum Wheels Div., Adecco, Cuyahoga Falls, OH: August 31, 2008

TA–W–72,226: NSI International Inc., Leased Workers from the Creative Group, Farmingdale, NY: June 28, 2009

TA–W–72,328: Summit Machine, Inc., Shoreview, MN: September 15, 2008

TA–W–72,516: Phoenix Engineering Corp., Baldwin, WI: October 5, 2008

TA–W–72,540: Komatsu Forest, LLC, A Subsidiary of Komatsu Forest, AB, Shawano, WI: September 25, 2008

TA–W–72,870: Boise Cascade, LLC, Oakdale, LA: November 16, 2008
TA–W–72,880: Intermet—Archer Creek, Intermet Corporation, Lynchburg, VA: July 10, 2009
TA–W–73,100: Superior Tire and Rubber Corporation, Leased Workers from Accent Human Resources, Warren, PA: November 30, 2008
TA–W–73,206: Smurfit-Stone Container Corporation, Containerboard Mill, Ontonagon, MI: December 18, 2008
TA–W–73,247: Mercer Tool Corporation, St. Marys, OH: January 6, 2009
TA–W–72,576: Alpha Polishing, Inc., dba General Plating Co. and Brite Plating, Inc., Los Angeles, CA: October 12, 2008
TA–W–72,807: E.T. Lowe Publishing Company, Nashville, TN: November 5, 2008
TA–W–72,514: Metal Creations, Div. Carsons, Inc., Bradley Personnel, Recruiting, High Point, NC: October 6, 2008
TA–W–71,003: Endless Summer, Inc., dba Alroe Apparel, Springfield, MO: May 20, 2008
TA–W–72,121: General Motors Company, Technical Center, Leased Workers of Aerotek, Bartech Group, CDI Professional, Warren, MI: August 14, 2008
TA–W–72,141: C.R. Laine Furniture, Hickory, NC: 8/20/2008
TA–W–72,212: General Motors Company, f/n/a General Motors Corporation, Bowling Green Assembly Plant, Bowling Green, KY: August 31, 2008
TA–W–72,375: Commercial Furniture Group, Inc., f/k/a Falcon Products and Shelby Williams, Morristown, TN: September 21, 2008
TA–W–72,861: Stanley Furniture Company, Inc., Including On-site Leased Workers from Americastaff Employment and Staffing, Stanleytown, VA: November 16, 2008
TA–W–73,414: Russell Brands, LLC, Columbus Distribution Center, Fruit of the Loom, Midland, GA: January 29, 2009
TA–W–73,415: Russell Brands, LLC, A Subsidiary of Fruit of the Loom, Reno, NV: January 29, 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–71,694: Arcelor Mittal, f/n/a Mittal Steel Walker Wire, Leased Workers from Leasing Systems, Ferndale, MI: July 15, 2008
TA–W–71,058: WellPoint, Inc., DBA Anthem Blue Cross Blue Shield of VA, Leased Workers Bender Consulting etc., Richmond, VA: June 5, 2008
TA–W–71,501A: Sony Electronics, Inc., Leased Workers of Selectremedy, Staffmark, San Jose, CA: June 22, 2008
TA–W–71,501B: Sony Electronics, Inc., Leased Workers Willstaff, Danco Industrial Contractors etc., Dothan, AL: June 22, 2008
TA–W–71,501C: Sony Electronics, Inc., Leased Workers Selectremedy, Itasca, IL: 6/22/2008
TA–W–71,501: Sony Electronics, Inc., SEL Headquarters, Leased Workers of Selectremedy, Staffmark, San Diego, CA: 6/22/2008
TA–W–72,005: Decca Classic Upholstery, LLC, High Point, NC: August 10, 2008
TA–W–72,010: Vesuvius USA, FKA Foseco Metallurgical, Inc., Cookson Group, PLC, Conneaut, OH: August 10, 2008
TA–W–72,171A: Hawker Beechcraft Corporation, Salina, KS: August 27, 2008
TA–W–72,689: Freescale Semiconductor, Inc., Hardware/Software Design and Manufacturing A, Austin, TX: October 19, 2008
TA–W–72,981: TEVA Pharmaceuticals, IVAX Division, Congers, NY: November 20, 2009
TA–W–73,144: Trimble Navigation, Ltd., Corvallis, OR: December 16, 2008
TA–W–73,147: Shaw Fabricator, Addis, LA: December 22, 2008
TA–W–73,167: Veeco Process Equipment, Inc., Mechanical Process Equipment Division, Leased Workers from Aerotek, Camarillo, CA: December 24, 2008
TA–W–73,259: PPG Industries, Inc., Working on Site at New United Motor Manufacturing, Fremont, CA: January 12, 2009
TA–W–73,307: Simclar International Corporation, Kenosha, WI: January 14, 2009
TA–W–73,317A: Sappi Fine Paper N.A., SPPI Ltd., Leased Workers from Alternative Solutions, Manpower and Adecco, Westbrook, ME: January 20, 2009
TA–W–73,321: Associated Spring, Central Lake, Barnes Group, Leased Workers from Manpower, Inc., Central Lake, MI: January 19, 2009
TA–W–73,332: Mine Safety Appliances (MSA), Murrysville-Soft Goods, Leased Workers from Advantage Technical Resourcing, Murrysville, PA: 1/21/2009
TA–W–73,391: Dakkota Integrated Systems, LLC, New United Motor Mfg., Leased Workers from Nelson Staffing, Freemont, CA: January 25, 2009
TA–W–73,411: MAPA Spontex, Inc., Total, S.A., Leased Workers from Express Employment Professionals, Columbia, TN: February 2, 2009
TA–W–73,417: TimeMed Labeling Systems, Inc., A Subsidiary of Precision Dynamics Corporation, Burr Ridge, IL: February 1, 2009
TA–W–73,418: TimeMed Labeling Systems, Inc., A Subsidiary of Precision Dynamics Corporation, Dallas, TX: February 1, 2009
TA–W–73,463: Work-Fit, Inc., New United Motor Manufacturing, Inc., Fremont, CA: February 4, 2009
TA–W–73,468: Emerson Network Power, Energy Systems, Leased Workers from Express Employment Professionals etc., LaGrange, GA: January 27, 2009
TA–W–73,546: Beiersdorf, Inc., Leased Workers from First Temp, Inc., Norwalk, CT: February 18, 2009
TA–W–73,665: Peek Traffic Corporation, Signal Division, Bedford, PA: March 8, 2009
TA–W–73,666: Badger Meter, Inc., Including On-Site Leased Workers from Sourcepoint Staffing, Milwaukee, WI: February 22, 2009
TA–W–73,671: Vygon US LLC, A Wholly Owed Subsidiary of Vygon Corporation, NKA Sophysa SA, Norristown, PA: February 26, 2009
TA–W–73,701: Acuity Brands Lighting, Inc., Leased Workers from Sizemore, Cochran, GA: March 11, 2009
TA–W–72,597: GE Healthcare Systems, Leased Workers from Adecco, Milwaukee, WI: October 12, 2008
TA–W–72,623: Alienware Corporation, A Subsidiary of Dell, Inc., Miami, FL: October 16, 2008
TA–W–73,390: Mahoning Glass Plant, GE Appliances and Lighting Div., General Electric, Niles, OH: March 29, 2010
TA–W–71,398: Yazaki North America, Inc., Leased Workers from Kelly Services, Universal Staffing, Omnisource etc., Canton, MI: June 4, 2008
TA–W–72,221A: AEES, Inc., El Paso, TX: August 24, 2008
TA–W–72,221: AEES, Inc., San Antonio, TX: August 24, 2008
TA–W–72,390: Acme Electric, Actuant Corp., Leased Workers from Enterforce & Temporary Design etc., Spring Grove, IL: October 23, 2009
TA–W–72,507: Cypress Semiconductor Corporation, Human Resources Department, Leased Workers of Doherty Staffing Solutions, San Jose, CA: October 5, 2008
TA–W–72,810: Durez Corporation, Research & Development Div., Sumitomo Bakelite North America

Holding, North Tonawanda, NY: November 4, 2008

TA–W–72,848A: Ingersoll-Rand PLC, Residential Solutions, Formerly Doing Business as Trane Engineering Service, Fort Smith, AR: November 13, 2008

TA–W–72,848: Ingersoll-Rand PLC, Residential Solutions, Formerly Doing Business as Trane Engineering Service, Tyler, TX: November 13, 2008

TA–W–72,877A: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Highlands Ranch, CO: November 12, 2008

TA–W–72,877B: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Southfield, MI: November 12, 2008

TA–W–72,877C: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Coppell, TX: November 12, 2008

TA–W–72,877D: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Westminster, CO: November 12, 2008

TA–W–72,877E: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Bellevue, WA: November 12, 2008

TA–W–72,877F: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Indianapolis, IN: November 12, 2008

TA–W–72,877G: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Herndon, VA: November 12, 2008

TA–W–72,877H: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Drexel Hill, PA: November 12, 2008

TA–W–72,877I: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Reston, VA: November 12, 2008

TA–W–72,877J: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Milpitas, CA: November 12, 2008

TA–W–72,877K: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Chelmsford, MA: November 12, 2008

TA–W–72,877L: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Overland Park, KS: November 12, 2008

TA–W–72,877M: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Norfolk, VA: November 12, 2008

TA–W–72,877N: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, King of Prussia, PA: November 12, 2008

TA–W–72,877O: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Alpharette, GA: November 12, 2008

TA–W–72,877P: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Norcross, GA: November 12, 2008

TA–W–72,877Q: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Chesire, CT: November 12, 2008

TA–W–72,877R: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Tampa, FL: November 12, 2008

TA–W–72,877S: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, St. Petersburg, FL: November 12, 2008

TA–W–72,877: Avaya Inc., Avaya Professional Services (APS), Avaya Worldwide Services Group, Basking Ridge, NJ: November 12, 2008

TA–W–73,066: Nortel Networks, Departments CA23 And 3R30, Research Triangle Park, NC: December 9, 2008

TA–W–73,118: The Regulus Group, Div. 3i Infotech DBA First Remittance Processing, Leased Workers from Spherion, Louisville, KY: December 16, 2008

TA–W–73,127: Freescale Semiconductor, Inc., Microcontroller Solutions Group (MSG), Austin, TX: December 9, 2008

TA–W–73,200: Sabre Holdings, Inc., Travel Network Billing Department, Southlake, TX: December 31, 2008

TA–W–73,233: The Berry Company LLC, Local Insight Media Holdings, Local Insight Yellow Pages, Lease Workers Kelly, Hudson, OH: January 7, 2009

TA–W–73,244: Sears Holdings Management Corporation, Dallas Support Center, Leased Workers from Snelling, Dallas, TX: January 11, 2009

TA–W–73,295: Weatherford International Ltd., Shared Services Division, Benbrook, TX: January 14, 2009

TA–W–73,355: EMC Corporation, Information Infrastructure Products, Ionix Software Engineers, Hopkinton, MA: January 18, 2009

TA–W–73,506: Allstate Insurance Company, Allstate Financial Annuity Contact Center, Kelly, Lincoln, NE: February 11, 2009

TA–W–73,639: Bimbo Bakeries USA, Inc., Financial Shared Services, Grupo Bimbo, Leased Workers of Appleone, Houston, TX: January 28, 2009

TA–W–73,645: Bimbo Bakeries USA, Inc., Financial Shared Services, Grupo Bimbo, Leased Workers Comet Employment Agency, Montebello, CA: January 28, 2009

TA–W–73,670: Bimbo Bakeries USA, Inc., Financial Shared Services Office, Grupo Bimbo S.A.B DE C. V., Fort Worth, TX: January 28, 2009

TA–W–73,725: Michaels Stores Inc., Information Systems, Irving, TX: March 10, 2009

TA–W–72,163: Direct Brands, Inc., a Subsidiary of JMCK Corporation, Indianapolis, IN: August 28, 2008

TA–W–72,286: Unisys Corporation, Technology Bus. Unisys Infor., Fka Bett, Leased Workers Hexaware Technologies, Plymouth, MI: September 11, 2008

TA–W–72,724: Freedom Eastern North Carolina Communications, Inc., dba The Daily News, Accounting Division, Jacksonville, NC: October 28, 2008

TA–W–73,039: OCE Imagistics Inc., Oracle Support Team, Trumbull, CT: November 26, 2008

TA–W–73,196: GMAC Insurance Management Corporation, Billing Division, Leased Workers from Comsys, Indox Services etc., Maryland Heights, MO: December 29, 2008

TA–W–73,226: Freedom Colorado Information, Inc., dba The Gazette, Finance Division, Colorado Springs, CO: January 6, 2009

TA–W–73,237: Ashland, Inc., Accounts Payable Division, Leased Workers from Express Personnel, Dublin, OH: January 11, 2009

TA–W–73,394: Varco Pruden Buildings, Design and Detail Department, Subsidiary of Bluescope, Evansville, WI: January 26, 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–71,252: Mold Base Industries, Harrisburg, PA: June 15, 2008

TA–W–71,569: BBI, Sidney, OH: June 24, 2008

TA–W–71,575: A–Stamp Industries, Bryan, OH: July 6, 2008

TA–W–71,627: Circuit Board Express, Inc., Haverhill, MA: July 6, 2008

TA–W–71,642: SPS Technologies Waterford Company, Waterford, MI: July 8, 2008

TA–W–71,759: Meridian Automotive Systems, Inc., Shelbyville, IN: July 3, 2008

TA–W–72,040: Therm-O–Disc, Inc., Emerson Electric Co., Leased Workers of Kelly Services, Mansfield, OH: August 10, 2008
TA–W–72,063: Outokumpu Stainless Plate, Inc., New Castle, IN: August 17, 2008
TA–W–72,136: EMF Corporation, Burkesville, KY: 8/25/2008
TA–W–72,425: Duro-Life Corporation, A Division of Wells Manufacturing Company, Leased Workers of and Staffing, Algonquin, IL: September 25, 2008
TA–W–72,551: American Tube and Paper Company, Totowa, NJ: October 7, 2008
TA–W–72,690: Whirlaway Cincinnati, A Subsidiary of Whirlaway Corporation, Hamilton, OH: October 1, 2008
TA–W–72,776: Masters Tool & Die, Inc., Saginaw, MI: October 14, 2008
TA–W–72,961: Inteva Products, LLC, Adrian, MI: November 3, 2008
TA–W–73,250: Stein Steel Mill Services, Inc., Working On-Site at United States Steel Corporation, Granite City, IL: July 8, 2008
TA–W–73,324A: Toyota Tsusho America, Inc., 41460 & 41320 Boyce Rd., Leased Workers Benchmark, Performance Staffing, Fremont, CA: January 19, 2009
TA–W–73,324: Toyota Tsusho America, Inc., Working on-site at New United Motor Manufacturing, Inc., Fremont, CA: January 19, 2009
TA–W–73,545: TG California Automotive Sealing Inc., Toyoda Gosei Co., Leased Workers from Aerotek Processional Services, Hayward, CA: February 22, 2009
TA–W–73,614: Technimark, LLC, Leased Workers of Mega Force Staffing Group, Fayetteville, NC: February 26, 2009
TA–W–71,726: Design Systems, Incorporated, Leased Workers from 3P Engineering Services etc., Farmington Hills, MI: July 10, 2008
TA–W–72,504: Penske Logistics, LLC, Penske Truck Leasing Company L.P., Leased Workers from Randstad and Transforce, Spring Hill, TN: October 2, 2008
TA–W–72,699: EMCOR Facility Services, On-Site at Dell Products, LP, Winston Salem, NC: October 27, 2008
TA–W–73,136: Everett Sales, Inc., Fort Payne, AL: December 16, 2008

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–71,682: Eaton Aeroquip, LLC, Division of Fluid Conveyance, Leased Workers from Manpower, Van Wert, OH: July 13, 2008
TA–W–73,216: Penske Logistics LLC, A Wholly Owned Subsidiary of Penske Truck Leasing Company, LP, Evansville, IN: January 5, 2009
TA–W–73,646: International Automotive Components, Warren, MI: March 1, 2009

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–72,948: Cooper Tire & Rubber Company, Cedar Rapids, IA: June 25, 2008

Negative Determinations For Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–72,171: Hawker Beechcraft Corporation, Wichita, KS
TA–W–73,384: B & K Trucking, Iraan, TX

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–72,983: R&M Manufacturing, Inc., Milton, WI

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–71,032: Agy Holding Corporation, Huntingdon, PA
TA–W–71,261: Interlake Material Handling, Naperville, IL
TA–W–71,503: ArcelorMittal Riverdale Inc., A Subsidiary of ArcelorMittal USA, Inc., Leased Workers of Adecco and Ivara, Riverdale, IL
TA–W–71,665: Future Visions, Micron Technology, Manassas, VA
TA–W–71,895: Warn Industries, Inc., a Subsidiary of Dover Corporation, Clackamas, OR
TA–W–72,264: Greenway Lumber Company, Waynesboro, TN
TA–W–72,369: Gentex Corporation, Carbondale, PA
TA–W–72,614: Parker-Hannifin Corporation, Cylinder Division, Portland, OR
TA–W–72,666: Kerry, Inc., Sweet Systems and Flavors Division, aka Kerry Ingredients and Flavors, Tualatin, OR
TA–W–72,737: General Electric Company, Transportation Division, Emporium, PA
TA–W–72,787: Visual Systems Inc., DBA Lehigh Phoenix, A Subsidiary of Visant Corporation, Leased Workers of Site Staffing, Inc., etc, Milwaukee, WI
TA–W–72,927: IC Bus, LLC, Subsidiary of Navistar, Inc., Conway, AR
TA–W–72,997: Precedent Furniture, Division of Sherrill, Leased Workers from the People Connection, Newton, NC
TA–W–73,175: Caraco Pharmaceutical Laboratories, Ltd., Sun Pharmaceutical Industries, Ltd., Leased Workers from Select Staffing, Detroit, MI
TA–W–73,186: The North Carolina Moulding Company, Lexington, NC
TA–W–73,416: Desoto Mills, LLC, Fruit of the Loom, Fort Payne, AL
TA–W–71,486: Northwest Metals, Inc., Okolona, OH
TA–W–72,008: Metro One Telecommunications Inc., Beaverton, OR
TA–W–72,341: Services Parts Operations (SPO)—Columbus, Subsidiary of General Motors Company, Groveport, OH
TA–W–72,458: Veeder-Root Company, Danaher Corporation, Altoona, PA
TA–W–72,644: C & R Oilfield Services, Inc., San Angelo, TX
TA–W–72,661: Air Comp, LLC, San Angelo, TX
TA–W–72,684: McMullin Chevrolet Pontiac Oldsmobile, Inc., Dallas, OR
TA–W–72,709: Master Lock Company, LLC, A Division of Fortune Brands, Inc., Milwaukee, WI
TA–W–72,741: Landmark Automotive LLC, Lawrenceburg, TN
TA–W–73,060: Harley-Davidson Motor Company Operations, Inc., York, PA
TA–W–73,099: Siemens Medical Solutions USA, Inc., Working on-site at Jefferson Regional Medical Center, Pittsburgh, PA
TA–W–73,223: American Bridge Manufacturing, Reedsport, OR
TA–W–73,317: Sappi Fine Paper N.A., SPPI Ltd., Leased Workers from Alternative Solutions, Manpower and Adecco, South Portland, ME
TA–W–73,323: US Airways, Inc., Passenger Service agents, Pittsburgh International Airport, Pittsburgh, PA

TA–W–73,328: Sandy Corporation, General Physics Corporation, Troy, MI
TA–W–73,369: Key Energy Pressure Pumping Services, LLC, Midland, TX
TA–W–73,407: Express Energy Services Operating, L.P., San Angelo, Texas Division, San Angelo, TX
TA–W–73,454: Ickes Chevrolet Cadillac Company, Inc., Robinson, IL
TA–W–73,521A: Citizens Gas Utility District, Wartburg, TN
TA–W–73,521B: Citizens Gas Utility District, Deerlodge, TN
TA–W–73,521: Citizens Gas Utility District, Helenwood, TN
TA–W–73,536: Allstate Insurance Company, Altoona Express Market Claim Office, Kelly, Altoona, PA
TA–W–73,597: Tandy Brands Accessories, Inc., Yoakum Distribution Center, Yoakum, TX
TA–W–73,784A: Ferrania USA, Inc., D/B/A Ferrania Technologies, St. Paul, MN
TA–W–73,784: Ferrania USA, Inc., D/B/A Ferrania Technologies, Weatherford, OK
TA–W–73,785: Ferrania USA, Inc., D/B/A Ferrania Technologies, Murrow, OH
TA–W–73,786: Ferrania USA, Inc., D/B/A Ferrania Technologies, Lake Worth, FL
TA–W–73,787: Ferrania USA, Inc., D/B/A Ferrania Technologies, Eagan, MN

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–70,982: Rexam Beverage Can Company, Oklahoma City, OK
TA–W–71,468: Electronic Data Systems, Auburn Hills, MI
TA–W–71,718: DSFI, Honesdale, PA
TA–W–71,984: Seagroatt Floral Company, Inc., Albany, NY
TA–W–72,255: Optimal, Inc. and Populus Group, Working on-site at General Motors Tech Center in Warren, MI, Warren, MI
TA–W–72,387: Sony Electronics, Inc., Dothan, AL
TA–W–72,986: Wardwell Braiding Machine Company, Central Falls, RI
TA–W–73,038: Vaquero Services, LP, Godley, TX
TA–W–73,044: Avaya Inc., Avaya Worldwide Services Group, Global Support Services (GSS) Organization, Coppell, TX
TA–W–73,051: Maco, Inc., Shelby, NC
TA–W–73,115: Solvay Advanced Polymers, Marietta, OH
TA–W–73,188: Hagemeyer North America, working on Site at Cummis Filtration, Lake Mills, IA
TA–W–73,439: A&S Building Systems, A Division NCI Building Systems, Inc., Rocky Mount, NC
TA–W–73,572: Track Corporation, Spring Lake, MI
TA–W–73,580: Rotodie Company, Inc., dba Rotometrics, Meadows of Dan, VA
TA–W–73,653: Heartland Companies, LTD., San Francisco, CA
TA–W–73,678: NPA Coatings, Inc., Leased from New United Motor Manufacturing, Inc., Fremont, CA
TA–W–73,699: ABM Janitorial, Sacramento, CA
TA–W–73,720: Apria Healthcare, Irving, TX
TA–W–73,852: General Motors Corporation, Vehicle Manufacturing Division, Shreveport Assembly Plant, Shreveport, LA
TA–W–73,858: Hugo Boss Cleveland, Inc., Brooklyn, OH

I hereby certify that the aforementioned determinations were issued during the period of April 26, 2010 through May 7, 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 21, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12890 Filed 5–27–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,247]

National Briquetting Corporation, a Subsidiary of Harsco, Also Known as Performix East Chicago, East Chicago, IN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 11, 2010, a petitioner 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 denial notice was signed on April 16, 2010, and will soon be published in the **Federal Register.**

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 of the TAA petition filed on behalf of workers at National Briquetting Corporation, a subsidiary of Harsco, also known as Performix East Chicago, East Chicago, Indiana, was based on the finding that there has been no increase in imports by the subject firm or its customers, or a shift/acquisition to a foreign country by the subject firm; and that the subject firm did not produce an article or supply a service that was used by a firm with a TAA-certified worker group in production of an article that was the basis for TAA certification.

In the request for reconsideration the petitioner stated that the workers of the subject firm should be eligible for TAA because of an increase in slag conditioner (another product of the subject firm) being exported to a foreign firm that is one of the subject firm's primary customers, and that has itself begun to do the processing that had previously been done by the subject firm.

However, the conducting by a foreign customer in a foreign country of a production process formerly carried out in the United States by the subject firm cannot be the basis for certification of

the subject firm since: (1) The subject firm has not imported the products like and directly competitive with those it formerly produced—the products are being manufactured in an offshore location and, rather than being imported into this country, are being consumed outside of the United States; and (2) the customer itself and not the subject firm has shifted production to an offshore location.

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 14th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12897 Filed 5–27–10; 8:45 am]

BILLING CODE 4519–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–061)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, June 30, 2010, 9 a.m. to 5:30 p.m.; and Thursday, July 1, 2010, 9 a.m. to 3 p.m. EDT.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 3H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: *The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:*

—Heliophysics Division Overview and Program Status

—Senior Review of Operating Missions

—Research and Analysis Program

—Assessment of Heliophysics Division Science Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: May 24, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–12813 Filed 5–27–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9; NRC–2010–0188]

Notice of Docketing, Proposed Action, and Opportunity for a Hearing for Renewal of Special Nuclear Material License No. SMN–2504

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

DATES: A request for hearing and/or petition for leave to intervene must be filed no later than 60 days from May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher M. Staab, Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 492–3321; fax number: (301) 492–3348; e-mail: *christopher.staab@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application dated November 10, 2009, from the Department of Energy (applicant or DOE) for the renewal of its Special Nuclear Material License No. SNM–2504, under the provisions of 10 CFR Part 72, for the receipt, possession, storage and transfer of spent fuel, reactor-related Greater than Class C (GTCC) waste and other radioactive materials associated with spent fuel storage at the Fort St. Vrain Independent Spent Fuel Storage Installation (ISFSI), located at the Fort St. Vrain site in Platteville, Colorado. If granted, the renewed license will authorize the applicant to continue to store spent fuel in a dry cask storage system at the applicant's Fort St. Vrain ISFSI. Pursuant to the provisions of 10 CFR 72.42, the renewal term of the license for the ISFSI would be twenty (20) years. This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–9.

An NRC acknowledgment review, documented in an electronic mail to DOE dated December 22, 2009, found that the application contains sufficient information for the NRC staff to begin its technical review. The Commission will approve the license renewal application if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the

Commission's regulations, including the findings required by 10 CFR 72.40. These findings will be documented in a Safety Evaluation Report. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

II Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for the renewal of Special Nuclear Material License No. SNM–2504 issued to DOE for its ISFSI located at the Fort St. Vrain site in Platteville, Colorado. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E–Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such

information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from May 28, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requestor;
2. The nature of the requestor's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requestor's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's or petitioner's position on the issue and on which the requestor or petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requestor or petitioner disputes and the supporting reasons for each dispute or, if the requestor or petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's or petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the request or petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by the applicant, or otherwise available to the requestor or petitioner. On issues arising under the National Environmental Policy Act, the requestor or petitioner shall file contentions based on the applicant's environmental report. The requestor or petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or if appropriate, the environmental assessment and associated draft or final finding of no significant impact, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.
4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.
5. Miscellaneous—does not fall into one of the categories outlined above. If the requestor or petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requestor or petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requestor or petitioner asserts the contention belongs with a separate designation for that category.

Requestors or petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors or petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requestor or petitioner that wishes to adopt a contention proposed by another requestor or petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor or petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing or a petition for leave to intervene may also address the selection of hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: License Renewal Application dated November 10, 2009 (ML093230788) and the acknowledgement review electronic mail dated December 22, 2008 (ML093561315). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 13th day of May, 2010.

For the Nuclear Regulatory Commission.

Chris Staab,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–12764 Filed 5–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on ESBWR

The ACRS Subcommittee on Economic Simplified Boiling Water Reactor (ESBWR) will hold a meeting on June 22, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric—Hitachi Nuclear Americas, LLC (GEH) and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, June 22, 2010—8:30 a.m. until 6 p.m.

The Subcommittee will discuss Chapters 5, 8, 11, 13, 17, 19, and 22 of the Final Safety Evaluation Report (FSER) associated with the ESBWR design certification. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, General Electric, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or E-mail *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 21, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–12900 Filed 5–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee On Digital I&C Systems

The ACRS Subcommittee on Digital Instrumentation and Control (DI&C) Systems will hold a meeting on June 23, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 23, 2010—8:30 a.m. until 12:30 p.m.

The Subcommittee will review the current NRC efforts in the area of Digital Instrumentation and Control (DI&C) Probabilistic Risk Assessment (PRA). Topics will include the results from the Brookhaven National Laboratory's (BNL) evaluation of quantitative software reliability methods (QSRMs), NUREG/CR—6997, "Modeling a Digital Feedwater Control System Using Traditional Probabilistic Risk Assessment Methods," and the outcome from the PRA software workshop held in May 2008. The Subcommittee will hear presentations by and hold discussions with NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Christina Antonescu (Telephone 301–415–6792 or E-mail *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 20, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–12904 Filed 5–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; NRC–2010–0191]

Entergy Nuclear Operations, Inc.; Entergy Nuclear Vermont Yankee, LLC; Vermont Yankee Nuclear Power Station; License No. DPR–28; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated April 19, 2010, Congressman Paul W. Hodes (the Petitioner) has requested that pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, "Requests for Action under this Subpart," the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Vermont Yankee Nuclear Power Station (Vermont Yankee). The Petitioner requested that the NRC not allow Vermont Yankee, operated by Entergy Nuclear Operations, Inc. (Entergy or the licensee), to restart after its scheduled refueling outage until all environmental remediation work and relevant reports on leaking tritium at the plant have been completed. Specifically, the Petitioner requested that Vermont Yankee be prevented from resuming power production until the following work has been completed to the Commission's satisfaction: (1) The tritiated groundwater remediation process; (2) the soil remediation process scheduled to take place during the refueling outage, to remove soil containing not only tritium, but also radioactive isotopes of cesium, manganese, zinc, and cobalt; (3) Entergy's ongoing Root Cause Analysis; and (4) the Commission's review of the documents presented by Entergy in response to the Commission's demand for information, which was issued on March 1, 2010.

The NRC is treating the request under 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). By letter dated May 20, 2010, the Director denied the Petitioner's request to maintain Vermont Yankee shut down. As provided by 10 CFR 2.206, the NRC will take appropriate action on this petition within a reasonable time.

A copy of the petition is available to the public from the NRC's Agencywide Documents Access and Management System (ADAMS) in the public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML101120663, and is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Dated at Rockville, Maryland this 20th day of May 2010.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–12884 Filed 5–27–10; 8:45 am]

BILLING CODE 7590–01–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 Securities and Exchange Commission will hold a market structure roundtable on Wednesday, June 2, 2010 at 9:30 a.m., in the Auditorium at SEC headquarters at 100 F Street, NE. in Washington, DC. The roundtable will be open to the public with seating on a first-come, first-served basis. Visitors will be subject to security checks.

The roundtable discussion will focus on key market structure issues, including high-frequency trading, undisplayed liquidity, and the appropriate metrics for evaluating market structure performance.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 26, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–13006 Filed 5–26–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62151; File No. SR–Phlx–2010–72]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. to Make Changes to Expand the $1 Strike Program

May 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on May 7, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to modify Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to expand the Exchange's $1 Strike Price Program (the "$1 Strike Program" or "Program") [3] to allow the Exchange to select 150 individual stocks on which options may be listed at $1 strike price intervals.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The $1 Strike Program was initially approved on June 11, 2003 as pilot, and was then extended several times until June 5, 2008. *See* Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55) (approval of pilot program); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29). The program was subsequently expanded and made permanent in 2008. *See* Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR–Phlx–2008–01). The program was last expanded in 2009. *See* Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009) (SR–Phlx–2009–21). The $1 Strike Program is found in Commentary .05 to Rule 1012.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Commentary .05 to Phlx Rule 1012 to allow the Exchange to select 150 individual stocks on which options may be listed at $1 strike price intervals.

Currently, the $1 Strike Program allows Phlx to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules.

The restrictions in the current $1 Strike Program remain and are not proposed to be modified by this filing. The Exchange may not list $1 strike intervals on any issue where the strike price is greater than $50. The Exchange may not list long-term option series ("LEAPS") [4] at $1 strike price intervals for any class selected for the Program, except as specified in subparagraph (C) of Commentary .05.[5] The Exchange is also restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[6]

The $1 Strike Program has been extremely successful since it was initiated as a pilot program in 2003, with no substantive problems attributed to the Program or listing and trading options at $1 strike intervals. During the time that the $1 Strike Program was a pilot, the Exchange submitted three pilot reports to the Commission in which the Exchange discussed, among other things, the strength and efficacy of the Program based upon the steady increase in volume and open interest of options traded on the Exchange at $1 strike price intervals; and that the Program had not and, in the future, should not create capacity problems for the Phlx or the Options Price Reporting Authority ("OPRA") systems.[7] This has not changed. Moreover, the number of $1 strike options traded on the Exchange has continued to increase since the inception of the Program such that these options are now among some of the most popular products traded on the Exchange.

There are now approximately 326 $1 strike price option classes listed (and traded) across all options exchanges including Phlx; 55 of which are classes chosen by Phlx for the $1 Strike Program. The Exchange has received repeated requests from its members to list more issues at $1 strike intervals, that is, to expand the $1 Strike Program. However, the Exchange is constrained from doing so because it has reached the limit of 55 individual stocks on which option series may be listed at $1 strike price intervals per Commentary .05 to Rule 1012. It is for this reason that the Exchange proposes to expand the Program to allow Phlx to select a total of 150 individual stocks on which option series may be listed at $1 strike price intervals. The proposal would expand $1 strike offerings to market participants (*e.g.* traders and retail investors) and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place. The $1 Strike Program (including the existing restrictions such as not listing any series that would result in strike prices being $0.50 apart) would otherwise remain unchanged.

Currently, there are more than 2,000 options trading on issues priced below $50 (generally, the "low cost options") that are outside the $1 Strike Program. These include high volume options such as, for example, Winstream Corp, The Mosaic Company, and General Growth PPTYS Inc. that traded 26,013 contracts, 9,826 contracts, and 20,107 contracts (23-day average volume), respectively. Because of the numerical limitation on how many issues may be chosen by the Exchange to be in the $1 Strike Program, however, these low cost options must trade at $2.50 or wider strike price increments.

The wide strike price increments for low cost options, when compared to the price of underlying issues, often lead to significant negative impact on investors. As an example:

- Sanofi Aventis (SNY), which has recently traded at a low of about $33 per share, is not currently in the $1 Strike Program. This means that options on Sanofi Aventis are offered at strike price intervals of $2.50. If an investor desired to protect 100 shares of Sanofi Aventis in the event of a 10% drop in the SNY share price for an intermediate time period, the investor ideally would want the ability to choose between buying a September 30 SNY put option, September 29 put option, or September 28 put option. Today, however, at $2.50 strike price intervals the investor would only have the choice of buying September 30 put options offered at $1.65 or September 25 puts offered at $0.45 (approximate numbers). Having the ability (choice) to buy 28 strike or 29 strike puts could significantly lower the investor's monetary outlay to purchase the desired insurance premium. This is because, as opposed to September 30 puts priced at $1.65, September 29 puts would be priced at approximately $1.10 and September 28 puts would be priced at approximately $0.90, which would potentially reduce the hedging cost to the investor by about a third. Clearly, options on Sanofi Aventis priced at $1 intervals could significantly improve the menu of hedging choices to the benefit of an investor in this issue.
- Tenaris S A (TS), which has recently traded at about $38 per share, is not currently in the $1 Strike Program. As such, strike intervals for TS are mostly in $5 (as well as $2.50) increments. If an investor sought to enhance his yield from owning 100 shares of Tenaris S A, the investor could sell a call option with a strike price approximately 10% higher than the current underlying issue price. Ideally, the investor could choose between the September 45 calls, the September 44 calls, or the September 43 calls. Not being in the $1 Strike Program, however, the September 44 and

[4] LEAPS are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. Commentary .03 to Rule 1012. Long-term FLEX options and index options are considered separately in Rules 1079(a)(6) and 1101A(b)(iii), respectively.

[5] Subsection (C) of Commentary .05 states that: The Exchange may list $1 strike prices up to $5 in LEAPS(R) in up to 200 option classes on individual stocks. *See* Securities Exchange Act Release No. 61277 (January 4, 2010), 75 FR 1442 (January 11, 2009) (SR–Phlx–2009–108)(notice of filing and immediate effectiveness).

[6] Regarding the $0.50 Strike Program, which allows $0.50 strike price intervals for options on stocks trading at or below $3.00, *see* Commentary .05(a)(ii) to Rule 1012 and Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65)(order approving). *See also* Securities Exchange Act Release No. 61630 (March 2, 2010), 75 FR 11211 (March 10, 2010) (SR–Phlx–2010–26) (notice of filing and immediate effectiveness allowing concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike Program and the $1 Strike Program).

[7] *See* Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29).

September 43 call strikes would not be available. And, like the Sanofi Aventis example, the lack of the September 44 and September 43 strikes would limit the investor's choices to maximize returns or execute the simplest of strategies.

By expanding the $1 Strike Program, such investors would be able to better enhance returns and manage risk. The Exchange feels that, having received requests to expand the Program and in light of the disparity between non $1 strike prices and stock prices underlying low-cost options, expanding the Program as requested would be greatly beneficial to investors and the financial community.

As stated in the Commission order that initially approved Phlx's Program and in subsequent Program extension and expansion approval orders and filings (the "prior orders"),[8] the Exchange believes that $1 strike price intervals provide investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk management objectives. These prior orders recognized, as we have noted pursuant to this proposal, that member firms representing customers have repeatedly requested that Phlx seek to expand the Program in terms of the number of classes on which option series may be listed at $1 strike price intervals. In addition, market conditions have led to an increase in the number of securities trading below $50, further warranting the proposed comparatively modest expansion of the $1 Strike Program.[9]

The Exchange notes that, in addition to options classes that are trading pursuant to the $1 strike programs of options exchanges, there are also options trading at $1 strike intervals on approximately 282 Exchange Traded Fund Shares ("ETFs"),[10] ETF options trading at $1 intervals has not, however, negatively impacted the system capacity of the Exchange or OPRA.

With regard to the impact of this proposal on system capacity, Phlx has analyzed its capacity and represents that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of an expanded number of series in the $1 Strike Program.

The Exchange believes that the $1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional strikes for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current $ 1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. *Comments may be submitted by any of the following methods:*

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

[8] *See* supra note 3.

[9] *See, c.f.,* Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009) (SR–Phlx–2009–21) (more than five-fold increase in the number of individual stocks on which options may be listed at $1 intervals).

[10] Options on ETFs have been trading for about a decade. *See* Securities Exchange Act Release Nos. 34– (July 1, 1998), 63 FR 37426 (July 10, 1998) (SR–AMEX–96–44) (approval order regarding, among other things, $1 strike price intervals for ETFs); and 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (SR–Phlx–01–32) (notice of filing and immediate effectiveness regarding, among other things, $1 strike price intervals for ETFs). *See also* Commentary .05 to Rule 1012(a)(iv) allowing $1 strike price intervals for ETF options where the strike price is $200 or less.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–72 and should be submitted on or before June 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12871 Filed 5–27–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62155; File No. SR–Phlx–2010–67]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Risk Management Interface

May 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 effect an information-related enhancement to the current Risk Management Feed Interface in Phlx XL II. The Exchange is not proposing any rule changes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to propose a series of enhancements to the interface for receiving real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to the The Options Clearing Corporation.

The Exchange currently provides Exchange members with real-time clearing trade updates through a Risk Management Feed known as the "RMP".[3] The updates include the members clearing trade messages on a low latency, real-time basis. The trade messages are routed to a member's connection containing certain information.[4] The administrative and market event messages include, but are not limited to: System event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange;[5] and trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange. This existing RMP interface will be retired in September 2010.

In connection with these enhancements, the Exchange proposes to rename the RMP interface as the Clearing Trade Interface ("CTI"). This proposed interface will provide increased throughput and significantly lower latency for clearing trade updates.[6] In addition, the new interface will contain an indicator which will distinguish electronic[7] and non-electronically[8] delivered orders.[9] This information will be available to members on a real-time basis.

The Exchange is proposing to continue to provide real-time clearing trade updates, referred to as CTI, with significantly lower latency as well as additional information, such as trade detail information that distinguishes electronically and non-electronically delivered orders. This new CTI will be made available to users promptly after successful testing with the Exchange. CTI will be available to all members.[10] The Exchange is not proposing any rule changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing members more efficient real-time clearing trade updates. This proposal is not a burden on competition and serves to protect investors and the public interest, in that CTI is a tool for members to receive real-time trade details and utilize that information to

[3] The Exchange assesses its members a Real-time Risk Management Fee of $.003 per contract for receiving this information. The Exchange is not proposing to amend this fee.

[4] The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or The Options Clearing Corporation or "OCC" number; (ii) Exchange badge or house number; and (iii) the Exchange internal firm identifier.

[5] The information related to complex order strategy messages includes information that lists the legs and the leg ratios, which uniquely defines this strategy for an underlying.

[6] The Exchange will post the technical specifications on its Web site and testing will be available. The Exchange intends to send an Options Technical Update to notify members of the new interface and testing availability.

[7] Electronically delivered orders do not include orders delivered through the Floor Broker Management System, but rather are delivered utilizing PHLX XL II.

[8] An order that is represented on the trading floor by a floor broker. *See* Exchange Rule 1063.

[9] Members that apply for this interface will continue to receive only their own trade data and data for their customers. Members utilizing RMP only receive their own trade data and data for their customers.

[10] The Exchange assesses a Real-Time Risk Management Fee of $.003 per contract to receive this information. Currently RMP is available to all members.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

capture fees on a real-time basis and also receive information on whether the orders were electronically or non-electronically delivered. This information will provide members more transparency on the fees assessed on transactions. The clearing trade updates are and will continue to be available to all members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

Phlx has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Exchange proposes to allow members to test the CTI immediately, and to migrate to the CTI upon successful testing. The Exchange proposes to retire the RMP in September 2010. Waiving the operative delay will thus allow the Exchange to provide members an increased period of time to test and migrate to the CTI before the retirement of the RMP in September 2010.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in 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–Phlx–2010–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–67. 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 publicly available. All submissions should refer to File Number SR–Phlx–2010–67 and should be submitted on or before June 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12873 Filed 5–27–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[15] For the purposes only of waiving the operative date 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62158; File No. SR–CBOE–2008–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to the Demutualization of Chicago Board Options Exchange, Incorporated

May 24, 2010.

I. Introduction

On August 21, 2008, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change in connection with its plan to demutualize and restructure from a Delaware non-stock corporation to a Delaware stock corporation that would be a wholly-owned subsidiary of CBOE Holdings, Inc. ("CBOE Holdings"), a holding company organized as a Delaware stock corporation (the "Restructuring Transaction").[3] To accommodate the Restructuring Transaction, CBOE proposed a Certificate of Incorporation and Bylaws for the newly formed CBOE Holdings, a new Certificate of Incorporation for CBOE, and to replace CBOE's existing Constitution with new Bylaws. Finally, CBOE proposed amendments to its rules to address, among other things, trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Restructuring Transaction" is defined in proposed CBOE Rule 1.1(hhh) as "the restructuring of the Exchange from a non-stock corporation to a stock corporation and wholly-owned subsidiary of CBOE Holdings, Inc."

access to the Exchange after the Restructuring Transaction. The proposed rule change was published for comment in the **Federal Register** on September 4, 2008.[4] The Commission received no comments on the proposal. On May 21, 2010, the Exchange filed Amendment No. 1 to the proposal.[5] This order provides notice of filing of Amendment No. 1 and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, as discussed in more detail below, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act.[7]

A. The Restructuring Transaction

(1) Overview of the Proposed Corporate Structure

CBOE proposes to restructure from a Delaware non-stock corporation owned by its members to a Delaware stock corporation that would be a wholly-owned subsidiary of CBOE Holdings, a holding company organized as a Delaware stock corporation. As a result of the Restructuring Transaction, CBOE Holdings would become the sole stockholder of CBOE.[8] In addition, CBOE would transfer to CBOE Holdings all of the shares or interests CBOE currently owns in its subsidiaries, other than CBOE Stock Exchange, LLC, ("CBSX"), thereby making them wholly-owned subsidiaries of CBOE Holdings.[9] CBSX, which is an equity trading facility of CBOE, would remain a facility of CBOE in which CBOE would continue to hold a 50% interest.[10] CBOE would continue to be a self-regulatory organization ("SRO") and to operate its exchange business and facilities.

CBOE has proposed a new Certificate of Incorporation and Bylaws that are similar to the CBOE's current Certificate of Incorporation and Constitution, except that they reflect CBOE's proposed new structure. CBOE also has proposed to adopt a Certificate of Incorporation and Bylaws for CBOE Holdings that would address, among other things, the operation of the Exchange as an SRO in a holding company structure.[11] Finally, CBOE has proposed amendments to certain rules of the Exchange to reflect, among other things, the use of Trading Permits[12] to access the Exchange and its facilities.

(2) Conversion of Memberships

After the Restructuring Transaction, the owners of membership interests in CBOE would become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of CBOE Holdings. Each transferable CBOE membership existing on the date of the Restructuring Transaction would be converted into a certain number of shares of Class A common stock of CBOE Holdings.[13] The Class A common stock of CBOE Holdings would represent an equity ownership interest in CBOE Holdings, but would not provide its holders with physical or electronic access to CBOE and its trading facilities. In addition, Class B common stock of CBOE Holdings would be issued in the Restructuring Transaction in connection with the settlement of the litigation relating to the exercise right.

B. CBOE Holdings

After the Restructuring Transaction, CBOE Holdings would become the parent company and sole shareholder of CBOE. The proposed Certificate of Incorporation and Bylaws of CBOE Holdings would govern the activities of CBOE Holdings.

(1) Governing Structure

CBOE Holdings Board of Directors. The CBOE Holdings Board of Directors ("CBOE Holdings Board") would be composed of between 11 and 23 directors. Except with respect to the initial CBOE Holdings Board, the exact number would be established by the CBOE Holdings Board.[14] The initial CBOE Holdings Board would be composed of the 22 directors of CBOE immediately prior to the Restructuring Transaction.[15]

Except with respect to the initial CBOE Holdings Board, the Nominating and Governance Committee[16] would

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[4] *See* Securities Exchange Act Release No. 58425 (August 26, 2008), 73 FR 51652 ("Notice").

[5] The substance of the proposed rule change and its filing with the Commission were approved by the Board of Directors of the Exchange prior to filing. At that time, the Exchange had not yet obtained approval from its members for the changes set forth in the proposal. On May 21, 2010, the Exchange obtained the requisite approval from its members. Amendment No. 1, among other things, reflects the membership's approval of this proposed rule change. *See infra* notes and text following note 172 for a discussion of Amendment No. 1 in greater detail.

[6] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] In Amendment No. 1, CBOE revised the proposed CBOE Holdings' Certificate of Incorporation to include the term "Regulated Securities Exchange Subsidiary" in the places that had referenced CBOE. A "Regulated Securities Exchange Subsidiary" is defined as "any national securities exchange, controlled, directly or indirectly, by CBOE Holdings, including, but not limited to CBOE." This change in terminology addresses CBOE's other national securities exchange C2 Options Exchange, Incorporated and would accommodate ownership of more than one national securities exchange by CBOE Holdings. *See* Amendment No. 1 at 4. *See also* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (order approving application of C2 Options Exchange, Incorporated).

[9] These subsidiaries are: CBOE Futures Exchange, LLC, which operates an electronic futures exchange; Chicago Options Exchange Building Corporation, which owns the building in which CBOE operates; CBOE, LLC, which holds a 24.01% interest in OneChicago, LLC, a security futures exchange; CBOE II, LLC, which has no assets or activities; DerivaTech Corporation, which owns certain educational software; Market Data Express, LLC, which distributes various types of market data; and The Options Exchange, Incorporated, which currently has no assets or activities.

[10] The remaining 50% interest in CBSX currently is owned by five registered broker-dealers.

[11] *See infra* note 51 and accompanying text (discussing CBOE's role in considering amendments to CBOE Holdings' corporate documents).

[12] *See infra* note 118 and accompanying text (describing Trading Permits).

[13] *See* Amendment No. 1 at 3. In the event of a future public offering by CBOE Holdings, each outstanding share of Class A common stock would be converted to one-half of one share of Class A–1 common stock and one-half share of one share of Class A–2 common stock, each of which would be subject to certain transfer restrictions. Specifically, Class A–1 common stock resulting from a conversion at the time of a pubic offering would be subject to a 180-day transfer restriction following the offering and Class A–2 common stock would be subject to a 360-day transfer restriction. Upon expiration of the restrictions, Class A–1 and Class A–2 common stock would convert to unrestricted common stock of CBOE Holdings. *See id.* Similarly, the Class B common stock of CBOE Holdings that will be issued in the Restructuring Transaction in connection with the settlement of the litigation relating to the exercise right would also be issued in a single class designated as Class B common stock. To ensure compliance with the transfer restrictions, Class A, Class A–1, Class A–2 and Class B common stock may only be recorded on the books and records of CBOE Holdings in the name of the owner of the shares. *See id.* CBOE Holdings would have the ability to issue preferred stock and unrestricted common stock including in connection with a public offering of shares of stock to investors who were not members of CBOE prior to the Restructuring Transaction and who would not be Trading Permit holders following the Restructuring Transaction. According to the Exchange, CBOE Holdings has no current intention to issue any shares of its preferred stock. *See id.*

[14] *See* proposed Article Seventh(b) of the CBOE Holdings Certificate of Incorporation and proposed Article 3.2 of the CBOE Holdings Bylaws.

[15] *See* Amendment No. 1 at 5–6 (concerning the size of the initial CBOE Holdings Board). CBOE currently has a 23-person Board with one vacancy that the CBOE Board does not intend to fill prior to the consummation of the Restructuring Transaction.

[16] *See* "Nominating and Governance Committee," *infra* Section II.B.2. (describing composition of Nomination and Governance Committee).

nominate candidates for the CBOE Holdings Board.[17] Each holder of CBOE Holdings voting stock would be entitled to one vote for each share of voting stock held, except as otherwise provided by the General Corporation Law of the State of Delaware or the Certificate of Incorporation or Bylaws of CBOE Holdings.[18]

The CBOE Holdings Board would be subject to a heightened independence requirement, with at least two-thirds of the directors satisfying the independence requirements adopted by the CBOE Holdings Board, as may be amended from time to time, which shall satisfy the independence requirements in the listing standards of the New York Stock Exchange ("NYSE") or The Nasdaq Stock Market.[19] CBOE Holdings directors would serve one-year terms.[20]

The CBOE Holdings Board would appoint one of its directors to serve as Chairman,[21] and may also appoint an independent director to serve as Lead Director, who would perform such duties and possess such powers as the CBOE Holdings Board may from time to time prescribe.[22]

Committees of CBOE Holdings. CBOE Holdings would have an Executive Committee, an Audit Committee, a Compensation Committee, a Nominating and Governance Committee, and such other committees that the CBOE Holdings Board establishes.[23] The members of each committee would be selected by the CBOE Holdings Board.

The Executive Committee would have all the powers and authority of the CBOE Holdings Board in the management of the business and affairs of CBOE Holdings, except it would not have the power or authority of the CBOE Holdings Board in reference to, among other things, amending the CBOE Holdings Certificate of Incorporation, adopting an agreement of merger or consolidation, approving the sale, lease or exchange of all or substantially all of the CBOE Holdings' property and assets, or approving the dissolution of CBOE Holdings or a revocation of a dissolution.[24] The Executive Committee would include the Chairman of the Board (who would serve as the Chairman of the Executive Committee), the Chief Executive Officer (if a director), the Lead Director, if any, and such directors as the CBOE Holdings Board deems appropriate, provided that Executive Committee must at all times have a majority of independent directors.

The Nominating and Governance Committee would recommend members of CBOE Holdings' Executive, Audit, and Compensation Committees for approval by the CBOE Holdings Board.[25] The Nominating and Governance Committee would consist of at least five directors, all of whom would be Independent Directors.[26]

Officers of CBOE Holdings. CBOE Holdings would have a Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice-Presidents (as determined by the CBOE Holdings Board), a Secretary, a Treasurer, and such other officers as the CBOE Holdings Board may determine, including an Assistant Secretary or Assistant Treasurer.[27] The Chief Executive Officer would have general charge and supervision of the business of CBOE Holdings.[28] Other officers would have the duties or powers or both set out in the CBOE Holdings Bylaws, as well as such other duties or powers or both as the CBOE Holdings Board or the Chief Executive Officer may from time to time prescribe.[29]

The Commission finds that the proposed provisions relating to the CBOE Holding Board are consistent with the Act, particularly Section 6(b)(1), which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.[30] In particular, these provisions will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

(2) Ownership and Voting Restrictions

The proposed Certificate of Incorporation of CBOE Holdings places certain ownership and voting limits on the holders of CBOE Holdings stock and their Related Persons.[31] These restrictions are intended to address the possibility that a person holding a controlling interest in an entity that owns an SRO could use that interest to affect the SRO's regulatory responsibilities.[32]

Ownership Limitation. No person (either alone or together with its Related Persons) may beneficially own more than 10% of the total outstanding shares of CBOE Holdings stock. In the event of a public offering of common stock, the permissible ownership percentage threshold would increase from 10% to 20%.[33] If a person, either alone or together with its Related Persons, exceeds these thresholds, such person and its Related Persons would be obligated to sell promptly, and CBOE Holdings would be obligated to redeem promptly, the number of shares of stock necessary so that such person, together with its Related Persons, would fall below the applicable threshold.[34]

[17] *See* proposed Article 2.11 of the CBOE Holdings Bylaws. Pursuant to proposed Article 2.11, the CBOE Holdings Board or a committee thereof each year would nominate candidates for the directors standing for election at the CBOE Holdings annual meeting of shareholders. *See also* Amendment No. 1 at 6–7 (discussing director nominees). In addition, subject to certain conditions, stockholders also have the right under this provision to nominate persons for the CBOE Holdings Board.

[18] *See* proposed Article 2.8 of the CBOE Holdings Bylaws. The Commission notes that there are no provisions in the proposed CBOE Holdings corporate documents providing for anything other than one vote for each share of voting stock held.

[19] *See* Amendment No. 1 at 6. *See* proposed Article 3.3 of the CBOE Holdings Bylaws. *See also* Sections 303A.01 and 303A.02 of the NYSE's Listed Company Manual and Nasdaq Stock Market Rule 5605.

[20] *See* Amendment No. 1 at 6 (changing term duration from two years, as initially proposed, to one year).

[21] *See* proposed Article 3.6 of the CBOE Holdings Bylaws. The proposed CBOE Holdings Bylaws would not restrict the Chief Executive Officer of CBOE Holdings from serving in this role. *See* proposed Article 5.1 of the CBOE Holdings Bylaws.

[22] *See* proposed Article 3.7 of the CBOE Holdings Bylaws.

[23] *See* proposed Article 4.1 of the CBOE Holdings Bylaws. The CBOE Holdings Board would designate the members of these other committees and may designate a Chairman and a Vice-Chairman of each committee.

[24] *See* proposed Article 4.2 of the CBOE Holdings Bylaws.

[25] *See* proposed Articles 4.2, 4.3 and 4.4 of the CBOE Holdings Bylaws.

[26] *See* Article 4.5 of the CBOE Holdings Bylaws. *See also* Amendment No. 1 at 6–7 (decreasing the size of the committee from seven to five). With the exception of the initial committee, all committee members would be recommended by the Nominating and Governance Committee for approval by the CBOE Holdings Board. *See* proposed Article 4.5 of the CBOE Holdings Bylaws. The initial Nominating and Governance Committee after the Restructuring Transaction would be selected by the CBOE Board or a committee thereof, consistent with the committee's composition requirements.

[27] *See* proposed Article 5.1 of the CBOE Holdings Bylaws.

[28] *See* proposed Articles 5.1 and 5.2 of the CBOE Holdings Bylaws.

[29] *See* proposed Articles 5.3, 5.4, 5.5, 5.6 and 5.7 of the CBOE Holdings Bylaws.

[30] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[31] The term "Related Person" is defined in proposed Article Fifth(a)(ix) of the CBOE Holdings Certificate of Incorporation and includes, among other things, persons associated with a Trading Permit Holder.

[32] The Commission notes that CBOE has received a legal opinion that the proposed ownership and voting limitations, as well as the provisions providing for the redemption of shares held by a person (either alone or together with its Related Persons) in excess of the ownership limitation, are valid under Delaware law. *See* Letter from Richards, Layton & Finger to CBOE Holdings, Inc. dated August 15, 2008.

[33] *See* proposed Article Sixth(b) of the CBOE Holdings Certificate of Incorporation.

[34] *See* proposed Article Sixth(b) of the CBOE Holdings Certificate of Incorporation. CBOE Holdings would redeem such stock at a price equal

Voting Limitation. No person (either alone or together with its Related Persons) would be entitled to vote or cause the voting of shares of stock beneficially owned by that person or those Related Persons to the extent that those shares would represent in the aggregate more than 10% of the total number of votes entitled to be cast on any matter. Further, no person (either alone or together with its Related Persons) would be entitled to vote more than 10% of the total number of votes entitled to be cast on any matter by virtue of agreements entered into by that person or those Related Persons with other persons not to vote shares of outstanding stock. In the event a public offering of common stock, these permissible voting percentage thresholds would increase from 10% to 20%.[35] Any attempted votes in the excess of such thresholds would be disregarded.[36]

Waiver of Ownership or Voting Limitations. The CBOE Holdings Board may waive the ownership and voting limits and may impose conditions or restrictions by means of a resolution expressly permitting ownership or voting rights in excess of such limits, subject to a determination of the Board that:[37]

- The acquisition would not impair the ability of CBOE to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of CBOE Holdings and its stockholders and CBOE;
- The acquisition would not impair the Commission's ability to enforce the Act;
- Neither the person obtaining the waiver nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act);[38] and
- For so long as CBOE Holdings directly or indirectly controls CBOE, neither the person obtaining the waiver nor any of its Related Persons is a Trading Permit Holder.[39]

The CBOE Holdings Board would have the right to require any person and its Related Persons that the Board reasonably believes to be subject to the voting or ownership restrictions summarized above to provide to CBOE Holdings complete information on all shares of CBOE Holdings stock that such stockholder beneficially owns, as well as any other information relating to the applicability to such stockholder of the voting and ownership requirements outlined above as may reasonably be requested.[40]

In addition, any changes to the CBOE Holdings Certificate of Incorporation, including any change in the provision that identifies CBOE Holdings as the sole owner of CBOE, must be filed with and approved by the Commission pursuant to Section 19 of the Act before it could become effective.[41] Further, pursuant to the Exchange's proposed Certificate of Incorporation, CBOE Holdings may not sell, transfer, or assign, in whole or in part, its ownership interest in CBOE. Any such purported action would trigger an amendment both to CBOE Holdings' and CBOE's governing documents, which in turn would be subject to consideration by the Commission pursuant to the rule filing procedure under Section 19 of the Act.

The Commission believes that these provisions are consistent with the Act. These requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight under the Act.

Members that trade on an exchange traditionally have had ownership interests in the exchange, particularly at mutually-held entities like CBOE.[42] However, as the Commission has noted in the past, a member's interest in an exchange or an entity that controls an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[43] A member that is a controlling shareholder of an exchange, or an entity that controls an exchange, might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the Federal securities laws with respect to conduct by the member that violates such provisions. The proposed ownership and voting limitations for persons with an equity interest in CBOE Holdings are designed to limit a person's ability to obtain and exercise such a controlling influence.

(3) Self-Regulatory Function and Oversight of CBOE

Although CBOE Holdings will not itself carry out regulatory functions, its activities with respect to the operation of CBOE must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. The proposed CBOE Holdings Certificate of Incorporation contains various provisions designed to protect the independence of the self-regulatory function of CBOE, enable the Exchange to operate in a manner that complies with the Federal securities laws,

to the par value of such shares of stock and to the extent that funds are legally available for such redemption. If shares of CBOE Holdings stock beneficially owned by any Person or its Related Persons are held of record by any other Person, this provision would be enforced against such record owner by requiring the redemption of shares of CBOE Holdings stock held by such record owner in a manner that would accomplish the ownership limitation applicable to such Person and its Related Persons. *See id.*

[35] *See* proposed Article Sixth(a) of the CBOE Holdings Certificate of Incorporation. The voting limitation does not apply to a solicitation of a revocable proxy by any CBOE Holdings stockholder on behalf of CBOE Holdings or by directors or officers of CBOE Holdings on behalf of CBOE Holdings or to a solicitation of a revocable proxy by a stockholder in accordance with Regulation 14A under the Act. 17 CFR 240.14A. This exception, however, would not apply to a solicitation by a stockholder pursuant to Rule 14a-2(b)(2) under the Act, which permits a solicitation made otherwise than on behalf of CBOE Holdings where the total number of persons solicited is not more than 10.

[36] *See* proposed Article Sixth(a) of the CBOE Holdings Certificate of Incorporation. If and to the extent that shares of CBOE Holdings stock beneficially owned by any person or its Related Persons are held of record by any other person, this provision would be enforced against such record owner by limiting the votes entitled to be cast by such record owner in a manner that would accomplish the voting limitation applicable to such person and its Related Persons.

[37] *See* proposed Articles Sixth(a) and (b) of the CBOE Holdings Certificate of Incorporation. Any such resolution must be filed with the Commission under Section 19 of the Act prior to becoming effective.

[38] 15 U.S.C. 78c(a)(39).

[39] A "Trading Permit Holder" is defined in Section 1.1(f) of the Bylaws of the Exchange as: Any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to an "individual Trading Permit Holder." If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a "TPH organization." A Trading Permit Holder is a "member" solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.

[40] *See* proposed Article Sixth(d) of the CBOE Holdings Certificate of Incorporation.

[41] *See* 15 U.S.C. 78s.

[42] With the proposed demutualization of CBOE, all registered national securities exchanges will have converted to or been founded as non-mutually held entities.

[43] *See* Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order approving application of BATS Exchange, Inc. for registration as an SRO); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving merger of New York Stock Exchange, Inc. and Archipelago, and demutualization of New York Stock Exchange, Inc.; 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx-2003–73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19).

including the objectives of Sections 6(b) and 19(g) of the Act, facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.

For example, the proposed CBOE Holdings Certificate of Incorporation contains a provision requiring each director of the CBOE Holdings Board to take into consideration the effect that CBOE Holdings' actions would have on CBOE's ability to carry out its responsibilities under the Act.[44] Similarly, for so long as CBOE Holdings controls CBOE, each officer, director, and employee of CBOE Holdings must give due regard to the preservation of the independence of the self-regulatory function of CBOE and to its obligations under the Act and such persons are prohibited from taking any actions that they reasonably should have known would interfere with the effectuation of any decisions by the Board of Directors of CBOE ("CBOE Board") relating to CBOE's regulatory functions, including disciplinary matters, or would adversely affect CBOE's ability to carry out its responsibilities under the Act.[45]

Further, the proposed CBOE Holdings Certificate of Incorporation provides that CBOE Holdings, its directors, officers, agents, and employees irrevocably submit to the jurisdiction of the U.S. Federal courts, the Commission, and CBOE and CBOE Holdings, its directors, officers, agents, and employees, would waive any claims or defenses that they are not personally subject to the jurisdiction of the Commission, as well as any defenses relating to inconvenient forum, improper venue, or jurisdiction.[46] Further, so long as CBOE Holdings controls CBOE, the books, records, premises, officers, directors, and employees of CBOE Holdings would be deemed to be the books, records, premises, officers, directors, and employees of CBOE for purposes of and subject to oversight pursuant to the Act to the extent that they relate to CBOE.[47]

In addition, all confidential information pertaining to the self-regulatory function of CBOE (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of CBOE that comes into the possession of CBOE Holdings: (1) Could not be made available to any persons other than to those officers, directors, employees and agents of CBOE Holdings that have a reasonable need to know the contents thereof; (2) would be retained in confidence by CBOE Holdings and the officers, directors, employees and agents of CBOE Holdings; and (3) could not be used for any commercial purposes.[48]

The proposed CBOE Holdings Certificate of Incorporation also requires CBOE Holdings to take reasonable steps to cause its directors, officers, and employees, prior to accepting such position with CBOE Holdings, to consent in writing to the applicability to them of Article Fourteenth, Article Fifteenth, and Sections (c) and (d) of Article Sixteenth of the CBOE Holdings Certificate of Incorporation, as applicable, with respect to their activities related to CBOE.[49] In addition, CBOE Holdings would take reasonable steps necessary to cause its agents, prior to accepting such a position with CBOE Holdings, to be subject to the same provisions, as applicable, with respect to their activities related to CBOE.[50]

In addition, for so long as CBOE Holdings controls CBOE, CBOE Holdings would be required to submit to the CBOE Board any proposed amendment to or repeal of any provision of the CBOE Holdings Certificate of Incorporation or CBOE Holdings Bylaws and to file such with the Commission before it may become effective.[51]

The Commission finds that the proposed governing documents for CBOE Holdings, discussed above, are designed to protect the independence of the self-regulatory function of CBOE and clarify the Commission's and CBOE's jurisdiction with respect to CBOE Holdings in a manner consistent with the Act. Accordingly, these provisions should help ensure CBOE Holdings' attention to the self-regulatory obligations of CBOE and facilitate the ability of CBOE to effectively carry out its regulatory responsibilities under the Act.

The Commission notes that under Section 20(a) of the Act,[52] any person with a controlling interest in CBOE would be jointly and severally liable with and to the same extent that CBOE is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act,[53] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[54] authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to CBOE Holdings' dealings with CBOE.

C. CBOE

Following the Restructuring Transaction, CBOE would become a Delaware for-profit stock corporation wholly-owned by CBOE Holdings. CBOE would issue a total of 1,000 shares of common stock, all of which would be owned by CBOE Holdings.[55] CBOE would continue to be registered as a national securities exchange under Section 6 of the Act and, accordingly, would continue to be an SRO responsible for enforcing compliance by its members (*i.e.,* Trading Permit Holders) with the Federal securities laws and with CBOE Rules.[56] Likewise, CBOE would continue as a participant and voting member in the following national market system plans: The Options Price Reporting Authority Plan, the Consolidated Tape Association, the Consolidated Quotation Plan, the Nasdaq Unlisted Trading Privileges Plan, the Options Order Protection and Locked/Crossed Market Plan, the Options Regulatory Surveillance

[44] *See* proposed Article Sixteenth(d) of the CBOE Holdings Certificate of Incorporation.

[45] *See* proposed Article Sixteenth(c) of the CBOE Holdings Certificate of Incorporation.

[46] *See* proposed Article Fourteenth of the CBOE Holdings Certificate of Incorporation.

[47] The books and records of CBOE Holdings relating to the exchange business of CBOE would be subject at all times to inspection and copying by the Commission and CBOE. *See id.* In addition, the CBOE Holdings Bylaws provide that the books of CBOE Holdings must be kept within the United States. *See* proposed Section 1.3 of the CBOE Holdings Bylaws.

[48] Notwithstanding this restriction, nothing in the CBOE Holdings Certificate of Incorporation would be interpreted so as to limit or impede the rights of the Commission or CBOE to access and examine such confidential information or to limit or impede the ability of any officers, directors, employees or agents of CBOE Holdings to disclose such confidential information to the Commission or CBOE. *See* proposed Article Fifteenth of the CBOE Holdings Certificate of Incorporation.

[49] *See* proposed Article Sixteenth(b) of the CBOE Holdings Certificate of Incorporation.

[50] *See id.*

[51] *See* proposed Article Eleventh of the CBOE Holdings Certificate of Incorporation and proposed Article 10.2 of the CBOE Holdings Bylaws.

[52] 15 U.S.C. 78t(a).

[53] 15 U.S.C. 78t(e).

[54] 15 U.S.C. 78u–3.

[55] Any sale, transfer or assignment by CBOE Holdings of any shares of CBOE common stock would require an amendment to the proposed CBOE Certificate of Incorporation and consequently would be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act (15 U.S.C. 78s). *See* proposed Article Fourth of the CBOE Certificate of Incorporation.

[56] 15 U.S.C. 78f.

Authority Plan, and the Options Listing Procedures Plan.[57]

CBOE's current Certificate of Incorporation, Constitution (which would be replaced by the proposed Bylaws), and selected rules are proposed to be amended to reflect, among other things, CBOE's status as wholly-owned subsidiary of CBOE Holdings.

(1) CBOE Board and Committees

The business and affairs of CBOE would continue to be managed under the direction of the CBOE Board. The CBOE Board would be composed of between 11 and 23 directors as fixed by the CBOE Board from time to time.[58] The initial CBOE Board would be composed of the 22 individuals who are the directors of CBOE immediately prior to the Restructuring Transaction.[59] Thus, the CBOE Board following the Restructuring Transaction would be composed of CBOE's Chief Executive Officer, twelve Non-Industry [60] Directors, and ten Industry [61] Directors.[62]

The number of Non-Industry Directors and Industry Directors may be increased from time to time by resolution of the CBOE Board, but the number of Industry Directors could not constitute less than 30% of the CBOE Board and in no event would the number of Non-Industry Directors constitute less than a majority of the CBOE Board.[63] In addition, at least 20% of the directors must be Industry Directors nominated (or otherwise selected through the petition process) by the Industry-Director Subcommittee (directors selected through this process are referred to as "Representative Directors").[64] Directors would serve for one-year terms ending on the annual meeting following the meeting at which such directors were elected.[65]

The CBOE Board would appoint one of its directors to serve as Chairman, which could be the Chief Executive Officer of CBOE.[66] Each year following the annual election of the directors, the CBOE Board would select, from among the Industry Directors, a Vice Chairman of the CBOE Board to serve for a term of one year.[67] The CBOE Board also may appoint one of the Non-Industry Directors to serve as Lead Director, who would perform such duties and possess such powers as the CBOE Board may from time to time prescribe.[68]

(2) Nomination and Election of Directors

Qualified individuals would be nominated for election to the CBOE Board by CBOE's Nominating and Governance Committee.[69] The committee would consist of at least seven directors, with a majority being Non-Industry Directors,[70] all of whom would be recommended by the then-serving Nominating and Governance Committee for approval by the Board. The initial Nominating and Governance Committee after the Restructuring Transaction would be selected by the CBOE Board or a committee thereof, consistent with the applicable proposed compositional requirements.[71]

Industry-Director Subcommittee. The Industry-Director Subcommittee of the Nominating and Governance Committee, composed of all of the Industry Directors then serving on the Nominating and Governance Committee, would be responsible for recommending a number of Representative Directors that equals 20% of the total number of directors serving on the CBOE Board.[72] The subcommittee would provide a mechanism for Trading Permits Holders to provide input with respect to nominees for the Representative Directors. The subcommittee would also issue a circular to Trading Permit Holders identifying the Representative Director nominees.[73]

The proposed Nominating and Governance Committee would be bound to accept and nominate the Representative Directors recommended by the Industry-Director Subcommittee, provided that the Representative Directors so nominated by the Industry-Director Subcommittee are not opposed by a petition candidate. If such Representative Directors are opposed by a petition candidate, then the Nominating and Governance Committee would be bound to accept and nominate the Representative Directors who receive the most votes pursuant to a "Run-off Election," as described below.[74]

Petition Process. Trading Permit Holders may nominate alternative candidates for election to the Representative Director positions by submitting a petition signed by individuals representing not less than 10% of the total outstanding Trading Permits at that time. If one or more valid petitions are received, a Run-off Election would be held. In any Run-off

[57] These plans are joint industry plans entered into by SROs for the purpose of providing for, respectively, (i) last sale and quotation reporting in options and equities, (ii) intermarket options trading, (iii) the joint surveillance, investigation and detection of insider trading on the options exchanges, and (iv) the listing of standardized options.

[58] *See* Amendment No. 1 at 7. *See also* proposed Article Fifth(b) of the CBOE Certificate of Incorporation and proposed Section 3.1 of the CBOE Bylaws.

[59] *See* Amendment No. 1 at 7.

[60] A "Non-Industry Director" would be defined as a person who is not an Industry Director. *See* proposed Section 3.1 of the CBOE Bylaws.

[61] *See* Notice, *supra* 4, 73 FR at 51658, n.58.

[62] *See* proposed Article Fifth(b) of the Amended and Restated Certificate of Incorporation and proposed Section 3.1 of the CBOE Bylaws. In comparison, the current CBOE Board has 23 directors, consisting of eleven public directors, eleven directors from the industry, and the Chairman of the Board (who is the CEO of CBOE). *See* Notice, *supra* note 4, 73 FR at 51658 (discussing the composition of the current CBOE Board).

[63] At all times, at least one Non-Industry Director would be a Non-Industry Director exclusive of the exceptions provided for in proposed Section 3.1 of the CBOE Bylaws and would have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. *See* proposed Section 3.1 of the CBOE Bylaws.

[64] *See* proposed Section 3.1 of the CBOE Bylaws.

[65] *See* Amendment No. 1 at 9–10.

[66] *See* proposed Section 3.6 of the CBOE Bylaws. *See also* proposed Section 5.1(a) of the CBOE Bylaws (concerning the ability of the CEO to serve as Chairman of the CBOE Board).

[67] *See* proposed Section 3.7 of the CBOE Bylaws. The Vice Chairman would: (i) Preside over the meetings of the CBOE Board in the event the Chairman of the Board is absent or unable to do so, (ii) serve as chair the Trading Advisory Committee, (iii) except as otherwise provided in the Rules or resolution of the CBOE Board, appoint, subject to the approval of the CBOE Board, the individuals to serve on all Trading Permit Holder committees established in the Rules or by resolution of the Board, and (iv) exercise such other powers and perform such other duties as are delegated to the Vice Chairman of the Board by the CBOE Board.

[68] *See* proposed Section 3.8 of the CBOE Bylaws. The CBOE Board currently has a Lead Director, and as provided in proposed Section 3.8 of the CBOE Bylaws, CBOE has the ability to continue the practice after the Restructuring Transaction.

[69] *See id.* In performing this function, the Nominating and Governance Committee would determine, subject to review by the Board, whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of that committee shall, subject to review, if any, by the Board, be final. *See* proposed Section 3.1 of the CBOE Bylaws. CBOE anticipates that the Nominating and Governance Committee would use director questionnaires in connection with determining the qualifications of director candidates. *See* Notice, *supra* note 4, 73 FR at 51659, n.74.

[70] *See* proposed Section 4.5 of the CBOE Bylaws.

[71] The composition of the proposed new Nominating and Governance Committee differs from the composition of CBOE's current Nominating Committee in that the current Nominating Committee consists of a majority of "industry" members and is not tasked with responsibility for governance issues. In addition, the current Nominating Committee is not a committee of the current CBOE Board, but rather is a separate committee elected by the voting members of the Exchange. *See* Section 4.1 of the current CBOE Constitution.

[72] *See* proposed Section 3.2 of the CBOE Bylaws. If 20% of the directors then serving on the CBOE Board is not a whole number, such number of Representative Directors would be rounded up to the next whole number. *See* proposed Section 3.2 of the CBOE Bylaws. Industry Directors not selected by the Industry-Director Subcommittee would be selected by the Nominating and Governance Committee. *See* proposed Section 3.2 of the CBOE Bylaws.

[73] *See id.*

[74] *See id.*

Election, each Trading Permit Holder would have one vote for each Representative Director position; provided, however, that no Trading Permit Holder, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate. Any votes cast by a Trading Permit Holder, either alone or together with its affiliates, in excess of this 20% limitation would be disregarded.[75]

The winner(s) of the Run-off Election would be nominated as the Representative Director(s) by the Nominating and Governance Committee for that year. In addition, CBOE and CBOE Holdings have entered into a Voting Agreement pursuant to which CBOE Holdings has committed to vote in favor of the Representative Directors recommended by the Nominating and Governance Committee.[76]

The Commission believes that the requirements in the proposed CBOE Bylaws that 20% of the CBOE Board be Representative Directors and the means by which they are chosen by members provides for the fair representation of members in the selection of directors and the administration of the Exchange consistent with the requirements of Section 6(b)(3) of the Act.[77] As the Commission has previously noted, this requirement helps to ensure that members have a voice in the use of the SRO's self-regulatory authority, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[78]

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[79] Further, public non-industry representatives help to ensure that no single group of market participants has the ability to disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the CBOE Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.[80] The Commission also believes that the proposed CBOE Board satisfies the requirements in Section 6(b)(3) of the Act,[81] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. In particular, at least one Non-Industry Director would be a Non-Industry Director exclusive of any exceptions and would have no material business relationship with a broker or dealer or the Exchange or any of its affiliates.

(3) Committees of CBOE

In addition to the Nominating and Governance Committee discussed above, CBOE would have an Executive Committee, an Audit Committee, a Compensation Committee, a Regulatory Oversight Committee, and such other standing and special committees as may be approved by the CBOE Board. Except as may be otherwise provided in the CBOE Bylaws, the Board would have the authority to remove committee members.[82]

Director Committees. Director candidates for CBOE's Executive, Audit, and Compensation Committees would be recommended by the Nominating and Governance Committee for approval by the CBOE Board.[83] The Audit Committee and the Compensation Committee would each consist of at least three directors, all of whom would be Non-Industry Directors.[84] The Regulatory Oversight Committee, which would be charged with overseeing the independence and integrity of the regulatory functions of the Exchange, would consist of at least three directors,[85] all of whom would be Non-Industry Directors recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board.[86] The Executive Committee[87] would consist of the Chairman and Vice Chairman of the CBOE Board, the Chief Executive Officer (if a director), the Lead Director (if any), at least one Representative Director, and such other number of directors that the Board deems appropriate, provided that at all times the majority of the directors serving on the Executive Committee are Non-Industry Directors.[88]

Member Committees. In addition to these CBOE Board-level committees, CBOE would have certain Exchange-level committees, including a Trading Advisory Committee and such other committees as may be provided from time to time.[89] The proposed Trading Advisory Committee would advise the Office of the Chairman regarding matters of interest to Trading Permit Holders.[90] The majority of the

[75] *See* proposed Section 3.1 of the CBOE Bylaws. In any Run-off Election, Trading Permits representing one-third of the total outstanding Trading Permits entitled to vote, when present in person or represented by proxy, would constitute a quorum for purposes of the Run-off Election. *See id.*

[76] CBOE included the proposed Voting Agreement as Exhibit 5F to its proposed rule change.

[77] 15 U.S.C. 78f(b)(3).

[78] *See, e.g.,* Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) ("BATS Exchange Registration Order"); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) ("Nasdaq Exchange Registration Order").

[79] *See, e.g.,* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

[80] *See, e.g.,* BATS Exchange Registration Order and Nasdaq Exchange Registration Order, *supra* note 78, 73 FR at 49501 and 71 FR at 3553, respectively.

[81] 15 U.S.C. 78f(b)(3).

[82] *See* proposed Section 4.1(a) of the CBOE Bylaws.

[83] *See* proposed Sections 4.2, 4.3 and 4.4 of the CBOE Bylaws. The selection and composition of the Nominating and Governance Committee is discussed above.

[84] *See* proposed Section 4.3 of the CBOE Bylaws (Audit Committee) and Section 4.4 of the CBOE Bylaws (Compensation Committee).

[85] *See* Amendment No. 1 at 11 (changing the number of directors required from four to three to allow for greater flexibility in the designation of the committee).

[86] *See* proposed Section 4.6 of the CBOE Bylaws.

[87] CBOE noted that its current Executive Committee (as well as the proposed new Executive Committee) generally does not make a decision unless there is a need for a CBOE Board-level decision between CBOE Board meetings due to the time sensitivity of the matter. *See* Notice, *supra* note 4, 73 FR at 51660–61. In addition, in situations when the current Executive Committee does make a decision between CBOE Board meetings, CBOE noted that the CBOE Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. *See id.* CBOE notes that the current CBOE Board is, and after the Restructuring Transaction would continue to be, fully informed of any decision made by the current (and new) Executive Committee at its next meeting and can always decide to review that decision and take different action. *See id.*

[88] *See* proposed Section 4.2 of the CBOE Bylaws. If the Vice Chairman is a Representative Director, the requirement to have at least one Representative Director on the new Executive Committee would be satisfied by the Vice Chairman's participation on that committee. The Executive Committee would have all the powers and authority of the CBOE Board in the management of the business and affairs of CBOE, except it would not have the power and authority of the Board to, among others: (i) Approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the proposed CBOE Certificate of Incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of CBOE's property and assets, or approval of a dissolution of CBOE or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of CBOE. *See* proposed Section 4.2 of the CBOE Bylaws.

[89] *See* proposed Section 4.1(b) of the CBOE Bylaws. "Exchange committees" refers to committees that are not solely composed of directors from the CBOE Board. Except as may be otherwise provided in the CBOE Bylaws, the rules or the resolution of the CBOE Board establishing any such other committee, the Vice Chairman of the Board, with the approval of the CBOE Board, would appoint the members of such Exchange committees (other than the committees of the CBOE Board) and may designate, with the approval of the Board, a Chairman and a Vice-Chairman thereof.

[90] *See* proposed Section 4.7 of the CBOE Bylaws.

committee would be individuals involved in trading either directly or through their firms. The Vice Chairman would serve as the Chairman of the committee and would appoint, with the approval of the CBOE Board, the other members of the committee. The proposed Trading Advisory Committee would serve as the replacement for CBOE's current Floor Directors Committee, which advises CBOE regarding trading and floor-related issues.

In addition, CBOE would continue to maintain a Business Conduct Committee ("BCC"), which would remain involved with the hearing of disciplinary matters.[91] CBOE is not proposing any material changes to the structure or function of the BCC.[92]

The Commission believes that the compositional requirements with respect to the committees discussed above are designed to ensure that members are protected from unfair, unfettered actions by the Exchange pursuant to its rules, and that, in general, the Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. The Commission believes that the proposed compositional balance of these CBOE committees is consistent with the Section 6(b)(3) of the Act, because it provides for the fair representation of Trading Permit Holders in the administration of the affairs of CBOE.

(4) Filling of Vacancies and Removal for Cause

Any vacancy in the CBOE Board could be filled by vote of a majority of the directors then in office or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists.[93] In the event the CBOE Board needs to fill a vacancy in a Representative Director position, the Industry-Director Subcommittee of the Nominating and Governance Committee would either (i) recommend an individual to the CBOE Board to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the CBOE Board from which the Board shall elect the individual to fill such vacancy.[94] In addition, the proposed CBOE Bylaws provide that no Representative Director may be removed from office at any time except for cause.[95]

(5) Officers of CBOE

CBOE would have a Chief Executive Officer, a Vice Chairman, a President, a Chief Financial Officer, one or more Vice-Presidents, a Secretary, a Treasurer, and such other officers as the CBOE Board may determine, including an Assistant Secretary and Assistant Treasurer.[96] In general, the officers would have the duties and powers set forth in the CBOE Bylaws, as well as such other duties or powers or both as the CBOE Board or, as applicable, the Chief Executive Officer may from time to time prescribe.[97]

Contrary to the current CBOE Constitution,[98] the proposed CBOE Bylaws would not restrict an officer from being a Trading Permit Holder or a person associated with a Trading Permit Holder or a broker or a dealer in securities or commodities or an associated person of such broker or dealer. The Exchange notes that there are other protections in place that limit the potential conflicts between the Exchange as an SRO and Trading Permit Holders, including, among other things, the existence of a Regulatory Oversight Committee as a committee of the Board that consists solely of Non-Industry Directors.[99]

The Commission finds that this proposed change consistent with the Act, including Section 6(b)(2) of the Act,[100] which requires that a national securities exchange have rules that provide that any registered broker or dealer may become a member. The Commission finds that there are sufficient safeguards in place to limit potential conflicts of interest between the Exchange as an SRO and Trading Permit Holders.

(6) Self-Regulatory Function and Oversight

As noted above, following the Restructuring Transaction, CBOE would continue to be registered as a national securities exchange under Section 6 of the Act and thus would continue to be an SRO.[101] As an SRO, CBOE is obligated to carry out its statutory responsibilities, including enforcing compliance by Trading Permit Holders with the provisions of the Federal securities laws and the rules of CBOE. In addition, CBOE would continue to be required to file with the Commission, pursuant to Section 19(b) of the Act[102] and Rule 19b–4 thereunder,[103] any proposed changes to its rules and governing documents.

The proposed CBOE Certificate of Incorporation contains various provisions designed to protect the self-regulatory functions of CBOE in light of the proposed new corporate structure. For example, each director would be required to take into consideration the effect that his or her actions would have on CBOE's ability to carry out its responsibilities under the Act.[104] The proposed CBOE Certificate of Incorporation also includes provisions designed to protect confidential information pertaining to the self-regulatory function of the Exchange.[105]

In addition, proposed CBOE Rule 2.51 requires that any revenue CBOE receives from regulatory fees or penalties would only be applied to fund the legal, regulatory, and surveillance operations of the Exchange and would not be used to pay dividends to CBOE Holdings, except in the event of liquidation of CBOE, in which case CBOE Holdings would be entitled to the distribution of CBOE's remaining assets.[106]

The Commission believes that the Exchange's proposed provisions concerning the self-regulatory function of CBOE are consistent with the Act, particularly, with Section 6(b)(1), which requires an Exchange to be so organized and have the capacity to carry out the purposes of the Act.[107] In particular, CBOE's proposed governing documents are designed to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

[91] *See* CBOE Rule 2.1(a). *See also infra* II.D (discussing the BCC).

[92] *See* Notice, *supra* note 4, 73 FR at 51663.

[93] *See* proposed Section 3.5(a) of the CBOE Bylaws.

[94] *See* proposed Section 3.5(b) of the CBOE Bylaws. Any individual recommended by the Industry-Director Subcommittee to fill the vacancy of a Representative Director position must qualify as an Industry Director.

[95] *See* proposed Section 3.4(c) of the CBOE Bylaws.

[96] *See* proposed Section 5.1(a) of the CBOE Bylaws.

[97] *See* proposed Sections 5.3, 5.4, 5.5, 5.6, 5.7 and 5.8 of the CBOE Bylaws. A few notable differences concerning CBOE's officers following the Restructuring Transaction include the following: (1) The Chief Executive Officer may, but would not have to, be a director or the Chairman of the CBOE Board; (2) the CBOE Board, as opposed to the membership, would select the Vice Chairman; and (3) the position of Chief Financial Officer would be formally incorporated into the CBOE Bylaws.

[98] *See* Section 8.1(b) of the current CBOE Constitution.

[99] *See* Notice, *supra* note 4, 73 FR at 51662.

[100] 15 U.S.C. 78f(b)(2).

[101] 15 U.S.C. 78f.

[102] 15 U.S.C. 78s(b).

[103] 17 CFR 240.19b–4.

[104] *See* proposed Article Fifth(d) of the CBOE Certificate of Incorporation.

[105] *See* proposed Article Eleventh of the CBOE Certificate of Incorporation.

[106] *See* Notice, *supra* note 4, 73 FR at 51662, and Amendment No. 1 at 14 (codifying this provision in proposed Rule 2.51).

[107] *See* 15 U.S.C. 78f(b)(1).

(7) Paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation

While the content of the Exchange's new Certificate of Incorporation and Bylaws would be similar to the content of the Exchange's old Certificate of Incorporation and Constitution, the new Certificate of Incorporation would not include, among other things, paragraph (b) of Article Fifth of the current CBOE Certificate of Incorporation ("Article Fifth(b)").[108] Article Fifth(b) provides the right for full members of The Board of Trade of the City of Chicago, Inc. ("CBOT") to become members of CBOE without having separately to purchase or lease a membership.[109]

Article Fifth(b) further provides that no amendment may be made to it without the prior approval of not less than 80% of both (i) the regular members of the Exchange admitted pursuant to Article Fifth(b) and (ii) the regular members of the Exchange admitted other than pursuant to Article Fifth(b), with each category voting as a separate class. CBOE has received a legal opinion from its Delaware counsel that under Delaware law, because the Restructuring Transaction is structured as a merger, this provision of Article Fifth(b) would not be triggered and the demutualization and related amendments to the Exchange's governing documents could be effected through a simple majority vote of members.[110]

In approving this proposal, the Commission is relying on CBOE's representation that its approach is appropriate under Delaware State law. The Commission is also relying on CBOE's letter of counsel that concludes that the Restructuring Transaction constitutes a merger and thus does not require the 80% vote contemplated in Article Fifth(b). Without opining on the merits of any claims arising solely under State law, the Commission finds that CBOE has articulated a sufficient basis to support its proposed changes.

D. Disciplinary Matters and Trading and Disciplinary Rule Changes

An exchange must be organized and have the capacity to carry out the purposes of the Act. Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with Federal securities laws and the rules of the exchange.[111] CBOE's current process for the hearing of disciplinary matters, and the rules governing that process, would remain substantively unchanged after the Restructuring Transaction. Under CBOE Rule 17.6(a), the hearing of a disciplinary matter currently is conducted by one or more members of the BCC. It has been the BCC's general practice to use three-person BCC hearing panels that include both industry and public representation, and CBOE is not proposing to change this process following demutualization.[112] Consistent with CBOE Rule 17.9, any decision of a BCC hearing panel that is not composed of at least a majority of the BCC is reviewed by the full BCC.

In addition, the current process for the review of appeals of disciplinary actions, and the rules governing that process, would remain substantively unchanged. Under current Rule 17.10(b), the CBOE Board is vested with the authority to review appeals of disciplinary actions. The CBOE Board may appoint a committee of the Board composed of at least 3 directors to review the appeal, but the decision of that committee must be ratified by the CBOE Board. Thus, after the Restructuring Transaction, Trading Permit Holders would have a say in the review of such appeals through their representation on the CBOE Board.[113]

The current process for the review of proposed trading and disciplinary rules also would remain unchanged. Since the CBOE Board would continue to be responsible for approving rule changes, including changes to trading and disciplinary rules,[114] Trading Permit Holders would have a voice in the review of these rules through their representation on the CBOE Board. In addition, the proposed Trading Advisory Committee, which would replace the existing Floor Directors Committee, would assume that prior committee's responsibility for the review of many of CBOE's proposed rule changes (particularly trading rules) in an advisory capacity. Accordingly, the Trading Advisory Committee would provide a mechanism for Trading Permit Holders to provide input on trading rules.

The Commission finds that the Exchange's amended By-Laws and rules concerning its disciplinary and oversight programs are consistent with the Act, including the requirements of Sections 6(b)(6)[115] of the Act, which requires the rules of an exchange to provide for the appropriate discipline of its members and persons associated with members for violations of the Federal securities laws and exchange rules, and Section 6(b)(7),[116] which requires the rules of an exchange to provide a fair procedure for the disciplining of members and persons associated with members, in that they are designed to provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposal is designed to provide the Exchange with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of Exchange.[117]

E. Trading Permits

Prior to the Restructuring Transaction, Exchange memberships provided trading access to the Exchange. After the Restructuring Transaction, "Trading Permits" would provide trading access to the Exchange.[118] A person or entity

[108] As a result of this change, the Exchange is proposing to delete CBOE Rule 3.16, which addresses certain issues related to Article Fifth(b).

[109] On January 15, 2008, the Commission approved an interpretation of Article Fifth(b) ("Article Fifth(b) Interpretation") that addressed the impact of the acquisition of CBOT by Chicago Mercantile Exchange Holdings Inc. ("CME/CBOT Transaction") on the eligibility of persons to become or remain members of CBOE ("exerciser members") pursuant to Article Fifth(b) (the right provided under this provision is sometimes referred to as the "exercise right"). *See* Securities Exchange Act Release No. 57159 (January 15, 2008), 73 FR 3769 (January 22, 2008) (order approving File No. SR–CBOE–2006–106). Under that interpretation, the consummation of the CME/CBOT Transaction resulted in no person any longer qualifying as a member of the CBOT within the meaning of Article Fifth(b) and therefore resulted in the elimination of any person's eligibility to qualify thereafter to become or remain an exerciser member of the Exchange.

[110] *See* Letter from Richards, Layton & Finger to Chicago Board Options Exchange, Incorporated dated August 20, 2008.

[111] *See* 15 U.S.C. 78f(b)(1).

[112] *See* Notice, *supra* note 4, 73 FR at 51661.

[113] As CBOE previously noted, it has been the CBOE Board's general practice to appoint a cross-section of directors to the CBOE Board committees that review appeals of disciplinary actions. *See* Notice, *supra* note 4, 73 FR at 51662. These committees usually consist of a floor or at-large director, an off-floor director, and a public director. *See id.* CBOE is not proposing to change this general practice and would expect that CBOE Board committees that review disciplinary decision appeals after the Restructuring Transaction would generally consist of an Industry Director who or whose firm is engaged in trading on the Exchange, an Industry Director whose firm is significantly engaged in conducting a securities business with public customers, and a Non-Industry Director. *See id.*

[114] *See* proposed Section 10.1 of the CBOE Bylaws.

[115] 15 U.S.C. 78f(b)(6).

[116] 15 U.S.C. 78f(b)(7).

[117] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[118] *See* proposed CBOE Rule 1.1(ggg) (defining Trading Permit). "Trading Permits" would be defined as licenses issued by the Exchange that grant the holders or the holders' nominee the right to access the Exchange or one or more of its facilities for the purpose of effecting transactions in securities traded on the Exchange without the services of another person acting as broker, and

that holds a Trading Permit would be referred to as a "Trading Permit Holder." [119] Trading Permit Holders would meet the definition of "member" in Section 3(a)(3)(A) of the Act.[120] As members under the Act, Trading Permit Holders and their nominees would be subject to the regulatory jurisdiction of the Exchange, including the Exchange's disciplinary jurisdiction under Chapter XVII of the CBOE Rules.[121]

A Trading Permit would not convey any ownership interest in the Exchange, would only be available through the Exchange, and would be subject to the terms and conditions set forth in proposed CBOE Rule 3.1. As a result of the Exchange's proposed new structure in which ownership would be separated from trading access, the Exchange is planning to propose separately to replace the term "member" throughout its rules with the term "Trading Permit Holder." [122]

(1) Features of Trading Permits

The Exchange would have the authority to issue different types of Trading Permits that allow holders thereof to trade one or more products authorized for trading on the Exchange and to act in one or more authorized trading functions. Trading Permits would be for set terms specified by the Exchange.[123] The Exchange expects initially to offer Trading Permits for terms of one month, three months, and one year, and would announce in a circular the types of permits it has determined to offer.[124] Trading Permits would be subject to such fees and charges as are established by the Exchange from time to time.[125]

The Exchange would have the authority to increase the number of any type of Trading Permit it has determined to issue.[126] The Exchange also would have the authority to limit or reduce the number of any type of Trading Permit it has determined to issue,[127] although the Exchange would be prohibited from eliminating or reducing the ability to trade one or more product(s) of a person currently trading such product(s) and would be prohibited from eliminating or reducing the ability to act in one or more trading function(s) of a person currently acting in such trading function(s), unless the Exchange is permitted to do so pursuant to a rule filing submitted to Commission under Section 19(b) of the Act.[128] The Exchange would announce in a circular any limitation or reduction in the number of Trading Permits it seeks to impose. In addition, the Exchange would have the authority, pursuant to a rule filing submitted to the Commission under Section 19(b) of the Act,[129] to establish objective standards that must be met to obtain or renew a Trading Permit.[130]

Trading Permits could not be leased or transferred to any person except that an organization holding a Trading Permit may change the designation of the nominee in respect of each Trading Permit it holds or a Trading Permit Holder may, with the prior written consent of the Exchange, transfer a Trading Permit to a Trading Permit Holder organization or to an organization approved to be a TPH organization which is an affiliate or which continues substantially the same business without regard to the form of the transaction used to achieve such continuation.[131]

(2) Issuance of Trading Permits

In connection with the Restructuring Transaction, each current member of the Exchange that has the ability to trade would be eligible to receive a Trading Permit. Specifically, provided such person submits a post-Restructuring Transaction trading application to the Exchange,[132] is in good standing as of the date of the Restructuring Transaction, complies with the application procedures established by the Exchange, and pays any applicable fees, the Exchange would issue to such person a Trading Permit in respect of: (A) Each membership not subject to an effective lease as of the date of the Restructuring Transaction that is owned by the applicant; (B) each membership that is leased as a lessee by the applicant as of the date of the Restructuring Transaction; (C) each trading permit issued by the Exchange prior to the Restructuring Transaction that is held by the applicant,[133] provided that in the case of a CBSX trading permit, the Exchange would issue a Trading Permit in respect of the CBSX trading permit that only provides the right to effect transactions on the CBSX; [134] and (D) each Temporary

otherwise to access the Exchange or its facilities for purposes of trading or reporting transactions or transmitting orders or quotations in securities traded on the Exchange, or to engage in other activities that, under CBOE rules, may only be engaged in by holders of Trading Permits, provided that the holder or the holder's nominee, as applicable, satisfies any applicable qualification requirements to exercise those rights.

[119] *See* proposed Section 1.1(f) of the CBOE Bylaws (defining Trading Permit Holder) and proposed CBOE Rule 1.1(gg) (defining Trading Permit Holder). A "Trading Permit Holder" could be an individual, corporation, partnership, limited liability company, or other entity authorized by the CBOE rules to hold a permit.

[120] 15 U.S.C. 78c(a)(3)(A). As described in Section II.C.2 above (Nomination and Election of Directors), the selection process for Representative Directors for the CBOE Board addresses the fair representation requirement for members contained in Section 6(b)(3) of the Act. 15 U.S.C. 78f(b)(3). *See also supra* note 39 (defining "Trading Permit Holder").

[121] *See* proposed CBOE Rule 3.1(a)(iii).

[122] This change will cause a significant number of the Exchange's rules to be amended. The Exchange intends to submit a separate filing to change the term "member" to "Trading Permit Holder" in the remainder of its rules and forms, as well as to make certain other related conforming changes.

[123] *See* proposed CBOE Rule 3.1(a)(iv).

[124] *See* Notice, *supra* note 4, 73 FR at 51663.

[125] *See* proposed CBOE Rule 3.1(a)(v). The Exchange would be required to file proposed rule changes under Section 19(b) of the Act, 15 U.S.C. 78s(b), including, as applicable, Section 19(b)(3)(A)(ii), 15 U.S.C. 78s(b)(3)(A)(ii), to establish or change the fees for the types of Trading Permits it determines to issue.

[126] *See* proposed CBOE Rule 3.1(a)(vii).

[127] *See* proposed CBOE Rule 3.1(a)(vi). The Exchange would only be permitted to limit or reduce the number of any type of Trading Permit in a manner that complies with Section 6(c)(4) of the Act (15 U.S.C. 78f(c)(4)). *See* proposed CBOE Rule 3.1(a)(vi). The Exchange would retain the authority to take any action (remedial or otherwise) under the Act, the Bylaws, and the Rules. For example, the Exchange would continue to have the authority to take disciplinary action against a person over which the Exchange has jurisdiction. *See* proposed CBOE Rule 3.1(a)(ix).

As noted in a letter submitted by the Exchange to the Commission in connection with SR–CBOE–2006–106, CBOE has been unable to locate records that reflect with certainty the number of CBOE memberships on May 1, 1975. *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel and Corporate Secretary, CBOE, to Richard Holley III, Senior Special Counsel, Division of Market Regulation, Commission, dated November 2, 2007 (*http://www.sec.gov/comments/sr-cboe–2006-106/cboe2006106-161.pdf*). The closest date to May 1, 1975 for which CBOE has been able to locate records that CBOE believes can be relied upon to establish this information is June 30, 1975. Specifically, CBOE has financial statements as of June 30, 1975, the end of its then fiscal year, which set forth this information as of that date. The number of CBOE memberships on June 30, 1975 was 1,025.

[128] 15 U.S.C. 78s(b).

[129] 15 U.S.C. 78s(b).

[130] *See* proposed CBOE Rule 3.1(a)(viii). Rule 3.1 provides that notwithstanding Rule 3.1 and Rule 3.1A (which addresses the issuance of Trading Permits to current members) nothing in those rules would eliminate or restrict the Exchange's authority to delist any product or to take any action under the Act, the Bylaws and the Rules. *See* proposed CBOE Rule 3.1(a)(ix).

[131] *See* proposed CBOE Rule 3.1(d)(ii).

[132] *See* proposed CBOE Rule 3.1A(a).

[133] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) (approving issuance of 50 Interim Trading Permits "ITPs"). Pursuant to Rule 3.27, the Exchange was authorized to issue ITPs to address the demand for trading access to the Exchange to the extent that a shortage exists from time to time in the number of transferable Exchange memberships available for lease.

[134] CBOE Rule 3.26, which currently provides for the issuance of CBSX trading permits, would be deleted as part of this rule filing because all Trading Permits after the Restructuring Transaction would be issued under proposed CBOE Rule 3.1. For the same reason, CBOE Rule 3.27, which currently provides for the issuance of Interim Trading Permits, also would be deleted.

Membership held pursuant to Interpretation and Policy .02 of CBOE Rule 3.19.[135] Trading Permits also would be available, pursuant to an application process, to persons seeking trading access to the Exchange for the first time, as well as persons seeking to obtain additional Trading Permits.

Persons who are issued Trading Permits as set forth above would have the ability pursuant to those Trading Permits to continue trading any product, and acting in any trading function, that those persons traded, or acted in, at the time of the Restructuring Transaction.[136]

The Exchange would have the ability to issue one or more types of Trading Permits through either a random lottery process or an order in time process.[137] In connection with an issuance of such Trading Permits, a Qualified Person [138] and any affiliated Qualified Person would be eligible to receive no more than the greater of 10 such Trading Permits or 20% of the number of Trading Permits issued at any given time.[139] This limit, however, would not apply in the event the number of permits to be issued exceeds the demand for such permits, in which case permits would be made available through the order in time process.[140]

The Exchange would automatically renew a Trading Permit for the same term as the expiring term,[141] unless, with advance notice to the Exchange and in a form and manner prescribed by the Exchange, the holder seeks to terminate the permit [142] or seeks to change the type of Trading Permit held.[143]

The Commission finds that the proposed CBOE rules governing the nature and issuance of Trading Permits are consistent with the Act, including Section 6(b)(2) of the Act,[144] which requires that a national securities exchange have rules that provide that any registered broker or dealer may become a member and any person may become associated with an exchange member.[145] The Commission notes that pursuant to Section 6(c) of the Act,[146] an exchange must deny membership to non-registered broker-dealers and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity.

(3) Tier Appointments

The Exchange has proposed a new type of appointment called a "tier appointment" for a market-maker seeking to trade one or more options classes.[147] Tier appointments would be subject to an application process similar to the process applicable for Trading Permits (*i.e.,* the random lottery or order in time processes).[148] Notwithstanding this application requirement, in the event a current member of the Exchange at the time of the Restructuring Transaction is trading an options class with respect to which the Exchange is establishing a tier appointment, the Exchange in connection with the Restructuring Transaction would issue to that member such tier appointment, provided that the Exchange is notified of that member's desire to hold such a tier appointment.[149] Tier appointments would be in addition to the current appointment cost process set forth in CBOE Rule 8.3, which would remain unchanged.[150]

Market-makers would be required to designate a Trading Permit with which a tier appointment would be associated and could designate no more than one tier appointment per Trading Permit.[151] Tier appointments would be for the same term as the Trading Permit with which the tier appointment is associated. Termination, change, renewal, and transfer of tier appointments would be subject to the same terms and conditions as the processes for Trading Permits.[152] The Exchange would have the authority to establish, increase, limit, or reduce the number of a type of tier appointment and to establish objective standards for a market-maker to be issued, or to have renewed, a particular type of tier appointment.[153] Tier appointments would be subject to such fees and charges as are established by the Exchange from time to time.[154]

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[135] A person who was eligible to receive Trading Permit(s) pursuant to any of these provisions but who failed to comply with the application or other requirements must submit an application for a new Trading Permit and must go through the approval process to hold a Trading Permit. *See* proposed CBOE Rule 3.1A(c).

[136] This guarantee is subject to Rule 3.1(a)(iv), which provides that nothing in Rules 3.1 or 3.1A would eliminate or restrict the Exchange's authority to delist any product or to take any action (remedial or otherwise) under the Act, the Bylaws, and the Rules, including without limitation the Exchange's authority to take disciplinary or market performance actions against a person with respect to which the Exchange has jurisdiction under the Act, the Bylaws, and the Rules. *See supra* note 130. In addition, this guarantee is subject to the continuing satisfaction of any applicable qualification requirements, as well as to the Exchange's ability discussed above to limit or reduce the number of any type of Trading Permit pursuant to a rule filing with the Commission. *See* proposed CBOE Rules 3.1A(a) and 3.1(a)(vi).

[137] *See* proposed CBOE Rule 3.1(b)(iii). The Exchange also would have the authority to modify these processes or to establish any other objective process to issue Trading Permits pursuant to a rule filing submitted to the Commission under Section 19(b) of the Act (15 U.S.C. 78s(b)).

The Exchange in its discretion may maintain a waiting list to be used to issue Trading Permits pursuant to the order in time process. *See* proposed CBOE Rule 3.1(b)(ii). If the Exchange maintains a waiting list, Qualified Persons would be placed on that waiting list based on the order in time that such persons submitted applications, and such persons may at any time voluntarily withdraw from that waiting list. A person on the waiting list would be permitted to adjust the number of Trading Permits that such person would like to receive at any time prior to an announcement of an issuance of such Trading Permits.

[138] *See* proposed CBOE Rule 8.1(b)(i) (defining Qualified Person).

[139] *See* proposed CBOE Rule 3.1(b)(iii).

[140] *See id.*

[141] *See* proposed CBOE Rule 3.1(c)(iii). In renewing a Trading Permit, the Exchange would have the authority to issue one or more Trading Permits that represent the same or more trading right(s) as the expiring permit. *See* proposed CBOE Rule 3.1(c)(ii). To the extent the Exchange determines to issue one or more Trading Permits that represent the same or more trading right(s) as an expiring Trading Permit, the Exchange would provide all holders of that type of expiring Trading Permit with the new Trading Permit(s).

[142] *See* proposed CBOE Rule 3.1(c)(i).

[143] *See* proposed CBOE Rule 3.1(c)(ii).

[144] 15 U.S.C. 78f(b)(2).

[145] *See, e.g.,* BATS Exchange Registration Order and Nasdaq Exchange Registration Order, *supra,* note 78, 73 FR at 59502 and 71 FR at 3555, respectively.

[146] 15 U.S.C. 78f(c).

[147] *See* proposed CBOE Rule 8.3.

[148] *See* proposed CBOE Rule 8.3(e).

[149] *See* proposed CBOE 3.1A(b).

[150] In general, under that process, the number of memberships owned or leased by a market-maker serves as the basis for determining the number/types of options classes that the market-maker can trade. In this regard, each membership held by a market-maker has an appointment credit of 1.0, and each option listed on the Exchange has an assigned appointment cost. Under that process, for example, a market-maker with one membership could trade options on the Nasdaq 100 Index, which has an appointment cost of .50, and options on the CBOE Volatility Index, which also has an appointment cost of .50. *See* Notice, *supra* note 4, 73 FR at 51665.

[151] *See* proposed CBOE Rule 8.3(e).

[152] For example, if a holder of a tier appointment does not notify the Exchange that the holder wants to terminate that tier appointment and does not file an application to replace that tier appointment, that tier appointment would be renewed along with its associated Trading Permit for the same term as the expiring term of that Trading Permit.

[153] *See* proposed Rule 8.3 that provides that notwithstanding the rule, nothing therein would eliminate or restrict the Exchange's authority to delist any product or to take any action under the Act, the Bylaws and the Rules. The application process and issuance of tier appointments as specified in Rule 8.3 would be in accordance with, and subject to the same terms and conditions as, the issuance process set forth for Trading Permits in Rule 3.1(b). Termination, change, renewal, and transfer of tier appointments would be in accordance with, and subject to the same terms and conditions as, the process set forth for Trading Permits in Rule 3.1(c) and (d). If it seeks to limit or reduce the number of a type of tier appointment, or establish other objective standards governing issuance and/or renewal of a particular type of tier appointment, the Exchange first would need to file with the Commission a proposed rule change under Section 19(b) of the Act, 15 U.S.C. 78s(b).

[154] The Exchange would be required to file proposed rule changes under Section 19(b) of the

The Commission finds that the proposed CBOE rules governing tier appointments are consistent with the Act, including Section 6(b)(2) of the Act,[155] which requires that a national securities exchange have rules that provide that any registered broker or dealer may become a member. In particular, the proposal would preserve the existing appointments of current CBOE market-makers, and any new or expanded tier appointments would be allocated in accordance with, and subject to the same terms and conditions as, the issuance process set forth for Trading Permits in Rule 3.1(b). To the extent the Exchange seeks to limit or reduce any type of tier appointment, the Commission notes that the Exchange would need to do so in an equitable and not unfairly discriminatory manner and file any such proposal with the Commission pursuant to Section 19 of the Act.

F. Other Changes to the Rules

(1) Chapter I of the Rules

The Exchange has proposed amended definitions in Chapter I to reflect the use of Trading Permits.[156] The Exchange also proposed a definition of its new "TPH Department,"[157] which would serve as the successor to CBOE's Membership Department and would continue the functions of that department, such as processing applications for Trading Permits. The Commission finds the proposed changes to Chapter I of CBOE's rules to be consistent with the Act as they are necessary to update the terms used in the rules and would assist Trading Permit Holders and the public in understanding the application and scope of CBOE's rules.

(2) Chapter II of the Rules

CBOE has proposed several clarifying amendments to CBOE Rule 2.1, including limiting its scope to Exchange committees (*i.e.,* committees that are not solely composed of CBOE directors) and clarifying the manner of appointment to such committees to reflect the fact that the Vice Chairman of the Board, with the approval of the CBOE Board, would appoint the chairmen and members of committees (other than the BCC)[158] unless otherwise provided by the rules of CBOE or by the CBOE Board.[159] CBOE has also proposed to streamline the process for filling vacancies on Exchange committees (other than the BCC)[160] and would provide that a majority would generally constitute a quorum for committee meetings.[161] The proposed revision would also clarify that committees could take all types of actions, not only "informal" actions, pursuant to written consent.[162]

Further, CBOE has proposed to clarify certain aspects of the authority of the CBOE Board over committees, including a clarification that the CBOE Board may delegate powers and duties to the committees and that each Exchange committee is subject to the control and supervision of the CBOE Board.[163] CBOE proposed to clarify that the CBOE Board has the authority to review, modify, suspend, or overrule any and all actions of any committee, officer, representative, or designee of the Exchange taken pursuant to the rules in accordance with any applicable review procedures specified in the rules.[164] Finally, CBOE proposed conforming changes to the rules in Chapter II to reflect the use of the term Trading Permits.[165]

The Commission finds that the proposed changes to Chapter II of CBOE's rules are consistent with the Act in that they clarify the operation of Exchange committees and the authority of the CBOE Board and also update the terms used in the rules to reflect the proposed Restructuring Transaction, therein clarifying the application and scope of CBOE's rules.

(3) Chapter III of the Rules

CBOE has proposed conforming changes to certain rules in Chapter III to reflect the change from memberships to Trading Permits without changing the substance of these rules.[166] In addition, the process for designating nominees for Trading Permits in CBOE Rule 3.8 would be amended to require an organization to designate as its nominee an associated person who is an individual holder of a Trading Permit.[167] Further, the Exchange proposes to streamline the process of designating nominees for organizations that have multiple Trading Permits in their name. As modified, CBOE Rule 3.8(a)(ii) would allow organizations to designate the same individual to be the nominee for Trading Permits held in its name, including Trading Permits used for trading in open outcry on the trading floor.[168]

The Exchange also is deleting the requirement in CBOE Rule 3.7(g) that a member keep and maintain a current copy of the CBOE Constitution and rules in a readily accessible place and available for examination by customers. CBOE believes that, because it is required to maintain a copy of its governing documents and rules online, this requirement is no longer necessary.[169] Finally, the Exchange is amending CBOE Rule 3.9 to, among other things, delete the requirement that the Exchange post notices of applications on the Exchange Bulletin

Act, 15 U.S.C. 78s(b), including, as applicable, Section 19(b)(3)(A)(ii), 15 U.S.C. 78s(b)(3)(A)(ii), to establish and change the fees for the types of Trading Permits it has determined to issue.

[155] 15 U.S.C. 78f(b)(2).

[156] For example, the Exchange proposed to delete the terms "Lessor" and "Lessee" (since these concepts would not exist after the Restructuring Transaction) and added proposed definitions of "person," "Trading Permit," and "Trading Permit Holder." *See* proposed CBOE Rules 1.1(ff) and (gg). A "person" would be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

[157] *See* proposed CBOE Rule 1.1(iii) (defining TPH Department).

[158] After the Restructuring Transaction, the President, with approval of the Board, would continue to have the authority to appoint members to the Business Conduct Committee. *See* proposed CBOE Rules 2.1(a). *See also* Notice, *supra* note 4, 73 FR at 51666.

[159] *See* proposed CBOE Rule 2.1(a).

[160] *See id.*

[161] *See* proposed CBOE Rule 2.1(b).

[162] *See* proposed CBOE Rule 2.1(b).

[163] *See* proposed CBOE Rules 2.1(d) and 2.1(e).

[164] *See* proposed CBOE Rule 2.2.

[165] For example, references to the term "dues" have been deleted in CBOE Rules 2.20, 2.22, and 2.23 because this term generally refers to payments made by members in a membership organization. This change also has been made to other rules in Chapters I–III. *See, e.g.,* CBOE Rule 1.1(jj).

[166] For example, rules relating to the sale, transfer, and lease of memberships, and to the member death benefit would be deleted, because they would not be applicable to Trading Permits. *See, e.g.,* CBOE Rules 3.12–3.15. CBOE Rules 3.24 (regarding member death benefit) and 3.25 (regarding transfer of memberships in trust) would also be deleted. In addition, CBOE Rule 3.1, which was designed to, among other things, ensure that memberships were used for trading on the Exchange, would be replaced with a new version as this requirement would not be necessary in the context of Trading Permits that, unlike memberships, are directly linked to having a trading function on the Exchange. Other conforming changes are being proposed to CBOE Rules 3.2 and 3.3 (relating to the qualifications to be a member or member organization, and the application process to become a member; 3.5 (relating to the authority of the Exchange to deny or condition persons from becoming or being associated with Trading Permit Holders); 3.18 (regarding statutory disqualification); and Rule 3.10 (regarding status of Trading Permit Holders).

[167] *See* CBOE Rule 3.8(a). References to registering a membership for a member organization would be deleted because that concept would have no application once Trading Permits are used to provide trading access to the Exchange. *See* proposed CBOE Rule 3.8. The Exchange also would make this change to other rules in Chapters I–III and to CBOE Rule 8.3. *See* Notice, *supra* note 4, 73 FR at 51667, n.180.

[168] Under the existing rule, a member organization that has multiple memberships in its name can designate the same individual to be the nominee for those memberships, except that for each membership used for trading in open outcry on the trading floor, the member organization must designate a different individual to be the nominee for each of those memberships.

[169] *See* Notice, *supra* note 4, 73 FR at 51667.

Board, as it believes that use of a physical bulletin board at the Exchange to notify persons is outdated in the era of electronic and remote trading.[170]

G. Request for Commission Approval Under Section 15.16 of the CBSX Operating Agreement

Under the CBSX Operating Agreement, CBOE is defined as one of the "Owners" of CBSX. Section 15.16 of the CBSX Operating Agreement provides that, in the event that a person acquires a 25% or greater interest in an Owner that owns a 20% or greater interest in CBSX, that person must execute an amendment to the Operating Agreement in which that person agrees to be a party to the Operating Agreement and to abide by all of the provisions of the Operating Agreement. Section 15.16 also provides that Commission approval under Section 19 of the Act is required in connection with such an amendment to the Operating Agreement.[171] Because CBOE owns a 50% interest in CBSX, the establishment of CBOE Holdings as the sole shareholder of CBOE would trigger this Commission approval requirement. Consistent with this requirement in Section 15.16 of the CBSX Operating Agreement, CBOE has requested as part of this proposed rule change that the Commission provide such approval.

The provision in the CBSX Operating Agreement requiring Commission approval of an amendment to the CBSX Operating Agreement to effectuate a change in control was designed to involve the Commission and CBOE in assessing the potential conflicts of control that could arise. In the case of the Restructuring Transaction, CBOE would become wholly-owned by CBOE Holdings. However, as discussed in detail above, CBOE Holdings would be subject to a number of conditions designed to protect the regulatory independence of CBOE in recognition of its status as an SRO. Accordingly, the Commission finds that the amendment to the CBSX Operating Agreement with respect to the change in control of CBOE in connection with the Restructuring Transaction is consistent with the Act.

H. Accelerated Approval

CBOE has asked the Commission to grant accelerated approval of the proposal, as modified by Amendment No. 1. As set forth below, the Commission finds good cause for approving the proposal, as modified by Amendment No. 1, prior to the thirtieth day after publishing notice of Amendment No. 1 in the **Federal Register**.[172]

In Amendment No. 1, CBOE proposed the following modifications to the proposed CBOE Holdings governing documents: (1) Issuance of a single class of common stock of CBOE Holdings, rather than different series of common stock as was originally proposed; (2) minor revisions to the transfer restrictions on common stock; (3) incorporation of the term "Regulated Securities Exchange Subsidiary," rather than "CBOE," to accommodate the potential future ownership of more than one national securities exchange by CBOE Holdings; (4) requiring that shares of stock issued in connection with the Restructuring Transaction be recorded on the books and records of CBOE Holdings only in the name of the owner of the shares to ensure compliance with the transfer restrictions; (5) changes to the size of the CBOE Holdings Board and term of its Directors; (6) defer for one year the date of the first annual meeting of CBOE Holdings stockholders, and thus the first election of post-Restructuring Transaction directors; (7) changes to the content of the notice stockholders must submit in connection with director nominations or stockholder requests to bring matters before the annual stockholder meeting; (8) the ability to set separate record dates for stockholder notice of a stockholder meeting and for voting purposes; (9) specify that two-thirds of CBOE Holdings directors must satisfy the independence requirements contained in the listing standards of either NYSE or The Nasdaq Stock Market; (10) modify the "for cause" removal standard applicable to directors in light of the change to one-year terms for directors; (11) delete the requirement that at least one director on the CBOE Holdings Compensation Committee be the beneficial owner of CBOE Holdings stock; (12) changes to the size of the CBOE Holdings Nominating and Governance Committee; and (13) make certain technical, non-substantive wording changes.

In addition, Amendment No. 1 proposes the following changes to the proposed CBOE governing documents: (1) Changes to the size of the CBOE Board and term of its Directors; (2) defer for one year the date of the first annual meeting of CBOE stockholders, and thus the first election of post-Restructuring Transaction directors; (3) modify the "for cause" removal standard applicable to directors in light of the change to one-year terms for directors; (4) delete the requirement that at least one director on the CBOE Compensation Committee be the beneficial owner of CBOE Holdings stock; (5) change the requisite number of directors on the Regulatory Oversight Committee from four to three; (6) revise the provision dealing with the duties and powers of the CBOE Treasurer to make the provision the same as a similar provision set forth in the CBOE Holdings corporate documents; and (7) correct non-substantive typographical errors.

Finally, Amendment No. 1 seeks to make the following changes to the proposed CBOE Rules: (1) Adopt a rule governing the permissible uses of regulatory revenues; and (2) make certain changes to reflect intervening proposed rule changes that have been submitted since CBOE filed its proposal.

The Commission believes that the changes contained in Amendment No. 1 are consistent with the Act. The Commission notes that the changes proposed in Amendment No. 1 are either not material or are otherwise responsive to the concerns of the Commission and do not raise any regulatory concerns. In addition, the Commission notes that the initial proposed rule change was published for comment with a comment period ending on September 25, 2008 and the Commission did not receive any comments on the proposal. Accordingly, the Commission finds that good cause exists for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[173]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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–CBOE–2008–88 on the subject line.

[170] The information would continue to be published in the electronic Exchange Bulletin. *See* CBOE Rule 3.9(e). The Exchange also would post notices of the effectiveness of Trading Permit Holder status or approval of a trading function in the Exchange Bulletin. *See* proposed CBOE Rule 3.11.

[171] 15 U.S.C. 78s.

[172] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of notice thereof, unless the Commission finds good cause for so doing.

[173] 15 U.S.C. 78s(b)(2).

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–CBOE–2008–88. 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 CBOE. 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–CBOE–2008–88 and should be submitted on or before June 18, 2010.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[174] that the proposed rule change (SR–CBOE–2008–88), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

By the Commission.

Elizabeth M. Murphy,

Secretary.

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[174] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62157; File No. SR–NYSEArca–2010–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Amending Its Schedule of Fees

May 24, 2010.

On April 12, 2010, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend a pilot program capping transaction fees for strategy executions. Under this pilot program, strategy executions are capped at $750 per transaction, and $25,000 per month per initiating firm. This proposed rule change retroactively extended the duration of this pilot program from March 1, 2010 through April 1, 2010. The proposed rule change was published for comment in the **Federal Register** on April 19, 2010.[3] The Commission received no comments regarding the proposal.

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, Section 6(b)(5) of the Act,[5] which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change allows the pilot program to continue without interruption from March 1, 2010 through April 1, 2010.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2010–28) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12874 Filed 5–27–10; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61895 (April 13, 2010), 75 FR 20417.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62152; File No. SR–ISE–2010–41]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional Customer Fees

May 21, 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 5, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees. 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its Schedule of Fees. Specifically, the Exchange proposes to adopt a $0.18 per contract execution fee for "professional customers" who execute orders as a result of taking liquidity from ISE's order book.

ISE rules distinguish between Priority Customer Orders and Professional Orders.[3] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Professional Order is defined in ISE Rule 100(a)(37C) as an order that is for the account of a person or entity that is not a Priority Customer. For purpose of this discussion, "professional customers" are non-broker/dealer participants who enter at least 390 orders per day on average during a calendar month for their own beneficial account(s). The level of trading activity by professional customers more resembles that of market makers and proprietary traders on the Exchange than it does of other customers.

Currently, the primary distinction between the two types of customers is that Priority Customers are given priority on the order book over professional customers. Professional customers are on parity with market makers and broker/dealers. However, professional customers, until recently, did not pay transaction fees and currently do so on a limited basis. Market makers and broker/dealers on the other hand have always paid transaction fees to the Exchange. Specifically, for market makers, the Exchange currently applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month. Broker/dealer orders currently pay a flat execution fee of $0.20 per traded contract.[4]

Earlier this year, the Exchange adopted a $0.20 per contract execution fee for professional customers who execute orders as a result of posting liquidity to ISE's order book.[5] This "maker" fee applies only to professional customer orders, i.e., non-broker/dealer customer orders; it does not apply to market maker and broker/dealer orders who already pay transaction fees under the Exchange's current fee schedule.

The Exchange now proposes to adopt a $0.18 per contract execution fee for professional customers who execute orders as a result of taking liquidity from ISE's order book.[6] The Exchange currently has a fee cap for large-size foreign currency ("FX") options orders where ISE waives the transaction fee on incremental volume above 5,000 contracts for single-sided FX options orders of at least 5,000 contracts. This fee waiver will also apply to professional customer orders. The Exchange believes that the proposed fees for professional customers will allow the Exchange to remain competitive with other options exchanges who apply fees to professional customers.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed rule change will help equalize fees among market makers, proprietary traders and professional customers on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–41 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–2010–41. 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,[12] 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

[3] *See* Securities Exchange Act Release No. 59287 (Jan. 23, 2009), 74 FR 5694 (Jan. 30, 2009).

[4] The Exchange recently adopted a modified maker/taker pricing program applicable to a select number of options classes under which professional customer orders and broker/dealer orders are treated equally. *See* Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010).

[5] *See* Securities Exchange Act Release No. 61434 (January 27, 2010), 75 FR 5826 (February 4, 2010).

[6] Fees charged by the Exchange for professional customer orders are always equal to or less than those charged for broker/dealer orders.

[7] The fees proposed herein do not apply to professional customer orders in a select number of options classes that are a part of the modified maker/taker pricing program recently adopted by the Exchange. *See supra* note 2.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com*, on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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–2010–41 and should be submitted on or before June 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12872 Filed 5–27–10; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2010–0015]

Notice and Request for Comments: Canada—Compliance With Softwood Lumber Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment.

SUMMARY: Under the 2006 Softwood Lumber Agreement (SLA), Canada agreed to impose export measures on Canadian exports of softwood lumber products to the United States. At the request of the United States, an arbitral tribunal established under the SLA determined in March 2008 that Canada had breached certain SLA obligations. In February 2009, the tribunal issued a remedy award requiring Canada to collect an additional 10 percent *ad valorem* export charge on softwood lumber shipments from Ontario, Quebec, Manitoba, and Saskatchewan, until an entire amount of CDN $ 68 million has been collected. Canada did not begin collecting the additional export charge. In April 2009, the United States Trade Representative ("Trade Representative") initiated an investigation under Section 302 of the Trade Act of 1974, as amended ("Trade Act"). In that investigation, the Trade Representative determined that Canada's failure to implement the tribunal's remedy award had the effect of denying U.S. rights under the SLA; and, pursuant to Section 301 of the Trade Act, the Trade Representative imposed 10 percent *ad valorem* duties on imports of softwood lumber products subject to the SLA from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan (the April 2009 action). Under the April 2009 action, the duties are to remain in place until such time as the United States collects $54.8 million, the U.S. dollar equivalent of CDN $ 68 million at the time. The Government of Canada, however, is now taking steps toward adopting its own measure to address Canada's breach of the SLA, in the form of legislation requiring the collection of an additional 10 percent charge on exports from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. In the event that the proposed bill becomes law by receiving royal assent, and if the Trade Representative finds that the law satisfactorily grants the rights of the United States under the SLA, the Trade Representative may modify or terminate the April 2009 action. Interested persons are invited to submit comments on the possible modification or termination of the April 2009 action.

DATES: To be assured of consideration, comments should be submitted by no later than 5 p.m. on June 14, 2010, although USTR will continue to accept comments after that date.

ADDRESSES: Non-confidential comments (as explained below) should be submitted electronically via the Internet at *http://www.regulations.gov,* docket number USTR–2010–0015. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comments contain confidential information, the person wishing to submit such comments should contact Sandy McKinzy at (202) 395–9483.

FOR FURTHER INFORMATION CONTACT: John Melle, Deputy Assistant USTR for the Americas, (202) 395–3412, or Suzanne Garner, Assistant General Counsel, (202) 395–3581, for questions concerning the enforcement of U.S. rights under the SLA; William Busis, Associate General Counsel and Chair of the Section 301 Committee, (202) 395–3150, for questions concerning procedures under Section 301; or Gwendolyn Diggs, Staff Assistant to the Section 301 Committee, (202) 395–5830, for questions concerning procedures for filing submissions in response to this notice.

SUPPLEMENTARY INFORMATION:

A. Enforcement of U.S. Rights Under the SLA

For further information concerning U.S. rights under the SLA and the April 2009 action, see *Initiation of Section 302 Investigation, Determination of Action Under Section 301, and Request for Comments: Canada—Compliance With Softwood Lumber Agreement,* 74 FR 16,436 (April 10, 2009) (notice); 74 FR 17,276 (April 14, 2009) (annex).

B. Canada's Steps Toward Addressing the Breach of the SLA

On March 4, 2010, the Canadian Parliament introduced as part of the Federal budget an amendment to the Softwood Lumber Products Export Charge Act, 2006. The amendment provides for the collection of an additional export charge of 10 percent on softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. The amendment might become law as soon as mid-June 2010.

C. Possible Modification or Termination of April 2009 Action

The Trade Act authorizes the Trade Representative to modify or terminate an action taken under Section 301 if, among other things, "the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement." Sections 301(a)(2)(B)(i) and 307(1)(A). If the proposed amendment becomes law, the Trade Representative may consider whether Canada is taking satisfactory measures to grant the rights of the United States under the SLA, and if so, may decide on an appropriate modification or termination of the April 2009 action.

Pursuant to Section 306(a) of the Trade Act, if the Trade Representative finds that the additional 10 percent export charge is a satisfactory measure, the Trade Representative will continue to monitor the implementation of such measure. Pursuant to Section 306(b), if the Trade Representative considers that Canada is not satisfactorily implementing the measure, the Trade Representative will determine what further action to take under Section 301.

D. Request for Public Comment

The Section 301 Committee invites comments from interested persons with respect to the possible modification or termination of the April 2009 action in the event the Government of Canada adopts a law imposing an additional 10

[13] 17 CFR 200.30–3(a)(12).

percent export charge on softwood lumber from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. This request includes comments on the appropriate methodology for transitioning from the current U.S.-collected 10 percent duties to the 10 percent export charge to be collected by the Government of Canada.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0015 on the home page and click "Search". The site will provide a search-results page listing all documents associated with this docket. If this notice is not listed on the search-results page, find a reference to this notice by selecting "Notice" under "Document Type." Upon locating a reference to this notice, click on the link entitled "Submit Comment."

The *www.regulations.gov* site provides the option of providing comments by filling in a comments field, or by attaching a document. Given the detailed nature of the comments sought by the Section 301 Committee, all comments should be provided in an attached document. Submissions must state clearly the position taken and describe with specificity the supporting rationale and must be written in English. After attaching the document, it is sufficient to type "See attached" in the comments field.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2010–0015 in the search field on the home page.

Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket and open to public inspection. Comments containing business confidential information should not be submitted via the *www.regulations.gov* Web site. Instead, persons wishing to submit comments containing business confidential information should contact Sandy McKinzy at (202) 395–9483.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). *If the submitter believes that information or advice may qualify as such, the submitter—*

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

The non-confidential summary will be placed in the docket and open to public inspection. Comments submitted in confidence should not be submitted via the *www.regulations.gov* Web site. Instead, persons wishing to submit such comments should contact Sandy McKinzy at (202) 395–9483.

William L. Busis,

Chair, Section 301 Committee.

[FR Doc. 2010–12951 Filed 5–27–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and RecordKeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 23, 2010, Vol. 75, No. 55, Pages 13806–13807.

DATES: Comments must be submitted on or before June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Tamara Webster at the National Highway Traffic Safety Administration, Office of Regional Operations and Program Delivery (NTI–200), 202–366–2701, 1200 New Jersey Avenue, SE., W46–490, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR, Part 1350, Certificate Requirements for Section 2010 Motorcyclist Safety Grant Program.

OMB Number: 2127–0650.

Type of Request: Extension to a previously approved collection of information.

Abstract: A motorcyclist safety incentive grant is available to help States enhance motorcyclist safety training and motorcyclist awareness programs. To qualify for a first year grant under the grant program, a State must demonstrate that it has satisfied one of six criteria: (1) Statewide motorcycle rider training course, (2) statewide motorcyclists awareness program, (3) reduction of fatalities and crashes involving motorcycles, (4) statewide impaired driving program, (5) reduction of fatalities and accidents involving impaired motorcyclists, and (6) use of fees collected from motorcyclists for motorcycle programs. In second and subsequent fiscal years, a State must demonstrate that it has satisfied at least two of six criteria.

Affected Public: The 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: 1560 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Marlene Markison,

Associate Administrator, Regional Operations and Program Delivery.

[FR Doc. 2010–12971 Filed 5–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0088]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, PHMSA announces that the currently approved Information Collection Request (OMB Control No. 2137–0614) abstracted below, is being forwarded to the Office of Management and Budget (OMB) for renewal and approval.

DATES: Written comments should be submitted by June 28, 2010.

ADDRESSES: Comments should identify the associated OMB Approval Number "2137–0614" Docket "PHMSA–2010–0088" and be sent to OMB by any of the following methods:

- *Fax:* 1–202–395–6566. ATTN: Desk Officer for U.S. Department of Transportation (DOT).
- *Mail:* Office of Information and Regulatory Affairs (OIRA), OMB, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for DOT.
- *E-mail:* OIRA, OMB, at the following address: *oira_submissions@omb.eop.gov.* ATTN: Desk Officer for DOT.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite, Transportation Regulations Specialist, 202–366–1319.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act, PHMSA will be forwarding the Information Collection Request titled: "Pipeline Safety: New Reporting Requirements for Hazardous Liquid Pipeline Operators: Hazardous Liquid Annual Report" (OMB Control No. 2137–0614), to OMB for renewal and approval for another three years. Earlier, a **Federal Register** Notice with a 60-day comment period was published March 23, 2010, (75 FR 13807). The agency did not receive any comments. The information collection is specified as follows:

Title of Information Collection: Pipeline Safety: New Reporting Requirements for Hazardous Liquid Pipeline Operators: Hazardous Liquid Annual Report.

OMB Control Number: 2137–0614.

Type of Request: Renewal of a currently approved information collection.

Abstract: Operators of hazardous liquid pipelines must prepare and file annual reports regarding the condition of their systems. The data provides the basis for more efficient and meaningful analyses of the safety status of hazardous liquid pipelines. PHMSA uses the information to compile a national pipeline inventory, identify and determine the scope of safety problems, and target inspections.

Affected Public: Operators of hazardous liquid pipelines.

Estimated Number of Responses: 447.

Estimated Total Annual Burden Hours: 5,364 hours.

Frequency of Collection: Annual.

It should be noted that this information collection, which includes the Hazardous Liquid Annual Report (PHMSA F 7000–1), is being revised in a rulemaking titled: "Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements (One Rule)". The Notice of Proposed Rulemaking for the One Rule was published in the **Federal Register** on July 2, 2009, (74 FR 31675) and comments were submitted to Docket No. PHMSA–2008–0291. The purpose of this notice is only for an extension of the currently approved referenced information collection with no revisions.

Issued in Washington, DC, on May 26, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–13017 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

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

ACTION: List of Applications for Modification of Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before June 14, 2010.

ADDRESSES: Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on May 20, 2010.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
		Modification Special Permits		
10407–M		Thermo Process Instruments, LP 175.3 (Former Grantee: Thermo Measure Tech), Sugar Land, TX	49 CFR 173.302a(a);	To modify the special permit to authorize the addition of Boron trifluoride.
10646–M		Schlumberger Technologies Corporation, Sugar Land, TX	49 CFR 173.302	To modify the special to authorize additional Division 2.1 and 2.3 hazardous materials.
10785–M		Thermo Process Instruments, LP (Former Grantee: Thermo Measure Tech), Sugar Land, TX	49 CFR 173.301(a)(1), 173.302a, 175.3.	To modify the special permit to authorize the addition of Boron trifluoride.
14466–M		Alaska Central Express, Inc., Anchorage, AK	49 CFR 172.101 Column (9B)	To modify the special permit to authorize an additional Division 1.1D hazardous material.
14546–M		Linde Gas North America LLC, Murray Hill, NJ	49 CFR 180.209	To modify the special permit to remove the requirement to comply with 49 CFR 172.203(a), marking of shipping papers.
14573–M		Polar Tank Trailer, LLC, Holdingford, MN	49 CFR 178.345–2	To modify the special permit to authorize the use of an alternative duplex stainless steel.
14763–M		Weatherford International, Forth Worth, TX	49 CFR 173.302a and 173.301(f).	To modify the special permit to change the minimum elongation from 12% to 10%.
14844–M		Northern Air Cargo, Anchorage, AK	49 CFR 173.302(f)	To modify the special permit to authorize cylinders of less than 116 cubic feet to be used after June 30, 2010, to include other oxidizing gases and that the human and veterinary use only provision be removed.

[FR Doc. 2010–12717 Filed 5–27–10; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2010 Discretionary Livability Funding Opportunity: Alternatives Analysis Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of FTA Alternatives Analysis Funds: Solicitation of Project Proposals.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of up to $25.7 million in discretionary Fiscal Year (FY) 2009 and 2010 funds under the Alternatives Analysis Program (49 U.S.C. 5339) authorized by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, August 10, 2005. Discretionary program funds will be distributed in accordance with the mission of this program and in support of the Department of Transportation's Livability Initiative.

This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Web site and in the **Federal Register.** A synopsis of this funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.* All proposals must be submitted to FTA electronically through the GRANTS.GOVAPPLY function. Applicants will receive two confirmation e-mails. The first will confirm that the application was received and a second will confirm within 24–48 hours whether the application was validated or rejected by the system. Additional information on submitting proposals through the GRANTS.GOV Web site is provided later in this announcement.

DATES: Complete proposals must be submitted electronically through the GRANTS.GOV Web site by July 12, 2010.

To apply for funding through GRANTS.GOV, applicants must be properly registered. Complete instructions on how to register and submit proposals can be found at www.GRANTS.GOV. If interested parties experience difficulties at any point during the registration or application process, please call the GRANTS.GOV Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST.

FOR FURTHER INFORMATION CONTACT: For general program information, contact Kenneth Cervenka, Alternatives Analysis Program, Office of Planning and Environment, by phone at (202) 493–0512 or by e-mail at *Kenneth.Cervenka@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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Appendix A FTA Regional Offices

Alternatives Analysis Program

FTA has the authority to implement this program under SAFETEA–LU amendments to 49 U.S.C. 5339. The authorizing legislation allows for the Secretary of Transportation to make awards under this program at his discretion. FTA may allocate up to $25.7 million from available prior year and FY 2010 funds. These funds will be allocated for alternatives analysis activities selected from applications submitted in response to this notice.

I. Program Purpose

The purpose of the Alternatives Analysis program (49 U.S.C. 5339) is to assist potential sponsors of New Starts and Small Starts projects in the evaluation of all reasonable modal and multimodal alternatives and general alignment options to address transportation needs in a defined travel corridor.

As defined in 49 U.S.C. 5309(1)(a), an alternatives analysis is a study conducted as part of the transportation planning process which includes: (1) An assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea; (2) [the development of] sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under Section 5309; (3) the selection of a locally preferred alternative; and (4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303. Further information on conducting an alternatives analysis, including descriptions of the documents produced, can be found on FTA's Web site at *http://www.fta.dot.gov/planning/newstarts/planning_environment_2396.html.*

FTA will award discretionary funding available under Section 5339 to support a limited number of alternatives analyses, or technical work conducted as part of on-going alternatives analyses, to develop information for local decision-makers and for the Secretary regarding potential New Starts and Small Starts projects. These funds will be awarded for alternatives analysis activities selected from proposals submitted in response to this notice.

II. Policy Priority—DOT's Livability Initiative

FTA has long fostered livable communities and sustainable development through its various transit programs and activities. Public transportation supports the development of communities, providing effective and reliable transportation alternatives that increase access to jobs, recreation, health and social services, entertainment, educational opportunities, and other activities of daily life, while also improving mobility within and among these communities. Through various initiatives and legislative changes over the last fifteen years, FTA has allowed and encouraged projects that help integrate transit into a community through neighborhood improvements and enhancements to transit facilities or services; make improvements to areas adjacent to public transit facilities that may facilitate mobility needs of transit users; or support other infrastructure investments that enhance the use of transit and other alternative transportation options for the community.

On June 16, 2009, U.S. Department of Transportation (DOT) Secretary Ray LaHood, U.S. Department of Housing and Urban Development (HUD) Secretary Shaun Donovan, and U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson announced a new partnership to help American families in all communities—rural, suburban and urban—gain better access to affordable housing, more transportation options, and lower transportation costs. DOT, HUD, and EPA created this high-level interagency partnership to better coordinate federal transportation, environmental protection, and housing investments.

Through the Alternatives Analysis Program grants, FTA will support a limited number of alternatives analyses, or technical work conducted as part of proposed or on-going alternatives analyses, that would advance major transit investments that foster the six livability principles that serve as the foundation for the DOT–HUD–EPA Partnership for Sustainable Communities:

1. Provide more transportation choices
2. Promote equitable, affordable housing
3. Enhance economic competitiveness
4. Support existing communities
5. Coordinate policies and leverage investment
6. Value communities and neighborhoods

FTA will also consider geographic distribution in project selection.

III. Eligible Applicants

Section 5339 allows FTA to make grants and agreements, under criteria established by the Secretary, to States, authorities of the States, metropolitan planning organizations, and local governmental authorities to conduct alternatives analyses as defined by section 5309(a)(1).

IV. Eligible Projects

Alternatives analyses must be documented in the Unified Planning Work Program of the metropolitan planning organization for the area. Applicants must commit to begin the alternatives analysis study within 12 months of grant approval, unless the study is already underway. FTA will award available discretionary funding to eligible applicants to conduct an alternatives analysis or to support additional technical tasks in an alternatives analysis that will improve and expand the information available to decision-makers considering major transit improvements. FTA will consider proposals for all areas of technical work that can better develop information about the costs and benefits of potential major transit improvements, including those that might seek New Starts or Small Starts funding. FTA will give priority to technical work that would advance the study of alternatives that foster the six livability principles that serve as the foundation for the DOT–HUD–EPA Partnership for Sustainable Communities.

V. Cost Sharing and Matching

Studies or technical tasks selected for funding will receive up to 80 percent of the study cost. Awards remain available for 3 fiscal years, including the fiscal year in which the award is made. FTA will not approve requests for deferred local share under this program.

To promote collaboration on the development of major transit capital improvements and to demonstrate the value of partnerships across government agencies that serve various public service missions, FTA will give priority to proposals that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives and are aligning their community development activities to increase the efficiency of Federal investments.

VI. Application Content

A. Brief Description of the Alternatives Analysis: Provide a paragraph about the study stating its goals and providing a brief description of the work plan. This section should also list all the partners involved in the study.

B. Applicant Information: Provide basic identifying information, including: (a) Applicant name, address, congressional district and FTA recipient

ID number; (b) contact information (including contact name, title, address, e-mail, fax and phone number); (c) description of services provided by the agency, including areas served. Some of this information is included in the Standard Form 424. If this is a collaborative study, provide the contact information for the LEAD agency only.

C. Evaluation Criteria: Address each of the evaluation criteria separately, providing evidence that demonstrates the ways that the proposed study meets each criterion.

D. Work Plan and Budget for the On-going or Up-coming Alternatives Analysis: Provide the work plan and budget describing the nature, technical approaches, and cost of the alternatives analysis indicating what items would be funded with Section 5339 funds and what items would be funded by other sources.

E. The total application may not exceed 25 pages.

VII. Proposal Evaluation Criteria and Other Considerations

Awards under this notice could range from $50,000 to up to $2 million in Section 5339 funding. Eligible applicants must be able to begin the alternatives analysis within 12 months of the study being selected for funding if it is not already underway. Proposals will be evaluated as follows:

A. *Demonstrated Need.* Applicants must demonstrate need for these funds by identifying a substantial transportation problem in the study corridor and the degree to which the Alternatives Analysis technical work will develop information on the full range of costs and benefits of the major transit capital improvements being studied, including alternatives that may seek New Starts or Small Starts funding. To demonstrate need, applicants should provide the following information:

1. *Description of Study Area, Transportation Problems, and Needs.* Applicants should provide a statement of the transportation problem for which alternative solutions are to be analyzed. This information provides the context for performing the analysis and for identifying the measures against which alternatives strategies will be evaluated.

2. *Description of Conceptual Alternatives.* Applicants should provide a conceptual definition of a broad range of strategies for improving conditions in the corridor. For each alternative, the conceptual definition includes the preliminary identification of candidate general alignments and operating strategies, including general ideas of overall bus service levels, service standards, and guideway service options.

3. *Preliminary Evaluation Criteria.* Applicants should identify the preliminary evaluation criteria that specify, in part, the desired outcomes of an improvement, and provide the basis for comparing the performance of the various alternatives. This should include criteria which would inform decision-makers how an improvement would advance the six livability outcomes: provide more transportation choices; promote equitable, affordable housing; enhance economic competitiveness; support existing communities; coordinate policies and leverage investment; and value communities and neighborhoods.

B. *The Technical Capacity of the Applicant to Carry Out the Proposed Work Successfully.* Applicants must demonstrate the technical capacity to successfully undertake an analysis of alternatives. Demonstration of technical capacity may include such items as staffing levels and skill sets at the organization undertaking the alternatives analysis and any previous experience completing an alternatives analysis or corridor study.

C. *Potential Impact on Decision-Making.* Applicants must demonstrate the potential impact of the proposed tasks on decision-making. FTA will give priority to project sponsors that are coordinating the development of transit projects with relevant public housing agencies, or relevant public agencies with energy or environmental missions.

VIII. Technical Assistance and Other Requirements

FTA's Office of Planning and Environment staff is available to discuss and clarify expectations regarding these efforts before applicants submit proposals. Proposals will be reviewed and ranked based on the criteria in this notice by FTA headquarters staff in consultation with the appropriate FTA regional office (see Appendix A). Highly qualified proposals will be considered for inclusion in a national list that represents the highest and best use of the available funding. The FTA Administrator will determine the final selection and amount of funding for each study. Selected studies will be announced in Fall 2010. FTA will publish the list of all selected studies and funding levels in the **Federal Register**.

All proposals must be submitted to FTA electronically through the GRANTS.GOVAPPLY function. Applicants will receive two confirmation e-mails. The first will confirm that the application was received and a second will confirm within 24–48 hours whether the application was validated or rejected by the system. Registering with GRANTS.GOV is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. Therefore, applicants should start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadline specified. Proposals will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. Further, applicants are urged to submit their application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

If applicants experience unforeseen GRANTS.GOV technical issues beyond their control that prevent the submission of their application by the deadline, the applicant must contact FTA staff at *Kenneth.Cervenka@dot.gov* within 24 hours after the deadline and request approval to submit the application. At that time, FTA staff will require the applicant to e-mail the complete grant application, their DUNS number, and provide a GRANTS.GOV Help Desk tracking number(s). After FTA staff reviews all of the information submitted as well as contacts the GRANTS.GOV Help Desk to validate the technical issues reported, FTA staff will contact the applicant to either approve or deny its request to submit a late application. If the reported technical issues cannot be validated, the application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow GRANTS.GOV instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

Issued in Washington, DC, this 24th day of May, 2010.

Peter Rogoff,

Administrator.

Appendix A—FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.
States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415,Tel. 212–668–2170.
States served: New Jersey, New York .....
New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.
Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.
States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.
Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.
Washington, DC Metropolitan Office, 1990 K Street, NW, Room 510, Washington, DC 20006, Tel. 202–219–3562.
Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtreet Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.
Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.
Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.
States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.
Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106,Tel. 816–329–3920.
States served: Iowa, Kansas, Missouri, and Nebraska.
Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.
States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926,Tel. 415–744–3133.
States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.
Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.
Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.
States served: Alaska, Idaho, Oregon, and Washington.

[FR Doc. 2010–12950 Filed 5–27–10; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Ford Motor Company

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Ford Motor Company's (Ford) petition for an exemption of the Explorer vehicle line in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). Ford requested confidential treatment for the attachments it submitted in support of its petition. The agency will address Ford's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with the 2011 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated December 11, 2009, Ford requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the MY 2011 Ford Explorer vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Explorer vehicle line. Ford will install its SecuriLock antitheft device (also known as the Passive Antitheft System or PATS) on the 2011 Explorer as standard equipment. Ford stated that it will also offer its Intelligent Access with Push Button Start (IAwPB) antitheft device as optional equipment. Ford stated that both systems are passive, electronic immobilizer devices that use encrypted transponder technology. Key components of the Securilock/PATS antitheft device will include an electronic transponder key, transceiver module, ignition lock, and a passive immobilizer. Key components of the IAwPB device is an electronic keyfob, remote function actuator, body control module, power train control module and a passive immobilizer. Ford stated that its MY 2011 Explorer vehicle line will also be equipped with several other standard antitheft features common to Ford vehicles, (*i.e.,* counterfeit resistant VIN labels; secondary VINs, cabin accessibility through the use of a valid key fob or keycode). Ford further stated that there will also be a separate visible and audible perimeter alarm available on its Explorer vehicle line. The alarm will be available as an option on vehicles with the Securilock/PATS device and included as standard equipment on vehicles with the IAwPB device. Ford's submission is considered

a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Ford stated that the devices integration of the transponder into the normal operation of the ignition key assures activation of the system. Ford further stated that both devices are always active and require no other operator action. Specifically, in the SecuriLock device, when the ignition key is turned to the "start" position, the transceiver module reads the ignition key code and transmits an encrypted message from the keycode to the control module, which then determines key validity and authorizes engine starting by sending a separate encrypted message to the powertrain contol module (PCM). In the IAwPB device, when the "startstop" button is pressed, the transceiver module reads the key code and transmits an encrypted message from the keycode to the control module to determine validity and authorizes engine starting by sending a separate encrypted message to the body control module (BCM), the PEP/RFA module and the PCM. Ford pointed out that in addition to the programmed key, the three modules that must be matched to allow start of the vehicle adds even an additional level of security to the IAwPB device and in both devices, if the codes do not match, the powertrain engine starter, spark and fuel will be disabled.

In addressing the specific content requirements of 543.6, Ford provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Ford conducted tests based on its own specified standards. Ford provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

Ford also stated that incorporation of several features in both devices further support reliability and durability of the devices. Specifically, some of those features include: encrypted communication between the transponder, control function and the power train control module; no moving parts; inability to mechanically override the device to start the vehicle; and the body control module/remote function actuator and the power train control module share security data that during vehicle assembly form matched modules that if separated from each other will not function in other vehicles.

Ford compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Ford stated that it believes that the standard installation of either the SecuriLock device or the IAwPB device would be an effective deterrent against vehicle theft.

Ford stated that it installed the SecuriLock device on all MY 1996 Ford Mustang GT and Cobra models and other selected models. Ford stated that in the 1997 model, the SecuriLock device was extended to the complete Ford Mustang vehicle line as standard equipment. Ford also stated that according to the National Insurance Crime Bureau (NICB) theft statistics, MY 1997 Mustangs installed with the SecuriLock device showed a 70% reduction in theft rate compared to the MY 1995 Mustangs. Ford also reported that the SecuriLock device is currently offered as standard equipment on most of its North American Ford, Lincoln and Mercury vehicles but is offered as optional equipment on its F-series Super Duty pickups, Econoline and Transit Connect vehicles. Ford stated that with MY 2011, the IAwPB device will be offered as standard equipment on the Lincoln MKT and optionally on the Lincoln MKS, MKX, Taurus, Edge and the Explorer vehicles.

Ford also referenced theft rate data published by NHTSA showing that the theft rate for the Explorer is lower than the median theft rate for all vehicles from MY's 2000–2006. Ford stated that the 2011 Explorer will be comparable in vehicle segment, size and equipment (including the SecuriLock device) to those Explorer/Mercury Mountaineer vehicles for which theft rate data is currently available (between MYs 2004 and 2006). Ford stated that since either the SecuriLock device or the IAwPB device is the primary theft deterrent on Ford Explorer vehicles, it believes that theft rates for the Explorer will improve or continue comparatively lower in the future than the theft rates experienced by its Explorer/Mercury Mountaineer vehicles between MYs' 2004–2006. The theft rate for the Ford Explorer using two MYs' data (2004–2005) data is 1.6797 and theft rate for the Mercury Mountaineer using three MYs data is 1.3361.

The agency agrees that the device is substantially similar to devices in other vehicle lines for which the agency has already granted exemptions. Based on the evidence submitted by Ford, the agency believes that the antitheft device for the Explorer vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Ford has provided adequate reasons for its belief that the antitheft device for the Ford Explorer vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Ford provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the Explorer vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Ford decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line

exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 25, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–12948 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road

[Waiver Petition Docket Number FRA–2010–0090]

The Long Island Rail Road (LIRR) seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.129(b)(2), which requires that the sound level of locomotives manufactured before September 18, 2006, have their horns tested before June 24, 2010; and 49 CFR 229.129(c), which prescribes the testing requirements for testing locomotive horns.

LIRR operates 836 M–7 MU passenger cars of which 84 have had their horns tested; and 170 M–3 MU passenger cars of which 60 have had their horns tested. In addition, LIRR operates 80 diesel electric locomotives of which 7 horns have been tested; and 23 control car locomotives of which 2 horns have been tested.

LIRR cites the previous winters (2009 and 2010) climatic conditions for failure to complete the required horn testing. LIRR is requesting an additional 6-month extension to complete the testing. Because of the constraints of their maintenance facilities, LIRR is also requesting that they be allowed to utilize an alternate testing standard. LIRR would do reference sample testing of locomotive horns as required in 49 CFR 229.129(c), and use the test results from the reference tests to develop an alternative test plan.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2010–0090) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on May 24, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–12880 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Solicitation of Applications for Fiscal Year (FY) 2010 Motor Carrier Safety Assistance Program (MCSAP) High Priority Grant Funding

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA announces that on May 21 it published an opportunity to apply for FY 2010 MCSAP High Priority grant funding on the grants.gov Web site (*http://www.grants.gov*).

DATES: FMCSA will initially consider funding for applications submitted by July 1, 2010. If additional funding remains available, applications submitted after that date will be considered on a case-by-case basis.

FOR FURTHER INFORMATION CONTACT: Ms. Cim Weiss, Federal Motor Carrier Safety Administration, Office of Safety Programs, State Programs Division (MC–ESS), 202–366–0275, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., EST., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act of 2010 provides grant funding for Commercial Motor Vehicle (CMV) safety programs as authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 111–147, 124 Stat. 71 (2010); Public Law 109–59, 119 Stat. 1144 (2005).

This notice announces the availability of approximately $2,000,000 in un-awarded FY 2010 funding for MCSAP High Priority projects. These funds are available for activities conducted by State agencies, local governments, and organizations *representing government*

agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. Post-secondary institutions of higher education are also eligible to receive funding. Funds are allocated in accordance with the provisions of 49 CFR 350.313 and 49 CFR 350.319. Applicants are encouraged to submit performance-based proposals that represent innovative strategies to support, enrich, or evaluate CMV safety programs. Priority for selection will be given to proposals with potential for nation-wide implementation, such as programs that support:

- The DOT's continuing effort to combat distracted driving by CMV drivers;
- Outreach that promotes safe driving practices by teen drivers around CMVs; and
- The development of a proof of concept, validating the Ticketing Aggressive Cars and Trucks (TACT) evaluation component's contribution to reducing CMV crash and fatality rates.

All applicants must submit an electronic application package through grants.gov. To apply using the grants.gov process, the applicant must be registered with grants.gov. To register, go to *http://www.grants.gov/applicants/get_registered.jsp.* The applicant must download the grant application package, complete the grant application package, and submit the completed grant application package.

This can be done on the Internet at *http://www.grants.gov/applicants/apply_for_grants.jsp.* The Catalogue of Federal Domestic Assistance number for MCSAP is 20.218.

Issued on: May 20, 2010.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 2010–12831 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Litigation Management Submissions

AGENCY: Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The U.S. 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 Terrorism Risk Insurance Program Office is seeking comments regarding Litigation Management Submissions.

DATES: Written comments should be received on or before July 27, 2010 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with "PRA Comments—Litigation Management Submissions". Please include your name, affiliation, address, email address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1505–0196.

Title: Terrorism Risk Insurance Program—Litigation Management Submissions.

Form: Treasury TRIP–03.

Abstract: Section 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) authorize the Department of the Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. Section 107 contains specific provisions designed to manage litigation arising out of or resulting from a certified act of terrorism. The Terrorism Risk Insurance Extension Act of 2005, (Pub. L. 109–144), added section 107(a)(6) to TRIA, which provides that procedures and requirements established by the Secretary under 31 CFR 50.82, as in effect on the date of issuance of that section in final form [July 28, 2004], shall apply to any Federal cause of action described in section 107(a)(1).

Section 50.82 of the regulations requires insurers to submit to Treasury for advance approval certain proposed settlements involving an insured loss, any part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program. The collection of information in the notice of proposed settlement in Section 50.83 that insurers must submit to implement the settlement approval process prescribed by Section 50.82.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 100.

Estimated Annual Time Per Respondent: 12.86 hours.

Estimated Total Annual Burden Hours: 1,286 hours.

Requests for Comments: 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. 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 collections; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 18, 2010.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. 2010–12836 Filed 5–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Recordkeeping Requirements for Insurers Compensated Under the Program

AGENCY: Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a currently approved information collection that is

due for extension approval by the Office of Management and Budget. The Terrorism Risk Insurance Program Office within the Department of the Treasury is soliciting comments concerning the Recordkeeping Requirements set forth in 31 CFR part 50, subpart (Sec. 50.50–50.55)

DATES: Written comments should be received on or before July 27, 2010 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with "PRA Comments—Recordkeeping Requirements for Insurers Compensated Under the Program". Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To makes appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1505–0197.

Title: Terrorism Risk Insurance Program—Recordkeeping Requirements for Insurers Compensated Under the Program.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (as extended by the Terrorism Risk Insurance Extension Act of 2005 (Pub.L. 109–144) and the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub.L. 110–160) authorize the Department of the Treasury to administer and implement the Terrorism Risk Insurance Program established by the Act. In 31 CFR part 50, subpart F (Sec. 50.50–50.55) Treasury established requirements and procedures for insurers that file claims for payment of the Federal share of compensation for insured losses resulting from a certified act of Terrorism under the Act. Section 50.60 allows Treasury access to records of an insurer pertinent to the amounts paid as the Federal share of compensation for insured losses in order to conduct investigations, confirmations and audits. Section 50.61 requires insurers to retain all records as are necessary to fully disclose all material matters pertaining to insured losses. This collection of information is the record keeping requirement in Sec. 50.61.

Type of Review: Extension of a currently approved data collection

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 100

Estimated Average Time per Respondent: 8.3 hours.

Estimated Total Annual Burden Hours: 833 hours.

Request for Comments.: 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. 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 collections; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 18, 2010.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. 2010–12839 Filed 5–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Community Reinvestment Act Sunshine

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before July 27, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from April Breslaw (202) 906–6989, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Community Reinvestment Act Sunshine.

OMB Number: 1550–0105.

Regulation Requirements: 12 CFR 533.4, 533.6 and 533.7.

Form Number: N/A.

Description: These information collections are required under section 711 of the Gramm-Leach-Bliley Act, Public Law No. 106–102. This section requires certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 to be disclosed to the public and the appropriate Federal banking agencies. This section also institutes an annual reporting requirement to the agencies concerning these agreements. These requirements apply to insured depository institutions and their affiliates, as well as nongovernmental entities or persons that enter into covered agreements with such entities. OTS's regulations implementing these requirements are found at 12 CFR 533.4, 533.6, and 533.7.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 5.

Estimated Burden Hours per Responses: 1 to 4 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 187 hours.

Dated: May 25, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–12937 Filed 5–27–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2011 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS has made available the grant application package and guidelines (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2011 grant cycle (the 2011 grant cycle runs January 1, 2011, through December 31, 2011).

The IRS accepts applications from any organization that meets the basic eligibility criteria, regardless of the geographic location in which the clinic services are being provided. To better identify areas most in need of LITC services, the Program Office has completed an evaluation of areas serviced. Based on the findings of this assessment, for the 2011 grant cycle, the LITC Program Office is particularly interested in organizations that meet at least one of the following criteria: (1) Organizations currently receiving a grant for the 2010 grant cycle, or (2) organizations servicing the following counties (whether or not they are receiving a grant for the 2010 grant cycle):

TARGET COUNTIES FOR NEW CLINIC APPLICATIONS

State	County	State	County	State	County
CA	El Dorado	MI	Barry	PA	Carbon
	Kern		Ionia		Lackawanna
	Placer		Kent		Lehigh
	Riverside		Newaygo		Luzerne
	Sacramento	NC	Franklin		Mercer
	San Bernardino		Guilford		Northampton
	San Joaquin		Johnson		Wyoming
	Stanislaus		Randolph	TN	Hamilton
	Ventura		Rockingham		Marion
	Yolo		Wake		Sequatchie

We also encourage existing clinics to consider expanding their services to cover these counties, where possible.

The IRS is currently funding at least one clinic in each State, the District of Columbia and Puerto Rico; however, not all clinics offer both controversy services and outreach and education services to taxpayers who speak English as a second language (ESL). An overriding goal of the IRS is to provide both types of services in each State, the District of Columbia and Puerto Rico. To that end, we are also interested in accepting applications from organizations in target States that currently lack either controversy or ESL services. The chart below lists the States that are currently lacking and which type of service is needed:

ADDITIONAL TARGET STATES BY CLINIC TYPE

State	Controversy	ESL
CT		X
MD		X
MT		X
NM		X
SD		X
WY	X	

Notwithstanding the criteria detailed above, all applications for clinics from all areas will receive serious consideration. Note, however, that applications submitted for clinics situated outside the U.S. counties noted in the table above should detail how they will serve eligible taxpayers in the noted counties.

The application period shall run from May 28, 2010, through July 16, 2010.

The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526, for matching grants. A qualifying organization may receive a matching grant of up to $100,000 per year. Qualifying organizations that provide representation for free or for a nominal fee to low income taxpayers involved in tax controversies with the IRS or that provide education on taxpayer rights and responsibilities to taxpayers for whom English is a second language can apply for a grant for the 2011 grant cycle. Examples of qualifying organizations include: (1) Clinical programs at accredited law, business or accounting schools, whose students represent low income taxpayers in tax controversies with the IRS, and (2)

organizations exempt from tax under I.R.C. § 501(a) which represent low income taxpayers in tax controversies with the IRS or refer those taxpayers to qualified representatives.

DATES: Grant applications for the 2011 grant cycle must be electronically filed, postmarked, sent by private delivery service or hand-delivered to the LITC Program Office in Washington, DC by July 16, 2010.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA: LITC, 1111 Constitution Avenue, NW., Room 1034, Washington, DC 20224. Copies of the *2011 Grant Application Package and Guidelines, IRS Publication 3319* (Rev. 5–2010), can be downloaded from the IRS Internet site at *http://www.irs.gov/advocate* or ordered by calling the IRS Distribution Center toll-free at 1–800–829–3676. Applicants filing electronically should do so through the Federal Grants Web site at *http://www.grants.gov.* For applicants applying via the Federal Grants Web site, the Funding Number is TREAS-GRANTS-052011-001.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at (202) 622–4711 (not a toll-free number) or by e-mail at *LITCProgramOffice@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award organizations matching grants of up to $100,000 per year for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS or inform individuals for whom English is a second language of their taxpayer rights and responsibilities. The IRS may award grants to qualifying organizations to fund one-year, two-year or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant cycle.

The *2011 Grant Application Package and Guidelines,* Publication 3319 (Rev. 5–2010), outlines requirements for the operation of a qualifying LITC program and provides instructions on how to apply for a grant.

The costs of preparing and submitting an application are the responsibility of each applicant. Each application will be given due consideration and the LITC Program Office will notify each applicant whether they are awarded a grant, no later than November 26, 2010.

Selection Consideration

Applications that pass the eligibility screening process will be numerically ranked based on the information contained in their proposed program plan.

The IRS's Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs are independently funded and separate from the LITC Program. Organizations currently participating in the VITA or TCE Programs may be eligible to apply for a LITC grant if they meet the criteria and qualifications outlined in the *2011 Grant Application Package and Guidelines,* Publication 3319 (Rev. 5–2010). Organizations that seek to operate VITA and LITC Programs, or TCE and LITC Programs, must maintain separate and distinct programs even if co-located to ensure proper cost allocation for LITC grant funds and adherence to the rules and regulations of the VITA, TCE and LITC Programs, as appropriate.

Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis. Comments may be sent to Internal Revenue Service, Taxpayer Advocate Service, Attn: Deborah L. Jones, LITC Program Office, TA: LITC, 1111 Constitution Avenue, NW., Room 1034, Washington, DC 20224.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 2010–12848 Filed 5–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting for the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Open Meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is for industry partners to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

8:30 a.m.—Meet and Greet.
9 a.m.—Meeting Opens.
11 a.m.—Meeting Adjourns.
The topics for discussion include:
(1) Annual Report to Congress.
(2) ETAAC 1040 Modernized e-File (MeF) Subcommittee.
(3) ETAAC Security Subcommittee.

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Wednesday, June 16, 2010. You must register in advance to be put on a guest list to attend the meeting. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. Escorts will be provided so attendees are encouraged to arrive at least 30 minutes before the meeting begins. Members of the public may file written statements sharing ideas for electronic tax administration. Send written statements to *etaac@irs.gov.*

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue, NW., Room 2116, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: You must provide your name in advance for the guest list and be able to show your state-issued picture identification on the day of the meeting. Otherwise, you will not be able to attend the meeting as this is a secured building. To receive a copy of the agenda or general information about ETAAC, please contact Cassandra Daniels on 202–283–2178 or at *etaac@irs.gov* by Monday, June 14, 2010. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration and Refundable Credits, who is also the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the strategy for electronic tax administration

will help IRS achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: May 21, 2010.

Norma Brudwick,

Deputy Director, Electronic Tax Administration and Refundable Credits.

[FR Doc. 2010–12847 Filed 5–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of two individuals whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the two individuals identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act is effective on May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property of interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On May 21, 2010, OFAC removed from the SDN List the individuals listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

1. VALENCIA MARTINEZ, Alberto Alfredo, Avenida I.T.R. 2207, Colonia Tecnologico, Tijuana, Baja California, Mexico; Calle Geiser 101, Colonia Colinas de Agua Caliente, Tijuana, Baja California, Mexico; Avenida Hipodromo 19, Colonia Hipodromo, Tijuana, Baja California, Mexico; Calle Lomas Altas 1480, Colonia Lomas de Agua Caliente, Tijuana, Baja California, Mexico; Calle Coronado 21760, Colonia Mesetas del Guaycura, Tijuana, Baja California, Mexico; Blvd. Fundadores 0, Colonia El Rubi, Tijuana, Baja California, Mexico; c/o INMOBILIARIA TIJUANA COSTA S.A. DE C.S., Tijuana, Baja California, Mexico; DOB 8 Apr 1949; POB Tijuana, Baja California, Mexico; C.U.R.P. # VAMA490408HBCLRL08 (Mexico); R.F.C. # VAMA–490408–C6A (Mexico) (individual) [SDNTK]
2. GOMEZ LLANOS AISPURO, Jose Rolando, c/o COMERCIAL JOANA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Calle Bradley, No. 5, Col. Anzures, Deleg. Miguel Hidalgo, Mexico City, Distrito Federal, Mexico; Acoxpa Andador 9, Edificio 44, Colonia Villa, Coapa, Distrito Federal, Mexico; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V., Culiacan, Sinaloa, Mexico; DOB 8 Feb 1971; alt. DOB 2 Feb 1971; POB Culiacan, Sinaloa, Mexico; citizen Mexico; nationality Mexico; Passport 340038412 (Mexico); alt. Passport 340015480 (Mexico); R.F.C. GOAR710208RS0 (Mexico) (individual) [SDNTK]

Dated: May 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–12901 Filed 5–27–10; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the three individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On May 21, 2010, OFAC removed from the SDN List the individuals listed below, whose property and interests in property were blocked pursuant to the Order:

1. ARBELAEZ GALLON, Gladys, c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia; DOB 12 Nov 1960; Cedula No. 31858038 (Colombia) (individual) [SDNT]
2. BECHARA SIMANCA, Salim, c/o SOCOVALLE, Cali, Colombia; DOB 26 Jul 1950; alt. DOB 28 Jul 1950; Cedula No. 19163957 (Colombia) (individual) [SDNT]
3. OCAMPO ROMAN, Carlos Jose, c/o CONSTRUCCIONES ASTRO S.A., Cali, Colombia; DOB 2 Feb 1959; Cedula No. 6401478 (Colombia) (individual) [SDNT]

Dated: May 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–12905 Filed 5–27–10; 8:45 am]

BILLING CODE 4810–AL–P

Federal Register

Friday,
May 28, 2010

Part II

Department of Agriculture

Rural Business-Cooperative Service

7 CFR Part 4280

Rural Microentrepreneur Assistance Program; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

RIN 0570–AA71

Rural Microentrepreneur Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes the Rural Microentrepreneur Assistance Program. This interim rule provides technical and financial assistance in the form of loans and grants to qualified Microenterprise Development Organizations (MDOs) to support microentrepreneurs in the development and ongoing success of rural microenterprises.

DATES: This interim rule is effective June 28, 2010. Comments must be received on or before July 27, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via commercial mail delivery or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

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

FOR FURTHER INFORMATION CONTACT: Lori Washington, Loan Specialist, Business Programs, Specialty Programs Division, USDA, Rural Development, Rural Business-Cooperative Service, Room 6868, South Agricultural Building, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225; Telephone: (202) 720–9815, E-mail: *lori.washington@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be significant and has been reviewed by the Office Management and Budget in conformance with Executive Order 12866. The Agency conducted a qualitative benefit cost analysis to fulfill the requirements of Executive Order 12866. Based on the results of this qualitative analysis, the Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of microlevel business capital, business-based training and technical assistance, and enhancing the ability of microlenders to service the microentrepreneurs to whom they are making their microloans.

Unfunded Mandates Reform Act

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

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given this rule; and

(3) Administrative proceedings in accordance with the regulations of the Department of Agriculture National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment. The provisions contain in the interim rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C 601–612). Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities for the reasons discussed below. While, the majority of MDOs expected to participate in this Program will be small businesses, the average cost to an MDO is estimated to be approximately 1 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Further, this regulation only affects MDOs that choose to participate in the program.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to MDOs in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V. Assistance to rural microenterprises will not require intergovernmental review.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities,"

available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs* and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this interim rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to this program is 10.870.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320), the information collection provisions associated with this interim rule have been submitted to the Office of Management and Budget (OMB) for approval as a new collection and assigned OMB number 0570–XXXX. In the publication of the proposed rule on October 7, 2009, the Agency solicited comments on the estimated burden. The Agency received no public comment letters in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a notice in the **Federal Register.**

Title: Rural Microentrepreneur Assistance Program.

OMB Number: 0570–XXXX (assigned).

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The collection of information is vital to Rural Development to make decisions regarding the eligibility of projects and loan and grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Microenterprise development organizations seeking funding under this program will have to submit applications that include specified information, certifications, and agreements as stated in the interim rule.

The estimated information collection burden has decreased by approximately $38,500, from $275,844 estimated for the proposed rule to $237,339 estimated for the interim rule. The majority of this decrease is attributable to removing enhancement grants from the interim rule. This change was made in response to public comment, but will be re-evaluated by the Agency upon receipt of public comment on enhancement grants after the interim rule is published.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002 (Pub. L. 107–347, December 17, 2002), to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

I. Background

Title VI, Section 6022 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, June 18, 2008) (the Act) established the Rural Microentrepreneur Assistance Program (RMAP). This interim rule implements the program to make loans and grants to microenterprise development organizations (MDOs) to support microentrepreneurs in the development and ongoing success of rural microenterprises.

Under this program, the Agency will make available to MDOs direct loans and grants. As provided in the Act, MDOs that qualify for direct loans (participating microlenders) will use the funds borrowed from the Agency to make fixed interest rate microloans of not more than $50,000 at a term not to exceed 20 years to microentrepreneurs for startup and growing rural microenterprises.

The Agency will also make available technical assistance (TA) grants for microlenders and technical assistance only (TA-only) grants for entities that provide training and technical assistance to microentrepreneurs and microenterprises but do not wish to fund microloans under this program. The TA grants will be annual grants made to participating microlenders to provide business based training and technical assistance to microentrepreneurs that have received or are seeking a microloan from a microlender under this program.

TA-only grants will also be made available, on a limited basis, to MDOs that are not participating in the program as microlenders.

II. Discussion of the Interim Rule

USDA Rural Development is issuing this regulation as an interim rule, with an effective date of June 28, 2010. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts a final rule.

III. Changes to the Rule

This section presents changes from the proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in this interim rule.

A. Highlighted Changes

The following list highlights some of the changes made to the rule. These changes are also discussed in the section specific change portion that follows this list. All changes resulting from public comments are explained in detail in that portion of the preamble.

- Creation of a technical assistance only grant program for non-lending MDOs.
- Deferral of the enhancement grant category.
- Increasing the maximum size of technical assistance grants.
- Implementation of a simplified interest rate structure.
- Removing the maximum margin requirement on loans made by the microlender to the microentrepreneur.
- Implementation of a minimum score for qualification as a microlender or grantee.
- Adjusting the cost share and matching requirements, including limiting the cost share requirement to loans and the matching requirement to grants.
- Allowing microlenders two cost share options for establishing the rural microloan revolving fund.

B. Section-Specific Changes

Purpose and Scope (§ 4280.301)

There were two primary changes to this section:

First. The Agency added discussion concerning the availability of technical assistance-only grants as one of the types of funding to be available under the program (§ 4280.301(a)(4) and (d)).

Second. The Agency clarified that participating microlenders can use the

TA grants to provide technical assistance not only to microentrepreneurs who have actually received a loan from the microlender, but also to microentrepreneurs who are seeking a loan from the microlender (§ 4280.301(a)(2)).

As the purpose of this Program is to support the development and ongoing success of rural microentrepreneurs and microenterprises, microentrepreneurs are encouraged to contact the Agency for a list of MDOs in or near their geographic area that are participating in this Program.

Definitions and Abbreviations (§ 4280.302)

The Agency made changes to the definitions section of the rule, including adding several new definitions. Except for terms in which the changes were grammatical, the following identify each affected term.

Agency personnel. Because no Agency personnel are eligible for a microloan under the interim rule, revised by removing the last clause ("who are more than 6 months from separating from the Agency") because it is no longer necessary.

Close relative. Added to clarify the implementation of § 4280.323(d) concerning the restrictions on the use of loan funds.

Default. Has been simplified for purposes of clarity.

Eligible project cost. Has been added as part of the implementation of the cost share requirement.

Facilitation of access to capital. To clarify this term, the words "access to" have been added.

Fiscal year. Added the word "Federal" for clarity.

Indian tribal government employee. Has been removed as a conforming change.

Loan loss reserve fund. Revised by removing text not associated with the definition of the term, but which was also covered elsewhere within the rule.

Microborrower. Added for clarification in implementing the rule.

Microentrepreneur. Revised to clarify that both the microentrepreneur and the microenterprise to be assisted under the program must be located in a rural area. In addition, the phrase "business financing" was replaced with "business capital." Lastly, a sentence was added to note that a microentrepreneur who has received a loan under this program may also be referred to as a microborrower within the rule.

Military personnel. Revised to add the words "or grade" after the word "rank"; "United States" after the word "active"; "active duty" after the word "their"; and to remove to the word "enlisted".

Nonprofit entity. Has been simplified and reference to the "U.S. Internal Revenue Service" has been removed.

Rural microenterprise. Revised the term to "microenterprise" and expanded the definition for clarity.

Rural microloan revolving fund. Revised for clarity.

Significant outmigration. Removed because the term is not used in the interim rule for the reasons discussed in the responses to comments.

State. Added to clarify the applicability of the program.

Review of Appeal Rights and Administrative Concerns (§ 4280.304)

In paragraph (a), the words "a microlender, or grantee MDO" were added after the word "MDO" to clarify the applicability of this paragraph.

Nondiscrimination and Compliance With Other Federal Laws (§ 4280.305)

In paragraph (a), "Applicant" was replaced with "Any entity receiving funds under this subpart" to clarify the applicability of this paragraph.

Forms, Regulations, and Instructions (§ 4280.306)

This section has been added to identify where applicants can access forms, regulations, and instructions noted within the subpart.

Program Requirements for MDOs (§ 4280.310)

This section has been revised and redesignated. The substantive changes are described below:

First. The citizenship requirements have been clarified to apply only to non-profit entities (paragraph (a)(2)), not American Indian tribes or United States public institutions of higher education.

Second. In addition to moving the requirements specific to potential microlenders into paragraph (a)(4), the Agency has added a new provision (paragraph (a)(4)(ii)) regarding obtaining an attorney's opinion regarding the microlender's legal status and its ability to enter into program transactions at the time of initial entry into the program.

Third. A minimum score threshold has been added for MDOs to be considered for receiving an award under this subpart (paragraph (b)). Generally, applicants must receive at least 70 points out of 100 in order to be eligible to receive an award under the program.

Fourth. The Agency removed "is delinquent in meeting U.S. Internal Revenue Service (IRS) requirements" from the list of provisions identifying ineligible applicants.

Loan Provisions for Agency Loans to Microlenders (§ 4280.311)

A number of changes have been made to this section, including grammatical changes and redesignation of paragraphs. The substantive changes are described below:

First. The Agency revised the provisions associated with the cost share requirements by applying them only to loans and identifying two options for how microlenders can establish Rural Microloan Revolving Funds (RMRFs). The provisions also allow microlenders the option of setting up multiple RMRFs (paragraph d)). Because of this revision, a conforming change was made to paragraph (c) to refer to "RMRF" funds instead of "Agency loan" funds.

Second. The provisions concerning the term of a loan have been recast to state that a term shorter than 20 years will be considered if requested by the applicant MDO and must be agreed to by the microlender and the Agency (paragraph (e)(3)).

Third. The number of days loan closing must take place has been revised to within 90 days, rather than 60 days as proposed, before funds would be forfeited (paragraph (e)(8)).

Fourth. Revised the number of day microlenders have to make at least one microloan from within 30 days to within 60 days of disbursement (paragraph (e)(10)). Further, failure to make a microloan within this time period may result in the microlender not receiving any additional funds from the Agency and may result in the Agency demanding return of any funds already disbursed to the microlender.

Fifth. Revised substantially the interest rate provisions. In the interim rule, each microloan made to a microlender during the first five years of participation will bear an interest rate of 2 percent and each loan made to the microlender after the fifth year of participation will bear an interest rate of 1 percent (paragraph (e)(12)).

Sixth. Revised several dates in the section, including the date when the Agency will calculate and amortize the microlender's debt after the deferral period (*e.g.,* (paragraph (e)(13)).

Seventh. Removed the provisions associated with negative amortization and reamortization (proposed § 4280.311(d)(15)(i) and (ii)).

Eighth. Modified the rule to indicate that loans can be used to recapitalize existing Agency funded RMRFs (paragraph (f)(2)).

Ninth. Added a provision to provide microlenders 30 days to replenish the loan loss reserve fund (LLRF) if it falls

below the required amount (paragraph (g)(2)(i)).

Tenth. Removed the phrase "and partially funded" in paragraph (g)(4).

Eleventh. Added a conforming change to the requirement for maintaining a minimum 100 percent of the amount owed by the microlender to the Agency for those microlenders with 3 years or less experience (paragraph (h)(2)).

Twelfth. Added a provision requiring microlenders to provide Agency access to any of the microlender's records pertaining to any microloan made to the microlender under this program. This was added to enable the Agency to better enforce the provision of this program (paragraph (h)(7)).

Thirteenth. Added a provision requiring prior written Agency approval before the microlender makes any key personnel changes (paragraph (h)(8)).

Loan Approval and Closing (§ 4280.312)

This section has been added and is comprised of proposed § 4280.311(g) and (h) for clarity. Changes to these paragraphs are:

- The promissory note and security agreement have been added to the list of items that may be used to demonstrate that the RMRF and LLRF have been established and the LLRF has been, or will be, funded as described in § 4280.11(f)(4) prior to loan closing (paragraph (c)(1)).
- This section has been clarified to explain what constitutes "sufficient evidence" to demonstrate that no law suits are pending or threatened that would adversely affect the security of the microlender when the security instruments are filed (paragraph (c)(3)).

Grant Provisions (§ 4280.313)

This section has been redesignated (proposed § 4280.312) and a number of changes have been made, including grammatical changes and reordering of paragraphs. The substantive changes are described below:

First. The calculation of the maximum TA grant amount has been revised such that the maximum annual TA grant to any one microlender could be $205,000 (paragraphs (a)(1)(i) and (b)(2)). The maximum TA grant amount for a microlender is now calculated as 25 percent of the first $400,000 of outstanding microloans owed to the microlender under this program, plus an additional 5 percent of the outstanding loan amount owed by the microborrowers to the lender over $400,000 up to and including $2.5 million.

Second. The addition of provisions that a microlender who expends more than 10 percent of its TA grant funding on administrative expenses will be considered in performance default and may have to forfeit funding (paragraph (b)(3)(iii)).

Third. Provisions have been added to address funding of the TA-only grants (paragraphs (a)(1)(ii) and (c)).

Fourth. The matching requirements have been revised (paragraph (a)(2)).

Fifth. The Agency added a provision requiring prior written Agency approval before the microlender makes any key personnel additions (paragraph (a)(5)).

Sixth. The grant oversight provisions were moved from this section and consolidated with those in § 4280.320.

MDO Application and Submission Information (§ 4280.315)

Most of the changes to the section reflect a reorganization of the provisions found in the proposed rule. Substantive changes include:

- Redefining less experienced MDOs as those with 3 years or less experience, rather than less than 3 years experience, and redefining more experienced MDOs as those with more than 3 year experience, rather than 3 or more years experience;
- Requiring certificates of good standing to be not more than 6 months old;
- Adding documentation requirements for TA-only grant applications;
- Requiring documentation that the applicant has certified to the Agency that it cannot find credit elsewhere (pursuant to the requirements as provided in the Consolidated Farm and Rural Development Act (Sec. 333(1));
- Revising and simplifying the requirement associated with separate applications to indicate that MDOs may only submit and have pending for consideration, at any given time, one application, regardless of funding category; and
- Requiring all applicants seeking status as a microlender to identify which cost share option(s) they will use to set up their RMRF(s) and the amount(s) and source(s) of the non-Federal share.

Application Scoring (§ 4280.316)

A number of changes have been made to this section, including grammatical changes, redesignation of paragraphs, and clarification as to whether the information to be submitted applied to rural or non-rural microentrepreneurs and microenterprises, or both, and to microloans or loans or the microlenders entire portfolio. The substantive changes are described below:

The Agency notes that, except for applications from microlenders with more than 5 years experience with this program:

1. The maximum number of points that each application can receive is 100;

2. Each application will be scored against the criteria specified in § 4280.316(a) for which it can receive a maximum of 45 points;

3. Each application will be scored against the criteria specified in § 4280.316(b), (c), or (d), as applicable, for which it can receive a maximum of 55 points; and

4. An application must receive at least 70 points in order to be eligible.

Applications from lenders with more than 5 years experience in this program will be scored on a pass/fail basis. Those applications that pass will be assigned a score of 90 points.

Figure 1 illustrates the RMAP scoring process.

Application Requirements for All Applicants (§ 4280.316(a))

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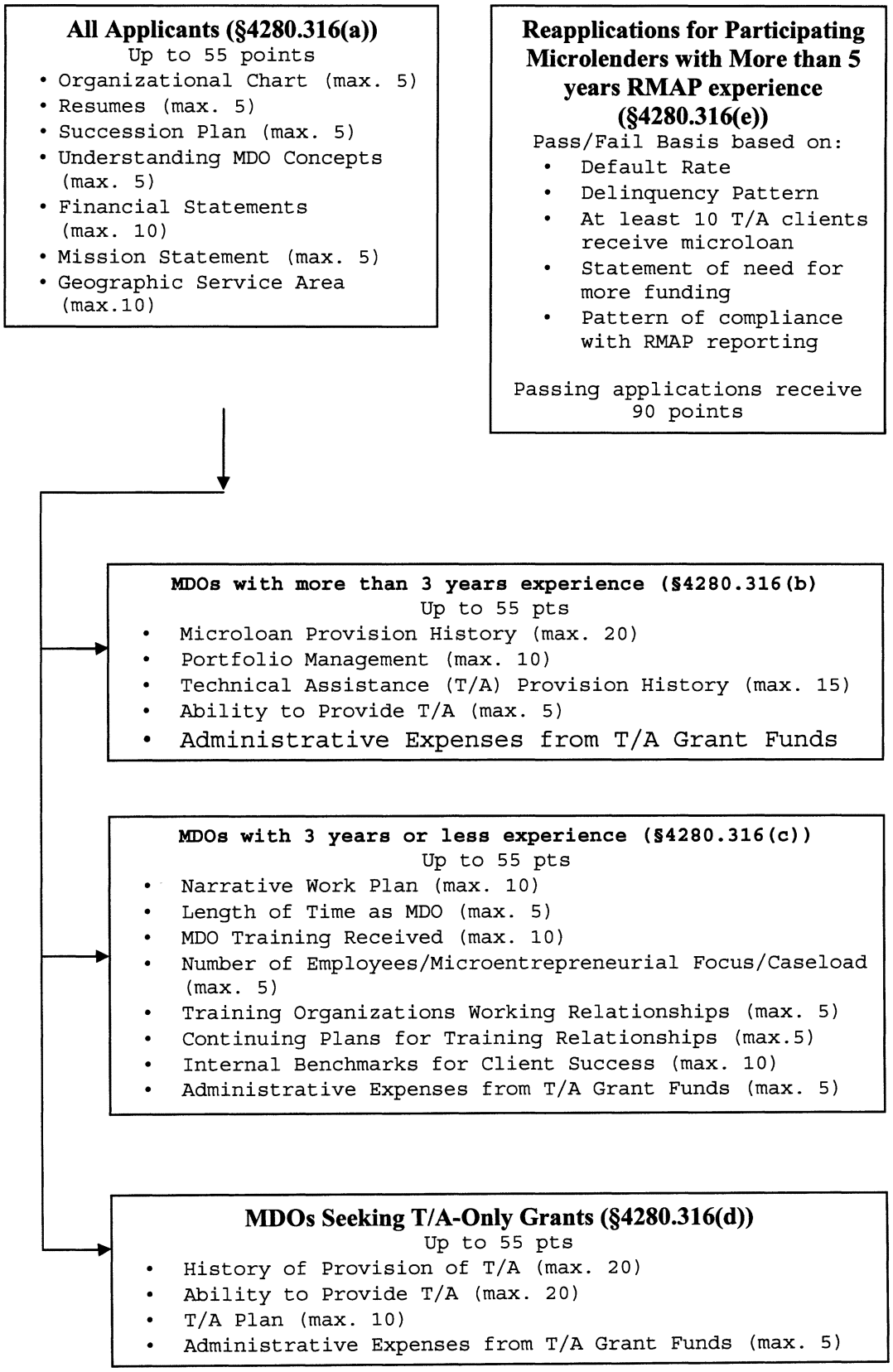

Figure 1. Summary of RMAP Scoring

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Changes to these application requirements are mostly editorial in nature; there were no changes in the basic scoring criteria or points to be awarded. Substantive changes included:

- Indicating that there should be a corresponding resume for each of the key individuals noted and named on the organizational chart;
- Noting that the mission statement does not need to be submitted twice if it is already included in other submitted documents; and
- Deleting "as well as the needs of the service area" and reference to areas of significant outmigration from the scoring criterion addressing information regarding the geographic area to be served.

Program Loan Application Requirements for MDOs Seeking To Participate as RMAP Microlenders With More Than 3 Years of Experience (§ 4280.316(b))

There were several important changes associated with the scoring criteria for these applications, including:

- Removing reference to demographic group and replacing that term with reference to racial and ethnic minorities, women, and the disabled in Figure 1;
- Replacing reference to the U.S. Census Bureau with the "applicable decennial census for the State" (paragraph (b)(1)(v));
- Replacing "race, ethnicity, and socio-economic status" with "racial and ethnic minority status" and indicating that disability will be defined as under The Americans with Disabilities Act under the scoring criterion for diversity (paragraph (b)(1)(v));
- Replacing "percentage points" with "percent" (paragraph (b)(1)(v));
- Removing the scoring criterion for outmigration and adding "non-rural" to the total number of microentrepreneurs that received both microloans and TA services in the scoring criterion for history of provision of technical assistance to microentrepreneurs (paragraph (b)(3));
- Removing "socially-disadvantaged" and clarifying that the percentage of rural entrepreneurs that received both microloans and TA services will be broken down by racial and ethnic minority, disabled, and gender in paragraph (b)(3)(iii); and
- Adding a new scoring criterion on the ratio of TA clients that also received microloans during each of the last three years (paragraph (b)(4)).

With the removal of outmigration as a scoring criterion for loans and the addition of the new scoring criterion, the points associated with most of the criteria also changed.

Application Requirements for MDOs Seeking To Participate as RMAP Microlenders With 3 Years or Less Experience (§ 4280.316(c))

There are no significant substantive changes to the scoring criteria for these applications other than a redistribution of points.

Application Requirements for MDOs Seeking Technical Assistance-Only Grants (§ 4280.316(d))

This is a completely new set of scoring criteria required by the addition to the interim rule of providing technical assistance grants to MDOs that are otherwise not participating as a microlender. The criteria included address: History of provision of technical assistance to microentrepreneurs, ability to provide technical assistance to microentrepreneurs, technical assistance plan, and proposed administrative expenses to be spent from TA grant funds.

Re-Application Requirements for Participating Microlenders With More Than 5 Years Experience as a Microlender Under This Program (§ 4280.316(e))

The substantive changes to this section were to:

- Replace "the number of businesses" with "the number and percent of program microentrepreneurs and microenterprises" and replace "after loan repayment" with "after microloan disbursement" in paragraph (e)(1)(iii);
- Add to paragraph (e)(2) "over the life of its participation in the program" to indicate the appropriate timeframe that data are to be reported;
- Provide better guidance on requirements for assessing overall program performance with regards to the successful use of TA dollars (paragraph (e)(2)(iii));
- Replaced proposed § 4280.316(e)(2)(iv), because it is duplicative of § 4280.316(e)(1)(iii), with a request for a statement discussing the need for more funding; and
- Removing proposed § 4280.316(e)(2)(vi) regarding other such issues as deemed appropriate.

Selection of Applications for Funding (§ 4280.317)

A few changes have been made to this section as briefly described below:

- The introductory text is revised to clarify that all applications will be scored on a 100-point scale and will be ranked together and to allow the Administrator to prioritize applications that score the same for geographic diversity. This latter provision is added in order to facilitate the distribution of limited program funds throughout rural America, because the Agency does not want program funds to be concentrated in a few states.
- Provisions for application packages have been added (paragraph (a)(1)).
- Provisions associated with internal procedures were removed (proposed § 4280.317(c) and (d)).
- Clarification that awardees have 90 days to close or forfeit their funding (paragraph (d)).

Grant Administration (§ 4280.320)

The changes made to this section addressed presentation of the requirements and updating and revising the forms to be submitted. This section now also states that if a microlender has more than one grant from the Agency, a separate report must be made for each.

Loans From the Microlenders to the Microentrepreneurs and Microenterprises (§ 4280.322)

A number of changes have been made to this section, including grammatical changes and reordering of paragraphs. *The substantive changes are described below:*

- The provision limiting the margin of the interest rate on the loan made to the microborrower has been deleted. Instead, the microlender may establish its margin of earnings but may not adjust the margin so as to violate Fair Credit Lending laws. In addition, margins must be reasonable so as to ensure that microloans are affordable to the microborrowers (paragraph (b)(3)).
- The provisions in § 4280.322(c) concerning insurance requirements have been revised by removing "except that * * * excessive."
- The requirement that a microborrower has been turned down has been removed and replaced with more appropriate options for meeting the test that have a lesser impact on the microborrower's ability to build a favorable credit history. (paragraph (d)), In the introductory text of paragraph (f), the rule clarifies that Agency loan funds may be used for any legal business purpose provided it is not identified in § 4280.323 as ineligible.
- The rule includes clarification on the eligibility of military personnel for funding under the program (paragraph (g)). The rule also clarifies that Indian Tribal government employees will be treated as any other MDO employee regarding eligibility for a microloan.

Ineligible Microloan Purposes (§ 4280.323)

A few changes have been made to this section:

- Reference to "his/her family members" has been removed (paragraph (d));
- The paragraph on military personnel has been moved to § 4280.322;
- Reference to swimming pools has been removed from (paragraph (l);
- Proposed paragraphs (o) and (p) have been removed; and
- Lines of credit and subordinated liens were added as an ineligible purpose (paragraphs (n) and (o)).

IV. Discussion of Comments

The proposed rule was published in the **Federal Register** on October 7, 2009 (74 FR 51713), with a 45-day comment period that ended November 23, 2009. Comments were received from 48 commenters yielding over 450 individual comments on the proposed rule, which have been grouped into similar categories. Commenters included members of Congress, Rural Development personnel, microenterprise development organizations, trade associations, states, universities, environmental organizations, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters. Responses to the comments on the proposed rule are discussed below.

General

Comment: Several commenters provided general support for the program, and positive discussion of other microenterprise development activities and programs to address rural need.

One commenter provided general support for the program's efforts to build the capacity of the microenterprise development industry to achieve new levels of performance and effectiveness. Due to tightened credit markets as a result of the recession, microlenders face increased demands to provide capital and technical assistance to both start-ups and existing microentrepreneurs.

Several commenters stated that they strongly support this commenter's comments on the proposed rule.

Response: The Agency appreciates the support for the program reflected by the commenters, acknowledges the microenterprise development work that has produced positive activity both in the United States and abroad for several decades, and looks forward to formalizing the Agency's participation in this economic development sector.

Comment: One commenter stated that they believe RMAP will do much good in reversing the economic and financial crisis in rural communities. With many rural areas underserved or not served at all by MDOs, the Agency should be doing all it can to recruit as many qualified organizations as possible to become engaged in rural training and microentrepreneur lending. The proposed rule's scoring should encourage the effort to build MDO networks to serve these communities with as many organizations with the necessary expertise as possible.

Response: The Agency acknowledges the commenter's support.

Funding Allocations

Comment: Four commenters stated that the terms of the proposed rule make it difficult to determine how USDA will make decisions on applications that seek funding from different components (the so-called "enhancement grants" and the loans/TA grants) without stating how much of available funding goes to each component. The commenters recommended that the final rule should contain information concerning program funding, including the subsidy rate that will be used to calculate the RMAP loan program level and legislative intent in the USDA FY 2010 appropriations bill. If this information is unattainable or otherwise not available, the commenter recommended that all RMAP dollars not previously identified by Congress as loan subsidy dollars be used to provide TA training grants to MDOs.

Response: The Agency considered a standard division among the program components and determined that such a balance should be adjustable in future years based on market demands and conditions. Therefore, the Agency has not included program funding in the rule with one exception. As noted later in this preamble, the Agency plans to use up to 10 percent of program funding each year for technical assistance only grants for MDOs that are not otherwise participating in the program. The Agency will publish program levels annually in a Notice of Funding Availability (NOFA).

Existing MDO Emphasis

Comment: Several commenters were concerned that the proposed rule applies exclusively to existing MDOs, especially those heavily involved in lending. The commenters stated that one of the purposes of the law is to build and enhance microenterprise services in rural areas, particularly remote rural areas and believe the application and scoring emphasis on MDO history (particularly an MDO's lending history) implies funding only for existing MDOs, and the "enhancement grants" provision (of the proposed rule) is defined in terms of "microlenders" and "projects" and activities that enhance the microlenders' capabilities, implying that funds will go exclusively for existing MDOs involved in lending. According to the commenters, this upsets the intended balance in RMAP between training, technical assistance (not connected to loans to MDOs) and lending, and between existing MDOs and developing a network of MDOs in unserved and underserved rural areas. The commenters suggested that the final rule restore the intended balance in both respects.

Response: With regard to the comment concerning training and technical assistance, the Agency agrees that microlenders who are not participating in RMAP as lenders should have access to technical assistance grants in order to provide such assistance to rural microentrepreneurs. Thus, the Agency has included in the rule § 4280.301 provisions for MDOs who are otherwise not participating in the program to be eligible to receive technical assistance grants.

With regard to the comment concerning existing MDOs and developing a network of MDOs, the Agency disagrees with the commenters that the rule does not address both. As provided in both the proposed rule and this interim rule, MDOs with less than 3 years experience are eligible to compete for program funds. Thus, this would allow for developing a network of MDOs. However, to further meet the need for developing a network, the Agency is requesting that comments and suggestions regarding the delivery of an enhancement grant program be submitted (*see* Section V of this preamble).

Administrative Management

Comment: One commenter expressed concern that the interest rate criteria specified were too complex for the current automated systems to monitor or effectively manage.

Response: During the development of the regulation, the program area has been engaged in system requirements discussions with Agency information technology staff. The Agency anticipates that, by the time the first applications are received, systems (the Rural Utilities Loan Servicing System (RULSS)) will be ready to accommodate the interest rate provisions in the rule.

Comment: One commenter stated that the program should be aligned with existing Rural Development programs and administrative capabilities. The

commenter believes that the Administrative requirements overall are too complex to manage within existing Agency systems and substantially out of sync with other Agency programs to be cost-effective to the taxpayer for management. According to the commenter, the proposed rule must align payment and deferral options with the Intermediary Relending Program (IRP) in order to be cost-effective.

Response: The Agency disagrees with the commenter's characterization of the proposed RMAP regulation. The Agency is in the process of placing its administrative systems under RULSS. RMAP will be aligned with other similar programs to leverage electronic reporting resources with the objective of improved information-gathering and more efficient program management. The RMAP program will begin the program area's move to newer, more flexible, more responsive administration of the program. This is expected to result in improved electronic reporting, less paper-based program administration, and mitigation of duplicative or unnecessary work, thereby allowing RMAP to be implemented efficiently.

Furthermore, RMAP is different from the IRP and, thus, certain provisions will not align intentionally with the IRP. Finally, the Agency believes that the RMAP provisions are very similar to other existing Federal microenterprise programs and the participating entities will understand the provisions contained in RMAP.

Comment: One commenter believes that the rule as proposed could cause issues with Office of the Inspector General (OIG) audits.

Response: The Agency believes that OIG audits are helpful in terms of suggesting program improvements. It further believes that programs that are efficiently and effectively managed will have few negative comments as the result of such audits.

Micromanagement

Comment: One commenter stated that as proposed there is too much micro-management in the program, especially if the MDO is applying for the minimum loan amount of $50,000. According to the commenter, the reporting burden is too great to make it worth their while.

Response: Reporting requirements for this program have been kept to a minimum as a result of instituting an electronic reporting system. Reporting is flexible, automated, and easily accessed by lenders, grantees, and agency personnel.

Loans, TA Grants, Enhancement Grants

Comment: A number of commenters believe that the proposed rule should be revised to maintain the intent of Congress by restoring the balance between the funding for loan capital and funding for training and technical assistance. As one claimed, the proposed rule is in "direct contradiction to the law" because it eliminates all grants to microenterprise programs to provide business training to existing and prospective microentrepreneurs. The commenter stated that, by eliminating the training funds (and by capping technical assistance funds), the proposed rule will make it difficult for organizations to fund the staff needed to work with borrowers and other clients.

Another commenter stated that the proposed rule directs most of the RMAP funds to loan capital and gives short shrift to support for training, financial planning, and critical support services that MDOs offer. The proposed rule does this by limiting the purposes of grants to support microenterprise development and by capping the maximum technical assistance grant an MDO can receive at $100,000, rather than 25 percent of the MDO's total balance of microloans.

Response: The Agency disagrees that the proposed rule was in direct contradiction to the law, because it provided for loans and for grants for both technical assistance to microentrepreneurs (referred to as technical assistance grants) and training of MDOs staff to enhance their capabilities in providing technical assistance to their clients (referred to as enhancement grants). Nevertheless, the Agency, as noted later in this preamble, has added in § 4280.301 that technical assistance grants may be made available to MDOs that are not otherwise participating in RMAP. The Agency believes that this change provides for an improved program and satisfies the concerns expressed by these commenters.

Finally, the Agency understands that those seeking technical assistance funding would prefer no funding cap. The Agency believes that, in order to fund more MDOs in rural areas nationwide, a cap is necessary. However, as later discussed, the maximum amount of technical assistance grants has been increased.

Inflexibility

Comment: Several commenters stated that the proposed rule is inflexible and will unnecessarily increase expenses for microenterprise service providers. To illustrate their concern, one commenter states that programs must identify prospective borrowers before they can receive loan funds from USDA. The result is that more time must be spent completing paperwork, leaving less time to serve microentrepreneurs. These rules ignore the flexibility needed to help microentrepreneurs be successful.

One commenter believes that the proposed rule does not reflect the reality of how lending to microentrepreneurs actually works.

Another commenter believes that the approach is far too elaborate and unnecessarily complex, particularly in the way RMAP loans are structured and reamortized and in the scoring system. The commenter stated there is the maximum need for flexibility and latitude for the program to succeed.

Three of the commenters stated that the rule, as proposed, will add to the administrative burdens on MDOs and decrease the portion of staff time that can be devoted where it should be devoted—servicing loans, providing technical assistance and conducting outreach that brings more microentrepreneurs in the door for services.

Response: It is not the intent of the Agency to require microlenders to identify prospective borrowers before they can receive loan funds from the USDA. There is no such requirement in the proposed rule. Similarly, the restrictions placed on the relationship between the microlender and the microborrowers are minimal and stem from statutory requirements, such as the maximum loan amount, the maximum term of a microloan, and the provision of technical assistance and training for microborrowers. The proposed rule did, however, require that the microlender make a microloan within 30 days of receipt of funds from the Agency. To the extent that the commenter may be referring to this policy, the interim rule instead adopts a 60 day requirement to provide microlenders more flexibility.

Notice of Funding Availability

Comment: Two commenters proposed that the Agency set a timeline for a NOFA that both reflects the Congressional funding process and allows for greater accountability to RMAP participants. The commenter recommended that a NOFA be made either no later than 45 days after the enactment of the appropriate spending bill or no later than 30 days after the disbursement of funds and/or budget authority to USDA.

Response: The Agency disagrees that it is necessary to set a timeline for issuing a NOFA, in part because there is no relationship between when the

Agency will accept applications and when it issues a NOFA. It is the Agency's intent, however, to publish RMAP NOFAs as early as possible each fiscal year. This comment is associated with the administration of RMAP and not with the proposed rule itself. Thus, no changes have been made to the rule as a result of this comment.

MDO Administrative Costs

Comment: One commenter believes that the Agency's expectation, noted under its Regulatory Flexibility Act discussion, that participating MDOs will be able to cover most of their administrative costs by "the interest rate spread between the one percent loan from Rural Development and the interest rate on loans made to the microentrepreneurs by the MDO" seems to be in conflict with subsequent sections of the proposed rule that severely limit MDO uses of interest income and must be clarified.

Response: The Agency agrees with the commenter that the statement in the preamble to the proposed rule was in error. The Agency has not repeated this statement in this preamble.

Intermediary Relending Program

Comment: One commenter recommended that the program be delivered under the published IRP regulations with the exception that the term must be 20 years and that microborrowers comply with the criteria in the proposed rule (*i.e.,* proposed §§ 4280.322 and 4280.323). The commenter further suggested that RMAP grant funds be administered under the published Rural Business Enterprise Grants regulations with the exception that the RMAP grants would be awarded in the proportional amounts indicated in the proposed rule (25 percent of the RMAP loan) and accompany RMAP loan awards. According to the commenter, adopting existing, well-understood, functional program regulations will allow rapid deployment and operation of the important RMAP initiative.

Response: The Agency disagrees with the commenter's recommendation to administer RMAP under the IRP and RBEG regulations because of the many statutory differences between the programs.

Purpose and Scope—(§ 4280.301)

Comment: In referring to proposed § 4280.301(b), one commenter expressed concern that the sentence "Technical assistance grants will be awarded to microlenders to provide technical assistance to microentrepreneurs who have received one or more microloans from the MDO under this program" would mean that entrepreneurs that have not received a microloan from an MDO under this program would not be able to receive technical assistance.

Response: The Agency agrees that it is in the best interest of the program not to limit technical assistance only to those microborrowers who actually receive a microloan under RMAP. Therefore, the Agency has revised the sentence for clarity to indicate that a microentrepreneur seeking a microloan would also be eligible to receive technical assistance.

Definitions and Abbreviations—(§ 4280.302)

Administrative Expenses

Comment: One commenter recommended removing the limitation on the percent of TA grant funding that may be used to fund expenses because it has nothing to do with the definition.

Response: While the Agency does not disagree with the commenter's observation, the Agency believes that it is helpful here to explain the limitations to the public and Agency staff. For these reasons, and because it does "no harm," the Agency has not revised the definition as suggested by the commenter.

Agency Personnel

Comment: Two commenters asked why there was a distinction made in the definition for personnel who are more than 6 months from separating from the Agency. One of the commenters also asked how someone would know that they are more than 6 months from separating from the Agency. One of the commenters believes that it is inappropriate, if not illegal, for the Agency to ask its staff when they plan to separate and the other commenter suggested deleting this phrase.

Response: As proposed, the Agency intended to allow Agency personnel who knew that they would be leaving the Agency within 6 months to apply for and receive RMAP funds. This distinction was intended to parallel the provisions for military personnel elsewhere in the proposed rule. After considering this and other similar comments, the Agency has determined that a "blanket" prohibition for all Agency employees while they are still with the Agency is easier to implement and consistent with other program regulations. The Agency, therefore, has removed the language from the rule.

Application

Comment: One commenter suggested adding "required to be" after the word "documentation" in the definition, so that it would read: "The forms and documentation required to be submitted by an MDO for acceptance into the program."

Response: The Agency disagrees with the commenter's suggestion. The application is what is submitted, not what is required. Section 4280.315 makes clear what items are required for a complete application. Therefore, the Agency has not revised this definition.

Business Incubator

Comment: One commenter stated that a business incubator is not an organization, but is generally a "thing", such as a building.

Response: The Agency disagrees with the commenter. As used in this interim rule, a business incubator is an organization that can perform such tasks as renting space, using equipment, etc. A building cannot do such tasks. The Agency, however, is adding to the definition the condition that, to be considered a business incubator, the organization provides temporary premises "at below market rates." This is a condition that the Agency overlooked when proposing the rule and believes is an important aspect of a business incubator.

Default

Comment: One commenter asked why a definition of default was included in the proposed rule.

Response: The Agency is including a definition of default for clarity because its history in the administration of other loan programs has shown that defaults other than the more common monetary default (*e.g.,* nonperformance is a form of default) can and do occur.

Comment: One commenter stated the definition of monetary default (found in paragraph (i) of the proposed definition of default) is extremely and unnecessarily complex. Further, according to the commenter, it is inconsistent with current Agency practice of annual installments for principal and interest or semi-annual installments for interest.

Response: The Agency agrees that a simpler definition is sufficient and has revised the definition accordingly. The Agency notes that it will collect payments on a monthly basis via an automated system.

Fiscal Year

Comment: One commenter stated that "fiscal year" should be clarified as "Federal fiscal year" because most organizations work off of either the calendar year or their individual fiscal year.

Response: The Agency agrees with the commenter and has revised the rule to

more clearly identify the fiscal year as being the Federal fiscal year.

MDO

Comment: One commenter suggested adding quasi-public entities that are formed by State or other governmental statutes whose purposes for operation are consistent with the program as eligible MDOs. According to the commenter, many quasi-public state agencies operate business and micro-business programs and, therefore, they need to be included as eligible entities.

Another commenter believes the term "non-profit" is used rather ambiguously in the proposed rule and recommended that the Agency provide a clarification to ensure that public non-profit entities, such as Councils of Governments, Regional Planning Commissions and Economic Development Districts, are eligible to apply for program assistance as MDOs. The commenter stated that many of these entities are experienced lenders as they currently operate USDA IRP, a program similar to RMAP, which also provides valuable assistance for financing business and economic development activity in rural regions of this country.

A third commenter requested that local governments be included as eligible applicants for program funds. The commenter asked why their local government organization is not considered the equivalent of an MDO, or at least eligible to apply for the funding as USDA has considered them capable of providing these services in the past when they awarded funding. The commenter suggests the language of the RMAP be changed to refer to MDOs and other entities that provide assistance to microentrepreneurs.

Response: Section 379E of the Consolidated Farm and Rural Development Act provides the definition for MDO. The Agency cannot change the definition and, thus, for example, quasi-governmental organizations cannot be included unless they otherwise meet the definition. Consistent with the eligibility requirements provided in other loan programs under the Consolidated Farm and Rural Development Act, the reference to non-profits is understood to mean only private non-profits. If Congress had intended to include other entities, they would have done so as they have done for other provisions in the Consolidated Farm and Rural Development Act. For this reason, the Agency has not revised the definition of MDO as suggested by the commenters.

Comment: A number of commenters requested that the rule clarify the ability of multiple groups to collaborate on an application (example: statewide microenterprise associations, statewide community action agency/programs). According to the commenters, such collaboratives could prove valuable in unserved and underserved rural areas, and bring together efficient and effective microenterprise development services among multiple MDOs. Potential collaborations are likely to be non-profit entities as contained in the definition of MDO in the proposed rule. The commenters suggest that the final rule be clarified to allow applications by such collaborations where other eligibility requirements are met. Scoring of such collaborative applications should consider the combined strengths and experiences of the collaborators.

Three of the commenters further stated that the Agency should apportion 20 percent of available funds to enhancement grants and allow collaborations and associations that have proven track records in providing capacity building services to MDOs to apply for these grants. Enhancement programs are an opportunity to build the capacity of MDOs to reach more clients with stronger and more effective services. This involves training trainers; curriculum development; increasing access to markets; quality assessment and evaluation; and much more. One of the purposes of this legislation is to create a strong network of MDOs. Collaborations and associations serve to build the strength of the entire industry.

Response: The Agency is not opposed to collaborative MDO efforts. MDOs selected to participate in the program are encouraged to develop community-based partnerships. However, such partnerships and collaboratives will be developed outside of the relationship between the Agency and the participating MDOs.

The Agency disagrees with the commenters' suggestion to specify a percent of available funds to be apportioned to any single aspect of the program. In order to facilitate equitable distribution between loans and grants and provide for flexibility to meet program needs, the Agency will announce anticipated distributions in an annual **Federal Register** notice.

Microentrepreneur

Comment: Two commenters pointed out that the proposed definition states that "All microentrepreneurs assisted under this regulation must be located in rural areas." The commenters recommended changing this to read "All microenterprises assisted under this regulation must be located in rural areas". The commenters stated that, while some entrepreneurs do work from home, they are concerned that an entrepreneur that provides a service or operates a microenterprise in a rural area may be disqualified from participation under this definition.

Response: The Agency disagrees with the commenters' recommendation. It is the Agency's intent that both the microenterprise and microentrepreneur be located in a rural area, so both definitions have been revised to clearly state this. The Agency has not revised this definition as suggested by the commenter.

Military Personnel

Comment: One commenter was concerned that the proposed rule was purposefully eliminating National Guard employees that are not deployed. The commenter pointed out that there was an administrative notice issued for the IRP that addressed IRP loans to certain military personnel. The commenter, therefore, recommended that RMAP be as inclusive as it can to service members.

Response: Although it was not the intent of the Agency, the Agency agrees with the commenter that National Guard employees that are not deployed would have been excluded from the program. The Agency has revised the definition to remove the reference to "enlisted" and added other provisions (*see* § 4280.322(g)) that would make such personnel eligible under this program.

Nonprofit Entity

Comment: One commenter recommended removing "that has applied for or received such designation from the U.S. Internal Revenue Service" as a criterion for defining a non-profit entity. According to the commenter, this criterion is inconsistent with all other Rural Development programs. The commenter suggested that instead the criterion should be "registered as a non-profit in the State, Commonwealth, Territory, etc. in which the entity is located."

Response: The Agency agrees with the commenter that the proposed rule would have been too restrictive. Therefore, the Agency removed the IRS requirement from the definition and has revised it to read: "A private entity chartered as a nonprofit entity under State law."

Rural or Rural Area

Comment: One commenter stated that, for the purposes of this program, the terms "rural" and "rural area" are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the

United States; and the contiguous and adjacent urbanized area. The commenter then pointed out that the Freely Associated States (Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia) are not under the jurisdiction of the U.S. Census Bureau and do their own internal Census. The commenter, therefore, recommended adding after "according to the latest decennial census of the United States" the following: "or of any of the Freely Associated States, as appropriate."

Response: The Agency agrees with the commenter's concern. However, rather than revising the text as suggested by the commenter, the Agency has added a definition of "State" to include reference to each of the Freely Associated States identified by the commenter. By doing so, it is unnecessary to make the change suggested by the commenter.

Significant Outmigration

Comment: Four commenters stated that this definition was more restrictive than it should be and that the definition rejects the definitions of the term that already exist in law or proposed in legislation. The commenters provided, as examples, the American Jobs Creation Act of 2004 (Pub. L. 108–357) and the proposed "New Homestead Act of 2007" (S. 1093). These use a net out-migration of at least 10 percent during a 20-year period. The commenters suggested defining "significant outmigration" as outmigration of 7.5 percent over two Census periods and/or 5 percent outmigration over one Census period in order to recognize the current state of rural demographics and to enable the program to be widespread throughout the nation.

Another commenter suggested that the population outmigration criteria be lowered from 15 percent over thirty years to 10 percent over thirty years. In Iowa, this change would provide a threefold increase in the number of targeted outmigration counties compared to the 12 counties under the currently proposed criteria.

One commenter stated that the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) uses the following definition of "significant outmigration:" "In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or (5) in counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent." The commenter urged USDA to adopt this definition.

Response: The Agency agrees that the definition of outmigration should take other current definitions into consideration. However, because outmigration issues apply to enhancement grants only, the Agency will address this issue when it publishes the final rule.

Comment: One commenter pointed out that the Freely Associated States (Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia) are not under the jurisdiction of the U.S. Census Bureau and do their own internal Census. The commenter, therefore, recommended revising the definition of significant outmigration to reflect this.

Response: The Agency agrees with the commenter's concern regarding the Freely Associated States. The Agency has revised the text in this definition (as noted in the response to the previous comment) and, in doing so, has removed reference to the U.S. Census Bureau.

Socially Disadvantaged

Comment: One commenter requested that the Agency define racially and ethnically diverse populations by using the same definition as found in the Small, Socially Disadvantaged Producer Program. Socially-Disadvantaged Individuals are those who have been subjected to racial, ethnic or gender prejudice because of their identity as members of a group, without regard for their individual qualities.

Another commenter recommended either including a definition for "socially disadvantaged" under proposed § 4280.302 that includes women and other disadvantaged groups or expanding proposed § 4280.316(b)(1)(v) to include an explanation of the term "socially disadvantaged." The commenter pointed out that the scoring rules concerning provision of technical assistance to microentrepreneurs (proposed § 4280.316(b)(3)(iii)) contain a reference to an undefined group of "socially disadvantaged" microentrepreneurs. It is not stated whether "socially disadvantaged" includes gender (presumably female microentrepreneurs). This is inconsistent with proposed § 4280.316(b)(1)(v) where gender is a specifically-mentioned demographic group. The commenter stated that any provision under the Program's rules should ensure that female microentrepreneurs should be considered "socially disadvantaged."

Response: The Agency agrees with the commenters that, as proposed, the rule did not adequately address whether gender was included in "socially disadvantaged." The Agency, however, has determined that "socially disadvantaged" is too broad a phrase and has changed the scoring criteria to include racial and ethnic minorities, the disabled, and gender. The Agency made this determination in consultation with Agency Civil Rights staff, consideration of other agencies, and Civil Rights reporting requirements. The latter is based on demographic data and "socially disadvantaged" is not specified.

Non-Discrimination and Other Federal Laws—(§ 4280.305)

Comment: One commenter expressed concern with the use of the word "applicants" in the beginning of proposed § 4280.305(a) that states "All applicants must comply with other applicable Federal laws." The commenter asked: What about ultimate recipients? The commenter suggested that there needs to be consistency with this proposed rule and the IRP.

Response: The Agency agrees with the commenter that the provisions of this paragraph need to apply to both the microlender participating in this program and to the microborrower receiving RMAP funds from the participating microlender. Therefore, the Agency has revised the text in this paragraph to state clearly that any entity receiving funds under this program is covered by this paragraph.

MDO Requirements—(§ 4280.310)

General

Comment: One commenter recommended that the rule minimize duplication, and the unintended development of underutilized surplus reserves in local RMRF loan capacity, by discouraging MDOs from providing services in overlapping service areas unless the MDO first approved in a designated area provides a letter of endorsement for the second MDO. According to the commenter, differing MDOs may target different market segments, which can be a rationale for overlapping service areas. However, the application approach should encourage collaboration when appropriate and discourage duplication when inappropriate.

Response: The Agency acknowledges that different MDOs may target different market segments, but disagrees with suggestion to discourage MDOs from providing services in overlapping areas. The Agency has determined that

encouraging competition generally provides the greatest potential for benefits for intended end users. The Agency encourages collaboration among MDOs regarding client referrals across different market segments. No changes have been made in response to this general comment.

Eligibility (Proposed § 4280.310(a))

Comment: One commenter suggested replacing "under RMAP" with "per § 4280.302(a)".

Response: While not inaccurate, the Agency believes that "under this program" should reference the subpart instead and has rephrased the text to read, in part, "To be eligible for a loan or grant award under this subpart, an applicant". The Agency believes the broader designation is more appropriate than the commenter's suggested cross-reference to § 4280.302(a) by itself.

Citizenship (Proposed § 4280.310(a)(2))

Comment: One commenter believes the requirement in § 4280.310(a)(2) for MDO "citizenship" is unworkable because nonprofits, tribes, and institutions of higher learning are entities with no "owners". Therefore, establishing their citizenship is not possible. Instead, the commenter suggests requiring that the nonprofit/tribe/institution of higher learning be legally established within the U.S.

Response: The Agency agrees with commenter that the citizenship requirements would not be "workable" as applied to tribes and institutions of higher learning. However, for nonprofit entities, the Agency has determined that the citizenship requirements are applicable. Therefore, the Agency has revised the citizenship requirements in the rule to apply only to applicants that are non-profit entities, as is consistent with other Rural Development programs.

Legal Authority/Responsibility (Proposed § 4280.310(a)(3))

Comment: One commenter asked whether the Rural Development State Office will determine whether the applicant has the legal authority to carry out the purpose of the award or, as in the case with Rural Business Opportunity Grants (RBOG), will concurrence from the Office of General Counsel (OGC) be required. The commenter stated that having the applicant provide a current (not more than 6 months old) Certificate of Good Standing in addition to articles and by-laws would allow the Agency (National or State Office official) to make a preliminary determination. The commenter then recommended that OGC concurrence be obtained for entities with an initial application and subsequent applicants that have experienced a material change to their articles or bylaws since their last OGC eligibility concurrence.

Response: The Agency will make an eligibility determination, including whether the applicant has the legal authority necessary to carry out the purpose of the award, based on the information provided in the application. Consultation with OGC is an internal operating procedure which is beyond the scope of this regulation. The rule now requires an attorney's opinion regarding the microlender's legal status to make loans specifically to allow the Agency to make such determination. The Agency may seek OGC advice as needed.

Direct Loans (Proposed § 4280.310(a)(4))

Comment: One commenter would like the Agency to consider easing the requirement for receiving education and training from a qualified microenterprise training entity (proposed § 4280.310(a)(4)(ii)). Being a relatively new lending concept, such education, according to the commenter, is not common to a majority of professionals involved in agriculture in the U.S. nor is such training readily available. If not, the commenter states the Agency should define what is considered "adequate experience."

Response: The microenterprise development industry has been active in the United States for more than two decades. It is important that the minimum standards of quality that have been generally recognized over time be maintained so that the industry can continue to grow. The Agency has determined that experience (as determined in the scoring), or training/education, or participation in the similar Small Business Administration (SBA) Microloan Program will help to ensure a baseline of capacity. No changes have been made in response to this comment.

Comment: In commenting on proposed § 4280.310(a)(4)(iii), one commenter suggested easing the requirement that MDOs be "actively and successfully participating as an intermediary lender." According to the commenter, this requirement will exclude many small producer groups with clientele that would benefit greatly from a microenterprise lending program. According to the commenter, most microlending institutions in the U.S. are located in major urban areas serving urban clients, not rural ones.

Response: The Agency notes that § 4280.310(a)(4)(i) indicates that only one of the three provisions found in §§ 4280.310(a)(4)(i)(A), 4(i)(B), or 4(i)(C), is required to be met, not all three. Thus, an applicant is eligible if it meets any one of the following:

- Has demonstrated experience in the management of a revolving loan fund, or
- Certifies that it, or its employees, have received education and training as described, or
- Is actively and successfully participating as an intermediary lender in good standing under the SBA Microloan Program or other similar Federal loan program.

Thus, no single organization will be required to meet all three of these requirements and newer organizations will be accommodated via the second option.

Enhancement Grants (Proposed § 4280.310(a)(5))

Comment: Several commenters believe that the proposed rule fails to properly implement section 379E(b)(4)(A) of the Consolidated Farm and Rural Development Act as added by the 2008 Farm Bill, which addresses grants to support rural microenterprise development, and as expressed in the report accompanying the 2008 Farm Bill.

One commenter noted that the proposed rule limits enhancement grants to organizations that already operate a program for training and other enhancement services, which would ultimately result in strengthening these organizations internally. According to the commenter, the overall purpose of section 379E(b)(4)(A) was to develop the technical infrastructure necessary to increase the success of microentrepreneurs by offering them training in critical business skills. This could be accomplished by building the capacity of local nonprofit organizations to provide training and technical assistance to microentrepreneurs. The proposed rule does not contemplate this approach and should be changed to accommodate the capacity building, training, and technical assistance clearly authorized under the law. By eliminating the training funds and capping technical assistance funds, the proposed rule will make it difficult for organizations to provide the services microentrepreneurs need to succeed.

One commenter stated that the proposed rule leaves out rural microenterprise development grants. The commenter stated that the final rule should be amended to include the missing statutory subprogram. According to the commenter, there are two appropriate ways to accomplish this. First, retain the enhancement grant

category, which is overall a very helpful idea, and to create a rural microenterprise development grant category and purpose statement. Second, incorporate the enhancement grant idea into the rural microenterprise development grant category and purpose as a noteworthy addition to the statutory requirements. One of these two approaches is required in order for the rule to conform to the statute.

Another commenter also believes that the Agency misinterpreted the statutory provision as well as the accompanying report language in creating "enhancement grants." According to this commenter, the statute shows the primary intent to be the provision of operating grants to MDOs, so they may better serve rural microentrepreneurs, and the commenter believes that the proposed "enhancement grant" method is not an accurate regulatory representation of statute. In support of this position, the commenter referred to the report language accompanying the statute (H. Rept. 110–256 Sec.367(b)(3)), which states that "The Secretary may make a grant under the program to a qualified organization (i) to provide training, operational support, or a rural capacity building service to a qualified organization to assist the qualified organization in developing microenterprise training, technical assistance * * * and other related services." According to the commenter, the proposed "enhancement grants" fail to meet stated Congressional intent as expressed in the law's report language, primarily by awarding grants to MDO trainees rather than MDO trainers as mandated.

This commenter claimed that the result of these misinterpretations are that the proposed "enhancement grants" result in neither technical assistance to rural microentrepreneurs, as intended by the law, nor as a tool for broader field-wide capacity building. While capacity building can involve the staff development purposes expressed in the "enhancement grants" provision, capacity building of the rural microenterprise development field as a whole provides a broader scope by which to build the field's infrastructure capacity. As a general rule, rural MDOs have few resources for technical assistance for their clients, and RMAP should be designed and implemented to help to fill the gaps in service that exist in many rural areas.

This commenter, therefore, (and as similarly expressed by several other commenters) recommended deleting "enhancement grants" and replacing them with "Rural Microenterprise Field Technical Assistance Grants" that adheres to both statute and report language. The commenter suggested several approaches including funding for State Microenterprise Associations and for MDOs. The commenter also recommended a 4:1 ratio towards providing MDOs with core funding.

Response: In consideration of these comments, the Agency considered a number of options for implementing a technical assistance and network enhancement category. As noted, the comments differed on appropriate approaches. Due to the broad range of suggestions, and the considerable interest in an enhancement grant program, this interim rule is published without reference to an enhancement grant category. Instead, comments and concepts regarding the best delivery approaches are requested (*see* Section V of this preamble). Submitted comments and concepts will be fully considered prior to publication of an RMAP final rule.

However, the interim rule does make technical assistance grants available to MDOs that are not participating in the program as microlenders (*see* § 4280.313(c)). By broadening the eligibility for technical assistance grants, the Agency is addressing the concerns of the commenters indicating the need for more technical assistance funding. No specific provision was made for State Associations.

Technical Assistance Grants (Proposed § 4280.310(a)(6))

Comment: One commenter suggested that the text "with the exception that up to 10 percent of the grant funds may be used to cover administrative expenses" be revised by replacing "to cover" with "for MDO".

Response: The Agency revised the text (*see* § 4280.313(b)(3)) identified by the commenter by inserting "the microlender's" as follows: "may be used to cover the microlender's administrative expenses." The Agency believes this adequately addresses the commenter's suggestion.

Delinquencies (Proposed § 4280.310(a)(8))

Comment: One commenter suggested that proposed § 4280.310(a)(8) be made part of § 4280.310(a)(7), Ineligible applicants.

Response: The Agency understands the commenter's suggestion, but has elected to keep the subject paragraph as a stand-alone paragraph to ensure its visibility to the public (*see* § 4280.310(d)).

Business Incubators (Proposed § 4280.310(c))

Comment: One commenter was unclear as to what the "business incubator" paragraph was saying.

Response: The paragraph referred to by the commenter (now § 4280.310(f)) states that a microlender who owns or operates a small business incubator is eligible to participate in RMAP. The paragraph also states that such a microlender may use RMAP funding to make a loan to an eligible microentrepreneur who is a tenant in that microlender's facility. This language is clear and was not further clarified. However, regulatory instructions will be published after promulgation of the interim rule that may assist with this commenter's concern.

Loan Provisions for Agency Loans to Microlenders (§ 4280.311)

Complicated Process

Comment: Eleven commenters stated that the proposed rule outlines an unnecessarily complicated process for the disbursement of loan funds to lenders participating in RMAP, with one commenter referencing in particular proposed § 4280.311(d)(10), (11), and (12). The commenters expressed concern that if these rules are not revised, the cumbersome methods outlined for loan disbursement will keep many qualified rural MDOs from participating in RMAP.

Response: Of particular concern to the commenters was that the Agency would require a list of probable microentrepreneurs prior to disbursement of loan funds. This is not the case and language has been added to § 4280.311(e)(11) to address this concern. Specifically, descriptions of anticipated need provided with a request for disbursement will indicate the anticipated amount and number of microloans to be made with the funds but need not identify each loan. These requirements are needed to adequately monitor use of program funds.

Co-financing

Comment: One commenter recommended that co-financing with local lenders and revolving loan funds for projects with total loan requests up to $150,000 be allowed with the $50,000 microloan maximum and subordinated position of the RMRF. According to the commenter, this would multiply the benefits of the program, encourage collaboration rather than duplication with commercial lenders and other loan funds, and encourage the transition of microloan clients back to commercial

lenders. The commenter also noted that this would be consistent with the flexibility for MDOs that is allowed under the SBA Microloan program.

Response: The Agency understands the recommendation that microlenders be allowed more flexibility in lending to microborrowers. In addition, small businesses that can receive loans from commercial lenders should not be able to receive microloans, because microborrowers must meet the credit elsewhere test; that is, microborrowers must be able to show that, but for the microloan, they would not have access to business capital. At this time, lines of credit and subordinated liens will not be authorized. However, the Agency will continue to accept comments during the interim rule phase.

Purpose of Loan (Proposed § 4280.311(a))

Comment: One commenter was unclear as to what "interest earnings" were being referred to in the introductory text to proposed § 4280.311(a). The commenter stated that this could be referring to either bank account accrued interest or to loan payment interest and that this needed to be clarified.

Response: The intent of this paragraph is to refer to any type of interest earnings, including the two types referenced by the commenter. While the Agency has removed the referenced text from § 4280.311(a), the Agency has revised the text in § 4280.311(e)(2) to more clearly address the issue raised by the commenter.

Comment: Two commenters recommended that the Agency clarify that proposed § 4280.311(a) applies only to interest earnings on the underlying USDA loan to the MDO.

Response: The Agency disagrees. The commenters are most likely referring to the sentence in the proposed rule that states: "Interest earnings accrued by the RMRF will become part of the RMRF and may be used only for the purposes stated above." The rule requires microlenders to retain the interest earned in the RMRF and LLRF accounts so that earnings may be reloaned or used to recapitalize the LLRF.

Comment: One commenter referred to the sentence: "However, with advance written approval by the Agency, the microlender may increase the funding in its LLRF with interest earnings from the RMRF." According to the commenter, this is going to be very hard to monitor and will ultimately result in OIG findings because the Agency has failed to provide advance approval to increase the account via interest earnings.

Response: The Agency disagrees that monitoring the movement of interest earnings will be difficult because the movement of those earnings between the RMRF and the LLRF will be evident in bank statements and quarterly reports. Because it will be able to monitor such movement, the Agency further disagrees with the commenter's assertion that this provision will lead to OIG concerns or investigations. Finally, the Agency will emphasize during training that microlenders need Agency written permission to move money out of the RMRF unless it is to make a payment on their Agency loan.

Comment: One commenter stated that Community Development Financial Institutions (CDFIs) often reinvest interest earnings into capital available for lending. However, interest earnings are also a source of operations revenue that help support technical assistance, allow CDFIs to lower the interest rate to borrowers, and otherwise provide products and services to their markets. Especially if the Agency maintains the scoring criteria related to use of administrative funds, it should allow flexibility in the use of interest earned from the RMRF and LLRF. USDA should, in addition, explicitly state that income earned from RMAP loans to microborrowers belongs to the lender and can be used flexibly.

Two other commenters stated that USDA should codify that interest income from microloans: (a) Need not be deposited into the RMRF, and/or (b) may be deposited and withdrawn from the RMRF without restriction. The commenters stated that failure to clearly allow MDOs to keep and use microloan interest income would likely render RMAP unusable for MDOs.

Twelve commenters noted that the proposed rule does not explicitly state that income earned from RMAP loans to microborrowers belongs to the lender. They stated that they believe that microlenders should be allowed to keep earnings on microloans, and that this needs to be explicitly stated in the appropriate section of the RMAP final rule.

Three other commenters stated that limiting MDO use of accrued interest that comes about as a result of an agreement between the MDO and a borrower is an overreach by USDA, limits the ability of an MDO to realize program income from its activities, and ultimately will limit the ability of MDOs to fund their programs and services. The commenters suggested the Final Rule remove all limits on use of interest accrued by RMRFs. In particular, The commenters suggested that, because the law and the proposed rule limit the amount funding for administrative expenses to an MDO, administrative expenses should be an allowed use of interest earnings on the RMRF in proposed § 4280.311(d)(2).

Two commenters recommended allowing accrued interest to be used by MDOs for purposes consistent with the mission of the organization and the purposes of the RMAP statute. One commenter noted that this would be consistent with current practices with other USDA loan funds including IRP. As proposed, such interest must be deposited in the LLRF.

One other commenter stated that, as written, the proposed rule would not allow the MDO to use any revenues from the operation of the microloan funds to cover its administrative expenses. All repayments on microloans must be deposited in the loan fund and used for either new microloans or payments to USDA. Thus, there is no provision for paying the MDO's loan officer, etc. and the presumption is that all these costs will be covered by other funding sources. According to the commenter, this is unfair to the MDO, which should be able to use the revenues from their operations for the operation of the microloan program.

Response: While the Agency acknowledges the points raised, the Agency has not revised RMAP as recommended by the commenters. It is the Agency's position that, because the interest is earned on monies owed back to the Agency, the Agency is within its purview to dictate the use of interest earned on that money. Further, requiring interest earned to be used to recapitalize the RMRF and LLRF will help ensure that those two funds are maintained at adequate levels over time and that earnings that remain in the LLRF account will help to mitigate the cost of reimbursing the RMRF from the LLRF in the event of a loss. Such earnings may also be used to help fund the non-Federal share.

Finally, the Agency notes that the rule allows MDOs that receive technical grants to use up to 10 percent of the funds to cover MDO administrative expenses for administering the technical assistance grants.

Term of Loan (Proposed § 4280.311(d)(3))

Comment: One commenter recommended that the Agency eliminate the uncertainty about the term "20 years and may be less" and simply follow the loan structure used by the IRP program—a 1 percent fixed rate loan with a 20-year term with 3 years of interest-only payments and with annual payments. The commenter stated that

this will allow for a predictable payment level for the MDO which is very helpful in running a microlending program.

Response: The Agency disagrees that RMAP needs to set the same term requirements as found in the IRP. While the Agency acknowledges that setting a standard term length would simplify the loan structure, the Agency wants to provide flexibility to accommodate lesser term lengths as permitted by statute. The Agency has revised the rule to allow a term of less than 20 years if requested by the microlender and as agreed upon between the microlender and the Agency.

Loan Repayments (Proposed § 4280.311(d)(4))

Comment: One commenter stated that the reference to the 24th month of the life of the loan is confusing at this point in the rule because not until later in the rule is the 2-year deferral referred to.

Response: The Agency has rearranged and revised proposed paragraphs (d)(4), (d)(5), and (d)(8), as discussed in response to a later comment. This rearrangement addresses the commenter's concern by placing this provision after reference to the two-year deferral period.

Comment: One commenter recommended that proposed § 4280.311(d)(4) be revised to state the payments would begin on the 1st day of the 25th month instead of making payments beginning on the last day of the 24th month. The commenter noted that traditionally the Agency has avoided making payments due on the 29th, 30th, or 31st of the month due to the fluctuating number of days in the month and the fact that the payments are not credited to the account for several days after the beginning of the next month. Thus, all end-of-the-month reports will show the payment not made when, in fact, the funds may already be in the Finance Office.

Response: The Agency disagrees with the commenter and has kept the provision to read "on the last day of the 24th month" to be consistent with RULSS system requirements.

Comment: One commenter stated that monthly installments are not practical and that annual payments would be far less burdensome and labor intensive for both the MDO and USDA. According to the commenter, this approach works well with the IRP program and there is no real advantage to using monthly payments. Many microentrepreneur borrowers, especially farm borrowers, will not have year-round, monthly revenues and so will not be able to make monthly payments to the MDO. The commenter asked how, in such cases, the MDO can be expected to make monthly payments to USDA.

Response: The Agency disagrees with the commenter that monthly installments are not practical. It is the Agency's experience that by requiring monthly payments, lenders are better able to manage and match their portfolio cash flow and that the Agency is better able to monitor the repayment behavior of the microlender. Therefore, the Agency has not revised the rule as suggested by the commenter.

Prepayment (Proposed § 4280.311(d)(5))

Comment: One commenter recommended that proposed § 4280.311(d)(5) simply state that there is no pre-payment penalty.

Response: The Agency is satisfied that this paragraph clearly states a no pre-payment penalty provision, but has clarified that this also applies to pre-payments during the deferral period (*see* § 4280.311(e)(5)).

Deferral Period (Proposed § 4280.311(d)(8))

Comment: One commenter asked why the proposed rule was making the 2-year deferral automatic and what if the MDO does not want a deferral.

Response: Section 379E of the Act allows the Agency to defer payments for 2 years. The Agency has provided a commensurate default provision wherein no payments are required until this 2-year period is completed. However, if a microlender wishes to make payments prior to the end of the 2-year period, the microlender can do so and without any prepayment penalties being assessed. The Agency has revised and rearranged proposed paragraphs (d)(4), (d)(5), and (d)(8) to make this more clear.

Loan Closing (Proposed § 4280.311(d)(9))

Comment: Five commenters were concerned about the 60 day time limit imposed by this paragraph. According to one of the commenters, it is often difficult to get loan closing instructions from OGC and get title set up and the loan closed in 60 days. This commenter was also concerned that there may be unusual and unavoidable issues that prevent a loan being closed within 60 days of loan approval. To address these concerns, the commenter recommended adding at the end of the paragraph: "Unless otherwise negotiated and agreed to by the Agency."

Two of the other commenters recommended a longer deadline of 90 or 120 days. Finally, one commenter recommended that the period be extended to at least 180 days, and further suggested that the timeframe be left to the judgment of the USDA State Office.

Response: In considering all of the commenters' suggestions, the Agency has revised the proposed timeframe for closing loans from 60 days to 90 days (*see* § 4280.311(e)(8)). This longer timeframe is sufficient to close loans under RMAP. The Agency has not accepted the suggestion to include "unless otherwise negotiated and agreed to by the Agency." The Agency is concerned that such an open-ended deadline would result in unnecessary delays. Lastly, if loans are not closed within 90 days, the funds will be forfeited.

Loan Disbursement (§ 4280.311(e)(10))

Comment: Several commenters noted that the rule, as proposed, allows microlenders to receive a disbursement of up to 25 percent of the total loan amount at the time of the loan closing. In general, the commenters stated that it is not clear why this limit is necessary and that it appears arbitrary. According to the commenters, this draw down limitation has the potential to limit the number of loans an MDO can make and limit the funds an MDO can loan. The commenters suggested modifying the rule to allow MDOs to draw down their entire loan if needed.

Another commenter recommended that, once a loan has been closed between the Agency and a microlender, the MDO be able to draw down at least half of the total loan amount. The commenter stated, in addition, that requests for draw downs should not require an iteration of specific pending loans for specific amounts, but should be based on the organization's lending history schedule. The commenter noted that successful microlending is more time consuming than conventional lending and that onerous paperwork requirements subtract from the time MDO staff can spend conducting outreach, providing technical assistance, and servicing loans. If an MDO has the track record, credibility and financial controls in place to warrant a loan from the Agency that MDO should be trusted to do their work and not be hamstrung by unnecessarily rigid requirements.

Response: The Agency included the provision (*see* § 4280.311(e)(9)) to limit full disbursement of the loan to the microlender in order to ensure that microloans are made in an expedient fashion and that disbursed funds are not accruing interest on the Agency loan before they begin to earn interest on microloans. The Agency, therefore, has

not revised the rule as suggested by the commenters.

30-Day Disbursement Provision (Proposed § 4280.311(d)(11))

Comment: A number of commenters noted that the requirement for an MDO to make one or more microloans within 30 days of any disbursement it receives from USDA seems to be an unnecessary rule. The commenters stated that, if an MDO is drawing down funds, they are clearly planning on placing loans in the near future and that if a loan to a client would not happen at the last minute, programs could easily violate this 30 day rule. One of the commenters stated that it seems arbitrary to insist that at least one loan be made within 30 days of disbursement and not particularly realistic given the realities of microlending in the field. The commenters, therefore, recommended omitting this from the rule.

Another commenter stated that the limitations that a microlender can only request funds once a quarter based on their pipeline and then must relend the drawn funds within 30 days is unnecessarily burdensome. The commenter acknowledged that there is certainly an expectation that the drawn funds will be promptly reloaned, but recommended that mitigating circumstances be allowed for.

Response: As noted by the commenters, the proposed rule required that the microlender make a microloan within 30 days of receipt of funds from the Agency. The Agency agrees that this may be too short under certain circumstances, but disagrees with the suggestion to have no timeframe. For example, some microlenders will already have a list of potential microborrowers for RMAP funds. For these microlenders, some amount of time may be required to evaluate and verify the eligibility of the microborrower for participation in the program. Some microlenders will not begin aggressively marketing the availability of RMAP loan funds until such funds have been drawn. Some amount of time, therefore, will be required to attract microentrepreneurs to the program. Thus, the Agency believes that a 30-day period may be insufficient. The Agency has, therefore, revised the rule to reflect a 60-day requirement (*see* § 4280.311(e)(10)).

Comment: One commenter asked what the ramifications would be if loans are not made within the specified timeframe.

Response: If a microlender fails to make a loan within 60 days of disbursement, the Agency may not provide the microlender with any additional funds and the Agency may demand return of any funds already disbursed to the microlender (*see* § 4280.311(e)(10)).

Quarterly Disbursement of Funds (Proposed § 4280.311(d)(12) and § 4280.320)

Comment: Several commenters were concerned over the proposed disbursement of loans and grants on a quarterly basis as found in proposed §§ 4280.311(d)(12) and 4280.320(b).

One commenter asked why grant payments would not be made more often than quarterly. According to the commenter, monthly payments for loans or grants can be acceptable if they are accompanied by a brief narrative of activity that justifies the requested funds. The commenter also asked why the Agency should not allow monthly draw downs for loans.

Another commenter stated that the requirement for quarterly disbursements seems overtly regulatory rather than necessary. According to this commenter, an active MDO may need funds prior to the end of the 90 waiting period. The commenter stated that the IRP currently allows disbursements every 30 days.

Another commenter stated that the quarterly disbursement of loan dollars is cumbersome and unnecessary. The commenter stated that, if the Agency's goal in restricting loan disbursements is to ultimately prevent the misuse of the loan dollars as well as the technical assistance grant dollars that accompany those loan dollars, a better way to do this would be to allow the MDO to draw down as needed and receive annual or quarterly technical assistance grants. As currently designed, an MDO with four loans from the Agency would need to keep track of four RMRF accounts, and submit various reports per year. According to the commenter, these regulations are unnecessarily burdensome, and could deter many small, rural MDOs from participating in RMAP. The commenter, thus, recommended allowing MDOs to draw down as needed and receive annual or quarterly technical assistance grants based on statutory allowances, program performance, and demonstrated needs.

Another commenter noted that, with the tools of electronic funds transfer, the approach should simply be that an MDO may request RMAP draws as microloans are ready to close; they should not be limited to once a quarter.

Response: The Agency is requiring quarterly draws rather than monthly draws for several reasons. The Agency has determined that quarterly payments enable both the Agency and the MDO to more efficiently utilize staff resources in part because quarterly payments match the quarterly reporting requirements. Further, monthly draws would require undue Agency resources. Second, matching fund payments with reporting requirements allows the Agency and the microlender to keep like calendars, which will facilitate reconciliations. Thus, the Agency has not incorporated the commenter's suggestion into the rule.

Comment: Two commenters stated that proposed § 4280.311(d)(12) requires that requests by MDOs for loan disbursement must be accompanied by a description of the incoming microloan pipeline. The commenters stated that it is questionable whether any MDO has a "microloan pipeline" that can be described to a funder. Generally, MDOs do not line up loans and then make a drawdown. The incoming pipeline is totally unpredictable. MDOs typically base their drawdowns on previous history and draw down as needed. The commenters recommended that the Agency remove this requirement from the rule and replace it with a provision that draw downs be allowed as needed by the MDO. According to the commenters, keeping this requirement will add to the administrative burdens on MDOs and decrease the portion of staff time that can be devoted where it should be devoted—servicing loans, providing technical assistance and conducting outreach that brings more microentrepreneurs in the door for services.

Another commenter stated that, regarding the "microloan pipeline," the rule has two very serious flaws: (a) It conflates borrower interest in pursuing a microloan with the certainty of that borrower qualifying for a microloan, and (b) it fails to consider the impact of unpredictable economic factors and outside forces. This commenter stated that a "microloan pipeline," as the term is used in the microenterprise field, is not a predictor of future borrowers, but rather an expression of loans in the process of closing. While an MDO may work to forecast demand for microloans, the incoming pipeline is ultimately unpredictable and does not provide a reliable proxy by which to judge the intent of MDOs requesting a loan disbursement. The commenter recommended that the "microloan pipeline" be utilized as an indicator of microloan demand.

Response: Agency experience indicates that lenders are able to anticipate what they will lend over the next 3 to 6 months. Generally, a microloan pipeline can be anticipated by assessing those clients that are in the pre-loan technical assistance and

planning stages. A well managed microlending institution will recognize those clients that are ready for loan approval and those clients that are not. They will also recognize those clients that intend to borrow and those clients that do not. Therefore, it should not be difficult for a microlender to anticipate the need for microlending funds. The "microloan pipeline" language, therefore, has been removed to state that the request for disbursement will be accompanied by a description of the microlender's anticipated need (*i.e.,* the amount and number of microloans anticipated to be made with the funding) (*see* § 4280.311(e)(11)).

Interest Rate Adjustment (Proposed § 4280.311(d)(13))

Comment: Many commenters expressed concern over the interest rate provisions in the rule at proposed §§ 4280.311(d)(13) and (d)(17). One of the commenters noted that the statute established a minimum interest rate of at least 1 percent for USDA loans (section 379E(b)(3)(B)(ii)) and claimed that the proposed rule does not implement the interest rate as set out under the law. This commenter then referred to the proposed formulations in proposed § 4280.311(d)(17) and stated that they may have merit, but are not clearly explained in the rule and have the potential to raise interest rate charges to microenterprises. In the interest of time, clarity, and ease, the commenter believes that the Agency should follow the law and implement the loan rate set out by the statute.

The other commenters recommended adopting fixed rate loans at a 1 percent interest rate.

Response: The Agency agrees that the interest rate provisions found in proposed § 4280.311(d)(13) and (d)(17) should be revised to reflect a simpler structure. However, the Agency disagrees that the rate should be less than 1 percent. The statute does not anticipate a 1 percent rate at all times on every loan. It only states that the interest rate must be at least 1 percent. To address the commenters' concerns regarding the rate structure, and Agency concerns regarding the cost and broad distribution of loan funds, the Agency has revised the rule at § 4280.311(e)(12) to set a fixed interest rate of 2 percent on all loans to any MDO that are made in the first 5 years of an MDO's participation in RMAP. After 5 years of successful and continuous participation in RMAP, each new loan to an MDO will be at a fixed 1 percent interest rate. Depending on future Treasury bill rates, these revised interest rate provisions may be more expensive to the Government, but comply with the law and will eventually provide the lower 1 percent rate to the best MDO performers. In addition, these revised interest rate provisions should encourage microlenders to continue successful participation in the program.

Interest Rate Adjustments (Proposed § 4280.311(d)(14) and (d)(15))

Comment: One commenter asked how the Agency's Financial Office would deal with the provisions of proposed § 4280.311(d)(14) and (d)(15).

Response: The RMAP will utilize the RULSS technology platform, which includes the calculation of capitalized interest.

Amortization (Proposed § 4280.311(d)(15)(i))

Comment: One commenter suggested replacing "subject itself to negative amortization" with "subject itself to a balloon payment" as being clearer.

Response: The Agency has revised the rule to remove reference to negative amortization. Because the Agency's Finance Office will always adjust payments so that negative amortization will not occur, there is no need to address this issue in the rule.

Comment: One commenter asked why amortization calculations are performed at month 22 for the end of the deferral period and to start payments, but then turning around and automatically reamortizing their loan at month 34.

Response: The Agency has removed the paragraph concerning reamortizing loans at month 34, because it is no longer necessary for the implementation of this program. The Agency notes that amortization calculations are to be performed during the 24th month of the deferral period, rather than on the first day of the 22nd month as had been proposed. Section 4280.311(e)(13) has been revised accordingly.

Loan Deobligation and Evaluation (Proposed § 4280.311(d)(16) and (d)(17))

Comment: One commenter asked how the Agency's Financial Office would deal with the provisions of these paragraphs.

Response: The RMAP will utilize the RULSS technology platform, which can facilitate the calculations.

Interest Rate Adjustments (Proposed § 4280.11(d)(17))

Comment: Two commenters were concerned over how the Agency was proposing to adjust the interest rates on loans made to microlenders. One of the commenters requested clarification of when interest rates will change for MDO's that have used all their funds (proposed § 4280.311(d)(17)(i)) by the 24th month and expressed concern regarding proposed § 4280.311(d)(17)(ii).

The other commenter stated that different incentives to reward microlenders who relend their funds quickly can be developed instead of the interest rate adjustment. The commenter also suggested that incentives be built into the use of the TA grant funds.

Response: For the reasons discussed earlier in response to comments on proposed § 4280.311(d)(13), the Agency has revised the interest rate structure and has removed proposed § 4280.311(d)(17). Thus, it is unnecessary to adopt the commenters' suggestions.

Minimum and Maximum Loan Amounts (Proposed § 4280.311(e)(1))

Comment: A number of commenters were concerned about the maximum loan amounts being proposed. Most recommended raising both the single year maximum and the aggregate maximum to $1 million and $5 million, respectively. Other amounts suggested were $750,000 for single year maximum and $4 million aggregate maximum. Points made by the commenters included:

- While most rural MDOs will not borrow the maximum amount, large lenders that can demonstrate success in making and managing a large volume of loans should have the opportunity to do so;
- The low limit may constrain MDOs with robust pipelines of potential borrowers; and
- The low limit creates additional administrative expenses for both the Agency and the MDO.

Response: In order to fund as many qualified microlenders as possible, it is important to have a maximum loan amount that is both large enough for larger lenders and small enough to allow equitable distribution of loan funds. Additionally, the current maximums and minimums provide the Agency with the opportunity to spread risk across a higher number of local economies than would a more condensed distribution. Therefore, the Agency has not revised these limits in response to the comments.

The Agency notes that it has retained the proposed minimum loan amount of $50,000 in the interim rule. The Agency considered whether to lower this minimum amount, but decided against doing so for two primary reasons. First, the Agency is concerned that an MDO seeking to borrow, for example, only $10,000 or $20,000 is unlikely to be a well established MDO with a sufficient

"critical mass" and would therefore present a higher risk to the Agency for repayment. Second, even if the MDO seeking such a small amount was well-established, the Agency believes that a $10,000 or $20,000 loan to the MDO under this Program would represent a small portion of the MDO's overall portfolio of loans and would not be the type of MDO the Agency is most interested in for the Program.

Use of Funds (Proposed § 4280.311(e)(2))

Comment: One commenter asked what an MDO would do concerning establishing an RMRF if the MDO wants to apply in a subsequent year to recapitalize the loan fund.

Response: The Agency has rewritten the beginning part of § 4280.311(f)(2) to state: "Loans must be used only to establish or recapitalize an RMRF out of which microloans will be made." By including "or recapitalize", the Agency is allowing MDOs to apply in subsequent years for loan funds to recapitalize an existing loan fund. In addition, other changes have been made to this paragraph.

Comment: One commenter suggested revising the sentence "Interest earned by the microlender on these funds may, with advance written authorization from the Agency, be used to help fund the LLRF" to read "Repayments plus Interest earned on these funds may be used to help fund the LLRF." The commenter believes that requiring advance written authorization is another opportunity for Agency non-compliance.

Response: The Agency has not revised the provision requiring advanced written notification for using the interest earned on the RMRF for increasing funding to the LLRF (*see* § 4280.311(e)(2)). The Agency disagrees with the commenter's assertion that this is an opportunity for Agency non-compliance. This requirement is a sound oversight provision.

Loan Loss Reserve Fund (LLRF) (Proposed § 4280.311(f))

Comment: One commenter asked why the LLRF would be set up to cover delinquent payments.

Response: The statute requires the establishment of at least a 5 percent LLRF (*see* section 379E(b)(3)(C)). The purpose of the LLRF is to cover microloans that have gone into default. This provides a cushion to protect the microlender from becoming delinquent to the Federal government.

Comment: One commenter stated the "105 percent rule" that requires the MDO at all times to maintain a microloan fund and loss reserve equal to 105 percent of the RMAP loan balance, or be in default, is unworkable and unnecessary. What this means is that if an MDO suffers any loss whatsoever (which is realistically likely), it either must immediately refund the entire loss up to the 105 percent level, or be liquidated by USDA. This is required even if the MDO is otherwise current on their RMAP loan and performing as agreed. If an MDO suffers a loss but continues to stay current on its payments, it should be monitored closely by USDA, but it may yet recover its losses through operations or other means. There is no benefit or reason to liquidate an MDO that is making payments as agreed and operating its microloan fund in accordance with the mission of the RMAP program. Again, the IRP program's approach to default is perfectly workable as a quick substitute.

Another commenter recommended that USDA provide further guidance on the available grace period for an MDO to replenish the LLRF in case of microloan default.

Response: The statute requires that each microlender establish and maintain a loan loss reserve fund of at least 5 percent of the outstanding balance of debt owed to the Agency under the program by the microlender. It is not the intent of the Agency to declare a microlender in default based on the loss by a microborrower. The Agency is also aware that it takes time to replenish the reserves. Therefore, the Agency has added a 30-day grace period for such replenishment. Regarding the reference to the IRP program, it is not the Agency's intent to operate the RMAP as if it were an extension of the IRP.

Capitalization and Maintenance (Proposed § 4280.311(f)(2))

Comment: A number of commenters were concerned with the proposed provision that would require the 5 percent funding level for the loan loss reserve fund to be met using "non-Federal funding" (*e.g.,* RMAP funds cannot be used to establish the loan loss reserve) (proposed § 4280.311(f)(2)(iii)). The commenters noted that this provision would require the LLRF to be funded by the borrower. The commenters stated that this is contrary to Congressional intent that the 5 percent level be met using the USDA/RMAP loan. Most of the commenters recommended that the rule reflect this Congressional intent.

In supporting this position, several of the commenters stated that requiring the use of non-Federal funds would limit the ability of smaller rural MDOs to participate in the program. According to the commenters, many rural MDOs depend on federal funds to operate, as state, local and private funds for microenterprise development are limited and decreasing. According to one commenter, even in the best of times, securing non-Federal funding is a challenge. These funds provide critical resources for achieving the MDOs mission of serving rural microenterprises. Making them nearly inaccessible for 20 years will pose significant challenges for all MDOs. The commenters believe that, if forced to use non-Federal funds for the LLRF, the program will be unattractive to many MDOs and many rural MDOs will not be able to participate in RMAP because they have no (or limited) non-federal funds to capitalize the required loan loss reserve.

Two of the commenters indicated that they understood the Agency's reluctance to allow use of RMAP funds to capitalize the loan loss reserve. These commenters stated that some flexibility should be provided to allow the use of other federal funds and suggested that, as an alternative, this provision be modified to allow federal funds other than RMAP (Rural Business Enterprise Grant (RBEG) or Community Development Block Grants (CDBG) funds, for example) to capitalize the required loan loss reserve.

Finally, one commenter suggested that the requirement for the LLRF as proposed be eliminated in its entirety and be replaced with the IRP's approach of requiring that a 6 percent loss reserve be built up by the third year of operations and maintained thereafter, with the understanding that losses will cut into the reserve and that therefore time is allowed in rebuilding the loss reserve.

Response: While the Agency understands the issues raised by the commenters, especially as it regards MDOs with less history, the Agency has not revised the requirement to use non-Federal funds. Based on the lending program history of Rural Development, it has greatest level of long-term success awarding projects with program participants who have their own capital in the project rather than having the government fully finance the project. In addition, there is a statutory requirement in section 379E to provide a 25 percent non-Federal share against funds received from the Federal Government for the cost of the project. The MDO's non-federal investment in the LLRF can be considered a part of the non-Federal share.

LLRF Funded in Advance (Proposed § 4280.311(f)(4))

Comment: One commenter in reference to "The LLRF account must be established and partially funded" asked: If they do not initially establish at 5 percent, what is the period of time the microlender has to fully capitalize the account? The commenter pointed out that proposed § 4280.311(h), Loan closing, requires at least 5 percent of initial disbursement be deposited. One commenter also asked: Why would the LLRF need to be funded with 5 percent of the initial disbursement when the account is required to have 5 percent of each loan made. If no loans have been made, the commenter believes that such a requirement would be an undue financial burden on the applicant to tie up funds for this.

Response: The initial amount of capitalization will be 5 percent of the initial disbursal amount requested from the Agency by the MDO. The remaining loan loss reserve funds can be front loaded into the account, or built over time as microloans are made. The MDO will maintain a minimum cash balance of 5 percent of the amount owed to the Agency under this program in the LLRF at all times, including at the time of the initial and all subsequent draws, with the exception that if the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The paragraph has been clarified accordingly.

Approval/Obligation (Proposed § 4280.311(g))

Comment: One commenter pointed to the part of proposed § 4280.311(g) that states that the Request for Obligation of Funds form "may be executed by the loan approving official provided the microlender has the legal authority to contract for a loan, and to enter into required agreements." The commenter then asked if OGC will be making the determination that the MDO has the legal authority to contract for a loan.

Response: As indicated previously in this preamble, the interim rule now requires the MDO to submit an attorney's opinion regarding the MDO's legal status to make loans, which the Agency will use in making the determination but may consult with OGC as necessary.

Comment: One commenter suggested replacing "loan approving official" with "Agency" for consistency within the rule.

Response: The Agency agrees with the suggestion to replace "loan approving official" with "Agency" and has revised the paragraph accordingly.

Loan Closing (Proposed § 4280.311(h))

Comment: One commenter suggested that the proposed rule needs to address the applicant signing a promissory note, security agreement, financing statement, etc., at loan closing.

Response: The Agency agrees that the rule needs to identify the promissory note and security agreement and has added them accordingly.

Comment: One commenter asked: Wouldn't the RMRF account have to be set up prior to "loan closing" because the Agency would have had to establish the electronic funds transfer (EFT)?

Response: The Agency agrees with the commenter that the RMRF account would have to be set up prior to loan closing. Section 4280.312(c)(1) provides, in part: "Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up." No change has been made in response to this comment.

Comment: One commenter suggested using the term "Agency Personnel" in proposed § 4280.311(h)(2)(ii) in order to allow seamless movement of the program from the national level to the state level at a future date if necessary.

Response: The commenter is referring to an earlier version of the proposed rule. The Agency is using the term "Agency" and that is sufficient to address the commenter's concern.

Comment: One commenter suggested replacing "processing officer" with "Agency Official" in proposed § 4280.311(h)(4) for consistency.

Response: The Agency agrees with the suggestion to replace "processing officer" with "Agency" and has made the change accordingly.

Comment: One commenter asked why tax considerations were included in proposed § 4280.311(h)(4) as a reason for not approving changes ("Changes in legal entities or where tax considerations are the reason for the change will not be approved").

Response: The Agency does not believe it is necessary to refer to "tax considerations" as questioned by the commenter. The Agency has recast the sentence to state: "Changes in legal entities prior to loan closing will not be approved." (*See* § 4280.312(b).) Such a change would be considered a material change since the issuance of the letter of conditions, so the loan would not be closed.

Comment: One commenter referred to the phrase "provide sufficient evidence" in proposed § 4280.311(h)(5) and asked what this meant. According to the commenter, this is inconsistent with other Rural Development programs.

Response: The Agency agrees that the phrase "provide sufficient evidence" needs clarification and has revised the rule accordingly (*see* § 4280.312(c)(3)). The Agency has determined that sufficient evidence is best demonstrated through the provision of mechanics' lien waivers. In some cases, the Agency recognizes that such waivers may not be available or applicable. In such instance, the provision of receipts of payment would suffice.

Comment: One commenter recommended that the program require a standard closing opinion, as required under the Intermediary Relending Program via OGC standard format in order to be consistent with existing programs.

Response: The Agency has determined that an attorney's opinion regarding the entity's legal status and its ability to enter into program transactions at the time of initial entry into the program will be required (*see* § 4280.310(a)(4)(ii)). Subsequent to an entity's acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the entity have occurred. The rule has been revised accordingly.

Report/Records/Oversight (Proposed § 4280.311(i))

Comment: One commenter stated that the program appears to be heavily bureaucratic in terms of data collection and reporting requirements compared to the SBA Microloan program. The reporting requirements need to be streamlined and reduced so administrative costs of the MDOs can be kept lower with more focus on serving the microloan clients.

Response: The Agency makes every attempt to streamline requirements. The portfolio reporting system for this program will be fully electronic. The grant reporting requirements are in line with Standard Federal reports. Therefore, no changes have been made in response to the comment.

Reporting Frequency

Comment: One commenter requested that reporting be semi-annual, and not quarterly, for both loans and grants. According to the commenter, only qualified and experienced MDOs will be selected, via the scoring criteria, as lenders in the program and that, in the "spirit of non-micromanagement", reporting should start out as semi-annual. The commenter also suggested quarterly reports until loan funds are spent by MDO and then convert to semi-annual reporting unless there are servicing or delinquency issues and then they may be reverted to quarterly reports until operations are found to be

satisfactory. Lastly, the commenter recommended that, for grants, reports be required quarterly during drawdown of the grant, and then semi-annually thereafter.

Response: The Agency does not disagree that selected applicants will be qualified and experienced MDOs will be selected to participate. However, the level of experience may vary widely. The Agency proposed that reporting be quarterly because microloans will be short- to intermediate-term loans. With short- and intermediate-term lending, more frequent reporting (quarterly versus semi-annual) should help the microlender better manage the loan.

Comment: One commenter was concerned with the phrase "such information as the Agency may require" (proposed § 4280.311(i)(1)(i)) and suggested that the rule needs to be specific in what information will be asked for in order to ensure consistency across the States.

Response: The list of required reporting forms is provided in § 4280.311(h)(1) and any other requirements will be determined by the Agency as necessary based on the activities of the particular MDO.

Comment: In reference to proposed § 4280.311(i)(4), one commenter stated that there is no "RD Form 1951–4, Report of RMAP/RMRF Lending Activity" but that there is a "Form 1951–04, Report of IRP/RDLF Lending Activity". The commenter then asked if there is a plan to make a new form or use the existing form.

Response: The Agency has determined that Form RD 1951–4 is no longer needed because the relevant part of that form will be moved into the Guaranteed Loan System (GLS). Thus, reference to the form has been removed from the rule and the Agency will use the GLS.

Grant Provisions (§ 4280.313)

Grant Amounts (Proposed § 4280.312(a)(1))

Comment: Many commenters expressed concern that the proposed rule would limit technical assistance grants to $100,000 despite "clear legislative language allowing such grants up to 25 percent of outstanding loans." Three of the commenters referred to Section 6022(b)(4)(B), stating that this section clearly states that the maximum amount of grant is "an amount equal to not more than 25 percent of the total balance of microloans made by the MDO * * * as of the date the grant is awarded." One commenter stated that the statute does not place any limit on the amount of the grants to support rural microenterprise development. According to this commenter, the purpose statement in the law could be read to suggest that these grants should generally represent 50 percent of the program, with technical assistance and financial assistance the other 50 percent. This commenter, therefore, recommended that, at a minimum, rural microenterprise development grants to an individual MDO be capped no lower than $250,000 annually.

These commenters believe that such a cap will make it difficult for organizations to fund the staff needed to work with borrowers and other clients, noting that good business planning, skills in marketing, management, and accounting are essential to business success. Several stated that the rule should be "revised to reflect the language of the law."

Two commenters believe that by capping technical assistance funds, the proposed rule will make it difficult for organizations to provide the services microenterprises need to succeed. Often, borrowers from this program have been deemed not creditworthy by commercial lenders. Microenterprise programs work exclusively with such borrowers and help microenterprises succeed by committing significant staff resources to training and technical assistance. A cap in technical assistance will likely result in more defaults.

Another commenter stated that this limitation ignores the possibility of high performing, successful organizations that may not be able to meet market demand for loans simply because of the limitation on technical assistance funds available. In the commenter's view, the reason for this provision was to ensure that micro-lenders had adequate financial capacity to support their loan volume. The $100,000 cap undermines this provision.

In sum, commenters requested (1) no cap, (2) using the 25 percent cap across the board, or (3) raising the limit from $100,000 to $250,000 (to be consistent with the $1 million annual RMRF limit for the MDO).

Finally, some commenters requested clarification as to whether the maximum amount of the TA grant accompany every borrowed loan; that is, if there is a separate TA grant of up to $100,000 for every loan to a microlender (in proposed § 4280.311(e)), and the proposed rule provides a maximum loan of $500,000, with an aggregate debt owed the program by any single microlender of $2,500,000, the implication is a possibility of up to five separate loans to a single microlender and the potential of up to an aggregate of $500,000 in TA grants to a single microlender). The commenters suggested that the final rule be clarified to allow the TA grant accompanying the loan to an MDO to be the maximum amount allowed by law.

Response: The Agency has determined that the $100,000 proposed maximum could be more limiting than intended in order to provide sufficient technical assistance to microenterprises and microentrepreneurs. However, the Agency has also determined that, considering the economies of scale, funding technical assistance grants at 25 percent for all outstanding loans up to the $2.5 million maximum is unnecessary and could divert too much of the program's funds away from loan purposes. Therefore, the Agency has revised the rule to allow technical assistance grants at a rate of 25 percent for the first $400,000 of aggregate outstanding microloans owed to the microlender under this program and then 5 percent on all additional outstanding microloans owed to the microlender under this program above $400,000 up to the $2.5 million total debt cap (*see* § 4280.313(a)(1)(i)). As a result, the maximum TA grant to any one MDO in any given year would now be $205,000. The Agency has also clarified that the TA grant amount is an annual amount, as specified in the statutory language.

Cost Share (Proposed § 4280.312(a)(2))

Comment: One commenter was concerned with the cost share provision limiting the "Federal share" to 75 percent as it would be applied to the Freely Associated States (Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia). The commenter pointed out that the Freely Associated States get much of their financial support from the Compact of Free Association with the United States, which is funneled through the Department of Interior, Office of Insular Affairs. This Compact funding could be a potential source of match for the RMAP program and the commenter would hate to see it excluded. The commenter, therefore, suggested this provision be revised to reflect "Rural Development" funding.

The commenter suggested combining proposed § 4280.312(a)(2) and (a)(3) to simply say that the Agency portion cannot exceed 75 percent of the grant amount.

Lastly, one commenter stated that the math in proposed § 4280.312(a)(2) and (a)(3) does not "add up". The commenter provided the following example: Paragraph (a)(2) states the maximum TA or enhancement grant cannot exceed 75

percent and paragraph (a)(3) states that the total matching requirement is 25 percent of the grant. If the cost of the grant project is $10,000 and the grant portion is 75 percent or ($7,500) and the match is 25 percent of the grant amount ($1,875), there is a shortage of $625 of complete funding for the project.

Response: Federal funding may not be used as the non-Federal share or match for the RMAP program unless specifically permitted by laws other than the statute authorizing RMAP. Instead, language has been provided that clarifies the statutory language regarding cost share (*see* § 4280.311(d)) and matching funds (*see* § 4280.313(a)(2)). The Agency has revised the cost share and matching requirements, which address the commenters' concerns (*see* §§ 4280.311(d) and 4280.313(a)(2)).

Matching Requirements (Proposed § 4280.312(a)(3))

Comment: One commenter suggested recasting the text to refer to the "non-Agency cash".

Response: With regard to the suggested text edit, the Agency has retained "non-Federal" because, with the exception of certain laws that allow the use of specific funding, other Federal funding may not be used.

Comment: Two commenters expressed concern about an apparent inconsistency between the law and the proposed rule with respect to matching funds for the grant provisions in the RMAP.

One of the commenters referred to section 379E(c)(1)(B) of the 2008 Farm Bill, which indicates that an MDO must provide a match of 15 percent the grant amount in the form of matching funds, indirect costs, or in-kind goods or services. For both enhancement grants and for technical assistance grants, proposed § 4280.312(a)(3) states that microlenders must provide a 10 percent match against any grant and a 15 percent cash or in-kind contribution against any grant for a total matching requirement of 25 percent. The proposed rule indicates that the loan loss reserve fund does not count for this requirement. The law, however, only requires either a cash match or an in-kind contribution. According to this commenter, there seems to be an inconsistency between the law and the proposed rule. For an MDO, the difference could have serious ramifications. Rural MDOs are challenged by the relative lack of local foundations, the fact that fewer corporations are headquartered in rural areas, and continually strained state budgets. The commenter, therefore, recommended that the Agency clarify the matching requirement, which the commenter understands—based on the law—to be a 15 percent match in the form of cash or in-kind funds.

The other commenter also noted that for both enhancement grants and for TA grants, the proposed rule states that microlenders must provide a 10 percent match against any grant and a 15 percent cash or in-kind contribution against any grant for a total matching requirement of 25 percent. The LLRF does not count for this requirement (proposed § 4280.312(a)(3)). The law, however, only requires either a cash match or an in-kind contribution; not both (section 379E(c)(1)(C)).

Lastly, one commenter noted that the law authorizes the use of CDBGs for use as a non-federal match. The commenter thus recommended that the Agency should include this in the final rule.

Response: The Agency has revised the non-Federal share and matching requirements, which address the commenters' concerns.

With regard to the CDBG comment, when permitted by laws other than the statute authorizing RMAP, Federal funding may be used as the non-Federal share or match for the RMAP program.

Oversight (Proposed § 4280.312(a)(4))

Comment: One commenter noted that the proposed rule already has provisions for oversight at proposed § 4280.311(i) and suggested combining the two provisions.

Response: The oversight provisions the commenter is referring to in proposed § 4280.311(i) apply to loans. The oversight provisions in proposed § 4280.312(a)(4) apply to grants. Because the provisions are different and apply to two different types of financial assistance, the Agency has not combined the two paragraphs as suggested by the commenter. However, the Agency has determined that there is no need for two grant oversight paragraphs found in proposed §§ 4280.312(a)(4) and 4280.320(a). Therefore, the Agency has deleted the first occurrence so that all grant oversight provisions are found in § 4280.320(a).

Comment: In reference to proposed § 4280.312(a)(4)(i), one commenter asked if the reporting will be with SF–269, "Financial Status Report," (Long Form) or (Short Form). The commenter also asked if this was in addition to the narrative and to Form RD 1951–4.

Response: The SF–269 has been replaced with SF–PPR, "Performance Progress Report." The new form will be submitted in conjunction with the narrative. As noted in a previous response, the Agency has determined that Form 1951–4 is no longer needed because the relevant part of that form will be moved into GLS.

Comment: In reference to proposed § 4280.312(a)(4)(iii), one commenter suggested adding "as revised" after the reference to "OMB Circulars A–102 and A–110."

Response: The Agency has replaced reference to these specific circulars with a more general reference to OMB circulars and regulations, eliminating the need to add the language suggested by the commenter.

Comment: One commenter suggested that all reporting requirements should be listed in one section and not spread out.

Response: While the Agency agrees with the commenter, the Agency will address this in regulatory instructions.

Administrative Expenses (Proposed § 4280.312(a)(5))

Comment: One commenter stated that there is a need for additional clarity about what the technical assistance grant may be used for. According to the commenter, the limitation at proposed § 4280.312(a)(5) that not more than 10 percent of the technical assistance grant be used for administrative costs is confusing and problematic. The commenter stated that an MDO should be able to use its technical assistance grant to pay for all of the costs associated with providing a functional staff to provide technical assistance to microentrepreneurs. Such costs should be expressly allowed and not be governed by the 10 percent figure.

Response: The Agency acknowledges that intensive technical assistance is widely recognized in the microlending community as a critical component to the success of potential and existing microborrowers. The 10 percent limitation is statutory (section 379E(b)(4)(C)). With regard to the commenter's request for additional clarity, the Agency disagrees that the rule is not sufficiently clear as to what the technical assistance grant may be used for and no changes have been made to the rule in response to this comment.

Enhancement Grants (Proposed § 4280.312(b))

Comment: One commenter stated that the enhancement grant is an unnecessary diversion of scarce RMAP funds. Enhancement grants as proposed are small ($25,000) and limited to the purpose of building MDO capacity. There are other USDA Rural Development programs available to do this—RBEG, RBOG, Rural Community

Development Initiative (RCDI)—as well as other sources from other funders and federal programs. There is no expressed requirement in the statute to create an Enhancement Grant program, and it would be a much better approach to direct all of the scarce RMAP grants to supporting the MDO's who are actually making microloans instead.

One commenter suggested an optional approach to provide enhancement grants, recommending that the rule allow the Agency to make larger enhancement grants to microlenders that, on a competitive basis, will select a group of rural microlenders to provide a platform for group, individual, and peer-to-peer enhancement services. The commenter referred to the U.S. Small Business Administration's Program for Investment in Microentrepreneurs (PRIME) as an example of such an approach.

Response: The Agency disagrees with the commenter concerning the statutory basis for the "enhancement grant" program. The statute states at section 379E(b)(4)(A)(i)(II): "Carry out such other projects and activities as the Secretary determines appropriate to further the purpose of the program." However, because opinions differ widely on how best to approach an enhancement grant category to this program, the Agency is requesting comments on this subject (*see* Section V of this preamble). Comments will be considered prior to publication of the final rule.

Technical Assistance Grants (Proposed § 4280.312(c))

Comment: One commenter noted that this section states that TA grants will be based on the loan amount made to an MDO "in accordance with the statute." The statute does not at any time state that TA grants should be calculated in this manner; however, the report language does allow for this mechanism.

Response: The statute states at section 379E(b)(4)(B)(ii): "Maximum amount of grant. A microenterprise development organization shall be eligible to receive an annual grant under this subparagraph in an amount equal to not more than 25 percent of the total outstanding balance of microloans made by the microenterprise development organization under paragraph (3), as of the date the grant is awarded." While the text in the preamble to which the commenter is referring may not reflect this statutory provision clearly, this is the statutory language on which the statement in question was made. The Agency will ensure clarity in the interim rule.

Comment: Several commenters noted that this section does not address borrowers who are "seeking a loan from an MDO"; that it addresses only people who have received one or more microloans and that this is in contradiction to the statute authorizing the program. As one of the commenters stated: This section of the proposed rule states that TA grants can only be used for people that have "received one or more microloans" from the MDO. However, the law also allows these TA grant funds to be used for services to microentrepreneurs that "are seeking a loan from the" MDO (Section 6022(b)(4)(B)(i)(II)). The law clearly intends to support microentrepreneurs who are owners and operators of rural businesses or prospective owners and operators of rural businesses. The definition of "microentrepreneur" in both the law and Proposed Rule include both types of microentrepreneurs. This section would ignore the need for technical assistance for prospective microborrowers as contemplated by the law. The commenters suggested that the final rule be modified to conform to the law.

One commenter also stated that, in practical terms, most microentrepreneurs seeking a loan need technical assistance to complete the loan process, and it is often difficult for MDO lenders to determine in advance whether an applicant will successfully complete the borrowing process. In fact, in some cases, well-crafted pre-loan assistance will enable a microentrepreneur to determine a means to grow or stabilize their business without taking on the risk of a loan, and as a result they will choose not to borrow.

Response: The Agency agrees with the commenters that the rule should include these entities and has so modified the rule (*see* § 4280.313(b)(1)).

Disbursement of TA Grant (Proposed § 4280.312(c)(2))

Comment: Several commenters discussed the manner proposed for disbursing TA grants. Four suggested that the TA grant be a full year grant and not based on the microloans made for the first year. Another similarly recommended that, during the first year of an intermediary's participation in RMAP, the TA grant should be a full year grant based on the amount of the loan to the intermediary.

Commenters noted that this section of the proposed rule states that during the first year of operation the disbursement of TA grants to MDOs shall be a percentage based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. This limitation of TA grant disbursement will limit the amount of technical assistance an MDO can offer to borrowers or potential borrowers. In the long-run it could affect the pipeline of microloan borrowers, something about which the proposed rule is concerned in other sections.

One commenter stated that the manner for disbursement of funds needs to be clearer. This commenter states that it appears that the proposed rule envisions awarding TA grants only in conjunction with the award of RMAP loan funds. Initially this certainly makes sense, but in years after an RMAP fund is established, it is still desirable to provide TA grant support. In fact, it would be ideal if an RMAP MDO, once funded, could depend upon rather than compete for TA grants. A possible structure might be to award a TA grant equal to 25 percent of the RMAP loan award in Year 1, with a commitment that provided the MDO makes satisfactory progress, it will be noncompetitively awarded a subsequent TA grant in Years 2, 3, and 4 equal to 20 percent, 15 percent, and 10 percent respectively of their RMAP microloan portfolio. This will have the effect of creating incentives for the MDO to get their RMAP funds loaned out quickly (since the size of subsequent TA grants will be pegged to their portfolio size) and will provide a reliable funding stream with the understanding that the RMAP MDO will need to get established internally and gradually come to rely less on RMAP TA grant. (It should be noted that there is a precedent for Rural Development awarding grants for multi-year terms—*e.g.,* the Section 523 Self-Help TA program. A similar approach would make sense for the RMAP TA grant.)

A sixth commenter recommended that the TA grant structure allow for the training and technical assistance of prospective microentrepreneurs as well as existing microentrepreneurs by awarding TA grants quarterly or annually, based on statutory allowances, program performance, and demonstrated need.

Response: With regard to the initial (first year) grant, the amount will be calculated against the initial loan amount. With regard to the manner of disbursement, these will coincide with loan disbursements to ensure that funds are available for microlending for loan ready clients, that these clients can receive post loan technical assistance, and that incoming clients can also receive technical assistance. This will allow the initial disbursement of grant

dollars in advance with the remaining quarters to be funded in reimbursement. The Agency notes that quarterly disbursements do not imply that one-quarter of the grant will be disbursed each quarter. If an MDO needs, for example, 50 percent of the grant in the first quarter, the rule allows the Agency to provide that amount in the first quarter.

Overall, the Agency is satisfied that the proposed distribution of money is sufficient for participating MDOs to implement technical assistance associated with loans made under this program. As the program matures, the Agency will evaluate this method of disbursement.

MDO Application and Submission Information (§ 4280.315)

Comment: One commenter noted that the application content specified in USDA Rural Development's IRP regulation (7 CFR 4274.338, including the use of the IRP application—Form RD 4274–1) provides a detailed, well-understood, and complete set of all of the information needed for a revolving loan fund loan application. The commenter recommended using this form in lieu of the SF–424 as specified in § 4280.315.

Response: The Agency disagrees with the commenter's recommendation because this program is not meant to replicate the IRP program. The program information requested by the Agency will provide the data necessary to appropriately evaluate applicants for this program.

Submission Requirements (Proposed § 4280.315(c))

Comment: One commenter was concerned that the submission requirements did not include mention of a narrative, detailed budget, and submission of lending and servicing policies.

Response: As proposed, there were several places within § 4280.316 that asked for a narrative. In addition, financial information was requested in proposed § 4280.316(a)(5) and loan policies and procedures were requested in proposed § 4280.316(a)(2). These provisions have been retained and appropriate reference to § 4280.316 has been added to § 4280.315 for clarity.

Comment: One commenter asked why the proposed rule did not ask for organizational documents and suggested that it be added to the list of documents to be submitted. According to the commenter, organization documents should be submitted to Agency personnel for analysis and eligibility determination. Another commenter suggested adding organizational documents as an additional documentation requirement.

Response: As proposed, the rule requested organizational documents in § 4280.316(a)(1) as part of the application. This has been retained and an appropriate reference has been added to § 4280.315(d)(1).

Comment: One commenter suggested using the certification under 1940–Q instead of Form SF LLL. According to the commenter, 1940–Q is used more frequently than SF LLL.

Response: While the commenter is correct in that either the certification under 1940–Q or Form SF LLL can be used, the Agency prefers to use SF LLL because it is shorter, meets the needs of the Agency, and is consistent with the Agency's other grant programs. Therefore, the reference to SF LLL has been retained in the interim rule.

Additional Documentation (Proposed § 4280.315(d))

Comment: One commenter recommended adding the following requirement for additional documentation: "Applicants are strongly encouraged to review the scoring criteria and provide documentation that will support the score." According to the commenter, this needs to be brought to the applicant's attention or they will look only at the application submission requirements and not provide sufficient information for scoring or a successful application. There is a disconnect in many of our programs between "scope of work requirements" and "scoring criteria". We need to do a better job of having applicants address burdensome scoring data—particularly with a program that is going to be administered at the National level initially.

Response: The Agency agrees with the commenter that the proposed text would be useful to help ensure receipt of better applications and has modified the rule accordingly with reference to the additional application requirements in § 4280.316.

Comment: In reference to proposed § 4280.315(d)(1)(i), one commenter expressed concern that the requirement for copies of an applicant's IRS designation as a non-profit would effectively block all non-profits in the Freely Associated States from being eligible. The commenter asked: Why not just get an OGC opinion similar to the Community Facilities program?

Response: The Agency agrees with the commenter's concern. As noted previously in a response to a comment on the definition of "nonprofit entity," the Agency has revised this requirement (found in § 4280.315(c)(8)(ii)) to, in part, remove reference to the IRS.

Comment: In reference to proposed § 4280.315(d)(1)(iv), one commenter suggested adding the words "not more than 6 months old" after "A Certificate of Good Standing."

Response: The Agency agrees with the commenter's suggestion that the certificate of good standing not be more than 6 months old and has revised the rule accordingly.

Comment: Another commenter expressed concern with the requirement that the Certificate of Good Standing come from the applicant's home state's Office of the Secretary of State. According to the commenter, the commenter's State does not provide these certificates to institutions of higher education and doubted that other States would do so for an Indian tribe within their borders.

Response: The Agency understands the commenter's concern. As a result, the language has been altered to exclude the need of a Certificate of Good Standing for institutions of higher education and for Indian tribes.

Application Scoring (§ 4280.316)

Comment: One commenter stated that a new application scoring process will be needed if the Agency includes in the rule grants to MDOs solely for the purpose of the provision of training, technical assistance, and other business development services to microentrepreneurs.

Response: As noted in a response to previous comments, the Agency is including such grants in the rule and has provided a new application scoring system for these grants (*see* § 4280.316(d)).

Past Experience Requirement

Comment: Many commenters expressed concern over the proposed rule's emphasis on an MDO's past experience, especially in rural areas, when scoring applications.

Commenters, in general, were concerned with the proposed scoring that would enable MDOs with past experience and those currently operating in rural areas to be awarded more points (and thus be able to score higher) than to those MDOs that do not. According to the commenters, such scoring would not only put urban MDOs at a disadvantage, but would also discourage their expansion into rural areas.

Several commenters also stated that the proposed rule does not adequately account for MDOs creating and proposing an effective plan for providing services to rural areas. By

awarding points to MDOs with past experience, the proposed rule puts rural MDOs who want to add microenterprise services at a disadvantage. As one commenter stated, an MDO with a proven microenterprise track record that has a viable plan to now provide lending services may be prohibited from doing so by the scoring rules, thus potentially denying microlending services to an unserved or underserved rural area.

In sum, these commenters stated that, if RMAP is to succeed, it must prompt both the development of new services by existing providers of a single service and the expansion of existing urban programs into rural areas. The commenters believe that the rule as proposed would discourage both and thereby undermine the success of RMAP in achieving the purposes for which it was created.

On the other hand, another commenter urged the Agency to maintain a strong commitment to supporting microlenders who are located in and predominantly serve rural communities. While understanding the interests of some to incentivize urban-based microlenders to expand their lending territories into rural communities, this commenter believes that the best service providers are locally based, have strong ties to their rural communities, and are intimately connected with the rural economies they serve. The commenter further believes that the greatest benefit to rural entrepreneurs will be felt through building the capacity of rural-based microlenders, not through additional outreach from urban markets and asks that the Agency preserve priority for microlending organizations having a strong history with, and a clear commitment to, rural communities.

Response: The Agency understands and recognizes the commenter's concern as it regards MDOs with more than 3 years experience, but without rural area experience. However, it is specifically the intent of RMAP to leverage as much as possible the existing rural development experience of MDOs and to serve, exclusively, rural areas.

Further, if the MDO has 3 years or less experience, the scoring does not take into account past experience in making loans to rural areas or to rural microentrepreneurs. Thus, RMAP does not discourage the development of new providers as suggested by the commenter.

Finally, each of the categories of prospective participants adds up to a total score of 100 points so that no category of applicants will have any advantage over another category of applicants.

Too Complex/Replace Scoring System

Comment: One commenter stated that the proposed scoring system is overly elaborate and complex, and it will not really single out projects with the greatest merit. This commenter recommended replacing the proposed scoring system with a much simpler system that is based on only three factors: Leverage of USDA funds (Matching Funds); Prospect for Success (Experience and Track Record); and Targeted Groups (Outmigration/Minority Focus).

Response: The commenter's suggested three factors are included in the scoring criteria. The Agency believes that some level of detail, in addition to those three factors, regarding applicant capabilities, legal status, historical performance, and other details are important in determining the applicant's abilities to make and service microloans, provide technical assistance, and facilitate access to capital. Therefore, the scoring criteria have been designed to provide the Agency with in-depth information regarding each applicant and help ensure the success of the program and its end user clients.

Subjective Scoring Criteria

Comment: Two commenters stated that numerous criteria are subjective and may lead to inconsistent or unreliable scoring, particularly if reviewers were to lack familiarity with rural microlending management best practices. One of the commenters specifically stated that the criteria found in proposed § 4280.316(c)(1), (3), (5), (6), and (7) are highly subjective and scoring may vary greatly from individual reviewer to individual reviewer.

Response: The Agency disagrees that these provisions are unduly subjective and will result in inconsistent scoring. Because the same staff within the National Office will score all applications as the program is implemented, the Agency can ensure consistent and reliable scoring. As the program matures, the Agency may have State office personnel score RMAP applications. At the time of publication of the final rule, the Agency will publish detailed regulatory instructions with guidance on scoring to help ensure consistency across the State offices.

Points for Partnering

Comment: Two commenters suggested awarding points for partnering. The commenters noted that under proposed § 4280.316(a) no points will be awarded based on the capacity of the applicant to partner with key local, regional, and statewide stakeholders that can help MDOs succeed in their mission. Most successful economic development efforts are due to key local, regional and statewide partnerships that bring together community stakeholders engaged in economic development efforts. These partnerships provide MDOs with additional sources of financing, technical assistance and buy-in from economic development agencies that are critical to program success. They also help to ensure that MDOs are not working in a vacuum or duplicating services that are already available to microentrepreneurs. The commenters recommended that USDA add an additional scoring component that requires MDOs to demonstrate their ability to partner with these key stakeholders. One of the commenters suggested up to 15 points be awarded and that this new criterion should also be included in enhancement grant scoring criteria (proposed § 4280.316(d) and (e)).

Response: The critical and essential scoring criteria have been included at this time. While we agree there is value in partnering, our primary need is to establish an understanding of the capacity of each applicant to provide microloans and technical assistance. As noted previously in this preamble, MDOs selected to participate in the program are encouraged to develop community-based partnerships. However, such partnerships and collaboratives will be developed outside of the relationship between the Agency and the participating MDOs. Thus, no further points are needed.

Fixed Versus Ranges in Scoring

Comment: One commenter was concerned with scoring criteria that relied on ranges. According to the commenter, awarding points through the use of ranges is not objective; most states will award the applicant the full score just to be competitive. To be objective, the criteria must be based on whether the applicant has either addressed the criteria or not. In the commenter's experience with the RBOG program, the commenter has issues with the subjectivity of a range of score versus the objectivity of a set score. The commenter believes that the rule should be kept simple; that is, no ranges, just points. Either the applicant has documented the criteria or not with points being awarded if they have and no points if they have not.

The commenter was also concerned that there is insufficient direction on how to score the criteria when scoring is shown as 0 to 5 points, for example.

To illustrate, the commenter referred to proposed § 4280.316(a)(1), which states "an organizational chart [must be submitted] clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are the management positions and those positions essential to the operation of microlending and TA programming; award 0–5 points." The commenter asked how the Agency would make a decision of 0 to 5 points, because there is no requirement for experience, until you get to paragraph (a)(4), which is another scoring criterion. The commenter was also concerned that the lack of direction would result in inconsistency in scoring across the states.

Lastly, this commenter expressed several concerns with the proposed scoring found in proposed § 4280.316(a). The commenter stated that there needs to be thresholds for scoring different categories; that is, the rule should clearly identify what information will result in a score of 1 point or 3 points or 5 points. In other words, there needs to be more detail on how to distinguish between, for example, scoring 10 out of 10 on financial statements versus scoring 3 out of 10.

Response: The Agency believes that ranges are appropriately identified for the scoring criteria identified by the commenter. For each criterion, it will be up to the applicant as to how much material to provide in addressing the criterion and the quality of that material. To help ensure consistency in scoring these criteria among National Office Agency staff, the Agency will be providing regulatory instructions on how to score each of these criteria.

Points for Smaller Loans

Comment: One commenter stated that, to become an effective national program, the benefits must be spread across the widest range of rural entrepreneurs and rural communities. To accomplish this goal, consideration should be given to providing some application points for MDOs that will target the provision of smaller loans and provide complementary nanoloan programs (loans of less than $5,000) designed for helping to repair credit scores. In today's economic environment it is very easy for rural clients to see their credit scores plummet due to loss of a job, unplanned medical bills, housing crisis, or credit crisis. Small credit builder loan programs require more administration and technical assistance per dollar value of loan balances and the commenter suggested that they be given extra consideration weight in the application scoring system, since they are an increasingly necessary component in providing a comprehensive program and would provide greater marginal impacts.

Response: Nanoloans fit well within program requirements and can be easily accommodated. The Agency also sees value in spreading risk via numerous loans at smaller amounts. Because these loans will fit well within program requirements, no additional scoring for that level of lending will be given. At this point in time, lending history information called for in the scoring criteria will provide the Agency with sufficient data to make appropriate decisions.

Narrative Length

Comment: One commenter recommended setting a page limit (or number of words) whenever the proposed rule requests the applicant to provide a narrative. The commenter noted two spots where there are page limits (5 and 7) and suggested in both cases that is still too many pages for a narrative.

Response: The Agency agrees and has set a uniform length (5 pages) for all narratives.

Fairness of <3 Years vs. >3 Years Experience

Comment: One commenter stated that setting up different standards for inexperienced MDO's ("<3 years" experience) and established MDO's ("3+ years" experience), is not fair, nor is it good policy because it has the effect of slightly favoring inexperienced applicants for a high risk undertaking.

Response: The statute requires that MDOs have "a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver services to rural microentrepreneurs, as determined by the Secretary." As a result, it is necessary to consider experienced as well as new entities. The scoring system has been created so that all categories of applicants can score up to 100 points. Thus, no category of applicants will have an advantage.

Relative Points Awarded

Comment: A number of commenters expressed concern with the relative weighting of points among the scoring criteria in proposed § 4280.316(a) and (b). Concerns expressed were:

(1) Proposed § 4280.316(a)(4) requires that resumes of all staff on the MDO's organizational chart be provided in the application, and up to 5 points are awarded for both the "quality" of staff resumes and for inclusion of the organizational chart. Meanwhile, the same number of points is awarded for the MDOs understanding of microlending. The allocation of points for the basic scoring of all applicants fails to recognize what is important for MDOs to properly serve rural microentrepreneurs. The ability of staff to administer the program can be determined through other required application items and through MDO history, and the points awarded for resumes and an organizational chart could be focused elsewhere.

(2) It seems superfluous to award up to 5 points for an organizational chart and another 5 points for adequate resumes for a combined 10 points. These two categories can be combined for fewer points and demonstrating an understanding of microlending with equal emphasis on loan making and providing technical assistance should earn more than the current up to 5 points.

(3) Under proposed § 4280.316(b)(1), History of Provision of microloans, paragraphs (b)(ii) through (b)(iv), award up to 8 points for the percentage of the number and amount of loans made in rural areas, but only up to 4 points for the number and amount of microloans made in rural areas. The commenter recommended that, if the goal of RMAP is to maximize the number and value of loans made to rural microenterprises, the scoring system should provide relatively more points to lenders with a history of making larger numbers (and a larger dollar value) of microloans in rural areas, regardless of the percentage of their total microloan portfolio those loans represent. In other words, a lender that has made 40 microloans in rural areas that represent 10 percent of its total portfolio should receive a relatively higher score than a lender that has made 4 loans in rural areas that represent 100 percent of its total portfolio.

(4) Proposed § 4280.316(b)(3)(v) provides seven points for providing loan and TA services to 75 percent or more socially-disadvantaged microentrepreneurs, but cuts the points nearly in half (to four points) for 50 to 74 percent. According to the commenters, it could be very hard in many places, like the Great Plains, to reach 75 percent, particularly with other rules requiring services to match the service area demographics. The commenters suggested increasing the points awarded in this section to six points for loans and technical assistance to at least 67 percent but less than 75 socially-disadvantaged microentrepreneurs, and four points for at least 50 percent but not more than 67 percent. That way MDOs in less racially

diverse rural areas like the Great Plains will not have to sacrifice points while still having a diverse portfolio.

(5) The scoring structure for microlenders with more than three years of experience should be changed to value that experience by awarding lenders that have made larger numbers (and lent more dollars) to microentrepreneurs.

(6) More points should be awarded for an MDOs successful training history because successful MDOs train many more microentrepreneurs than they provide loans. According to the commenter, if the MDOs are good at the work, some of the microentrepreneurs find they do not need credit or gain the knowledge to allow them to receive loans in the commercial credit market. The proposed scoring metric awards too many points for having made loans and disadvantages organizations whose emphasis is on training. The long-term positive effect of the program will depend on how successful it is at building community economic capacity, which depends at least as much on effective training as on lending.

(7) Require an organizational chart and staff resumes together and awarding a maximum of less than 5 points combined for the two items, and reallocating the remaining points (5 plus whatever is remaining from the organizational chart/resume combination) to other items, such as location in an outmigration area and information regarding understanding of technical assistance to microentrepreneurs. The commenters also recommended that staff information and resumes, if required, be required only for organizational employees dealing directly with microentrepreneurs, microlending, and/or the providing of technical assistance services.

(8) Amend these criteria in the final rule to emphasize that applicants will be judged on the governance structure of the MDO. In particular, the board of directors or governing body of the MDO should include a diverse representation of various sectors of the community including local elected officials. In supporting this recommendation, the commenter states that USDA emphasizes the management positions as a critical component of the scoring for this section and notes that this is an important factor in a MDO applicant's success. However, the most critical organizational component that should be evaluated for an MDO is the composition of its governing body or board. This body will be responsible for compliance with the funding award regardless of staff changes and its composition demonstrates the diversity of local stakeholders that are involved in the governance of the MDO.

Response: The Agency accepts that the proposed scoring system was complicated and sometimes unclear. As a result, categories have been clarified and reorganized, specific items have been moved to specific loan and grant type categories, subjective and objective items have been assigned points more appropriate to their actual value, and other such changes have been applied. The new scoring criteria are located in § 4280.316.

The Agency disagrees that the quality of resumes and organizational structure are not important. Without such quality and structure, the MDO may not have the right level of management and understanding to make microloans. Lastly, as indicated in § 4280.316(a)(2), resumes are requested for the individuals shown on the organizational chart which would be, as indicated in § 4280.316(a)(1), management positions and those positions essential to the operation of the subject program.

Understanding of Microlending (Proposed § 4280.316(a)(2))

Comment: One commenter recommended that an MDO's understanding of technical assistance play a stronger role in the scoring of applications because, according to the commenter, the TA portions of RMAP are essential and the consensus view is that technical assistance is crucial for the success of rural microentrepreneurs. The commenter pointed out that up to 5 points would be awarded for the applicant's understanding of microlending. Included in proposed § 4280.316(a)(2) also is the term "provision of technical assistance." This seems to indicate that applicant MDOs must also provide evidence of their understanding of technical assistance.

Response: The Agency agrees with the commenter that this provision needs to address the MDO's experience with providing technical assistance and has revised the rule accordingly (*see* § 4280.316(a)(4)) to request provision of the MDO's policy and procedures manual addressing technical assistance.

Resumes (Proposed § 4280.316(a)(4))

Comment: One commenter noted that proposed § 4280.316(a)(4) requires that resumes of all staff on the MDO's organizational chart be provided in the application, and up to 5 points are awarded for both the "quality" of staff resumes and for inclusion of the organizational chart. Meanwhile, the same number of points is awarded for the MDOs understanding of microlending. The allocation of points for the basic scoring of all applicants fails to recognize what is important for MDOs to properly serve rural microentrepreneurs. The ability of staff to administer the program can be determined through other required application items and through MDO history, and the points awarded for resumes and an organizational chart could be focused elsewhere.

Response: The organizational chart is requested of all applicant entities (*see* § 4280.316(a)(1)) for several reasons. It is important to know which personnel are in program-pertinent position on the chart. It is also important to know whether or not there is a larger organization beyond the microenterprise specific offices. This provides the Agency with a sense of whether applicants are stand-alone entities or have a greater support structure behind them. When used in concert with the resumes, the Agency will have a more complete picture of the capacity and capability of the applicant. The organizational structure and resumes of key people provide insight into the understanding of microlending and the ability of the applicant entity to serve rural microentrepreneurs that is in addition to information found in the policies and procedures manuals as requested in § 4280.316(a)(4). No change has been made in response to this comment.

Organization Mission Statement (Proposed § 4280.316(a)(6))

Comment: Two commenters stated that proposed § 4280.316(a)(6) awards up to 5 points for the applicant's organizational mission statement. The commenters recommended that this scoring component be clarified to emphasize the importance of an applicant's connection to broader local and regional economic development plans and efforts. One of the commenters referenced the development strategies as outlined in the U.S. Economic Development Administration's Comprehensive Economic Development Strategy (CEDS) or other federally recognized plans. The other commenter recommended that this section provide up to 15 points and should also be included in proposed § 4280.316(d) and (e).

One commenter suggested that the scoring criteria in proposed § 4280.316(a)(1) through (a)(7) be enhanced to ensure that applicants are representative of their communities, working in partnership with other local and regional development entities and are linked to a broader local or regional economic development planning effort.

If the applicant does not currently possess these additional criteria, they should still be encouraged to develop a plan to enhance these connections in their application and be scored favorably for developing these plans.

Response: As indicated previously, we agree that connections to broader local and regional CEDS are valuable. However, the focus at this time is to include entities that best deliver microloans and technical assistance.

Geographic Service Area (Proposed § 4280.316(a)(7))

Comment: Many commenters expressed concern on the outmigration provisions proposed. These comments fell into the following two main concerns:

(1) Do not include outmigration criterion in the loan provisions because the statute is silent on this as it regards loans. These commenters noted that the only mention of outmigration is in connection with the proposed "enhancement grants" and not with loans or with technical assistance grants.

(2) Reduce the emphasis on outmigration in scoring and rating of proposals. Three commenters stated that population dynamics look quite different throughout rural America, and outmigration, as the main criteria for assessing need, is not a good indicator. Each commenter referred to California, noting that California and other states that are not experiencing net outmigration are prejudiced by the emphasis on this as criteria for qualification for these RMAP funds. Poverty and economic decline exist in rural California despite the fact that population levels have stabilized or even increased. A fourth commenter suggested the Agency consider lowering the rating system for "outmigration". By rewarding extremely high outmigration, associated infrastructure may not be available to support microentrepreneurs.

One commenter stated that the law does not define outmigration as is done in the proposed rule and that the definition will significantly curtail the ability of MDOs to serve rural areas. The commenter stated that residents of distressed rural communities are more dependent on microenterprises for their livelihoods and often are unable to move to areas with more employment opportunities. The commenter recommended that the Agency align the proposed rule with the structure of the law by not including areas of outmigration as part of the loan program requirements.

Response: With regard to the consideration of outmigration for making loans and TA grants, the commenters are correct in that the criterion does not apply to loan applications as written in the statute. The outmigration scoring criterion should have been applied to enhancement grants, which, as noted elsewhere in this preamble, are not included in the interim rule.

MDOs With More Than 3 Years Experience (Proposed § 4280.316(b)(1))

Comment: One commenter stated that the application scoring rules provide substantial points for MDOs with demonstrated track records of providing lending services to rural microentrepreneurs, but fail to provide points for effective plans to deliver such services. In the definition of MDO, the statute states an MDO is an organization that "has a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver services to rural microentrepreneurs" (section 379E(a)(3)(D)). In the final rule, provision should be made to provide significant points to an MDO with a proven microenterprise track record that has a viable plan to now provide lending services. This change will be critical to reaching micro-businesses in underserved areas or among underserved populations.

Response: The Agency agrees that there is value in having a proven track record as well as a plan. The initial information required of all applicants will provide the Agency with sufficient information to determine basic capacity. In addition, there is a scoring section for MDOs that have a demonstrated record (§ 4280.316(b)). There is a separate section (§ 4280.316(c)) for MDOs that have 3 years or less of experience; this section calls for written plans.

Comment: Two commenters were concerned over the amount of recordkeeping that would be required to comply with proposed § 4280.316(b)(1)(v) and in scoring in general. These commenters stated that some application requirements are overly burdensome for the borrower compared to the dollars requested. Recordkeeping required for scoring criteria, such as those found in proposed § 4280.316(b)(1)(v), involves notable efforts of recordkeeping that does not have anything to do with the fundamental business of the MDOs and involves information that MDOs cannot require borrowers to provide.

Response: The Agency disagrees. Keeping appropriate records is essential to the understanding, assessment, and evaluation of the MDO. However, to respond to the demographic questions, the Agency has named three demographic groups by which MDOs should be able to illustrate their activities. These are women, minorities, and the disabled.

Diversity (Proposed § 4280.316(b)(1)(v))

Comment: A number of commenters were concerned about how the scoring would affect MDOs that specialize in serving specific populations. Most submitted similar comments as captured by the following comment:

Proposed § 4280.316(b)(1)(v) provides points for how closely an MDOs microloan portfolio matches the demographics of the MDO's service area. Some MDOs will naturally serve certain segments of the service area (*e.g.,* female or low-income entrepreneurs), generally for reasons that such demographic segments are historically underserved or unserved. For that reason, their portfolio may not match the demographics of the service area, thus potentially penalizing those MDOs in the scoring pursuant to this section. This paragraph also provides points when at least one loan made to each demographic group is within specified percentage points of the demographic makeup of the service area. This paragraph is confusing, as it is not clear what "each demographic group" means (does it mean, for example, every racial or ethnic or socio-economic group that has at least one resident in the service area?); also MDOs that focus on certain segments of the population (female or low-income entrepreneurs, for instance) may be penalized. While we support using RMAP to support diverse clientele, we would suggest that the final rule recognize and not penalize MDOs that serve historically underserved or unserved populations in their rural service areas. We also suggest that language on "each demographic group" as outlined above be clarified in the final rule.

One commenter recommended deleting this criterion or reducing the number of points associated with it. According to the commenter, many of the most successful MDOs concentrate on training, technical assistance, and lending to one or several disadvantaged demographic groups. They have the knowledge and credibility to serve these underserved populations best and should not be disadvantaged for concentrating their work. In order to ensure the program is reaching diverse groups, the commenter recommended that the Agency charge application reviewers to ensure proper lending coverage to all groups in a geographic

area when they consider which MDOs to fund.

Response: The Agency disagrees that the proposed scoring criteria would penalize entities that serve certain segments of the population. The Agency offers no penalties regarding scoring on the provision of services. Organizations that have historically served a specific group of prospective microborrowers will be required, by Fair Credit Lending rules, to open their doors to all, whether or not they fit the particular demographics of the historic customers or the geographical area. Following the pattern of fairness, the Agency would anticipate that TA grant recipients will provide services to all groups as well.

Comment: One commenter suggested that the scoring structure be altered so that the applications of MDOs that have stated missions to provide services to underserved populations are scored appropriately.

Response: The Agency agrees with the commenter and does require mission statements as a part of the application process. As the mission statements are reviewed, they will be scored in accordance with how well the applicant's mission statement matches program requirements. The capacity to serve underserved populations is considered as a part of § 4280.316.

Comment: One commenter noted that proposed § 4280.316(b)(1) requests data regarding the history of the MDO's provision of microloans for the three years prior to its application. Most of these data are readily available; however, some of the data points requested appear to reflect the more narrowly targeted goals of the Enhancement Grant program as opposed to the loan program. For example, proposed § 4280.316(b)(1)(v) requests information on the diversity of the MDO's microloan portfolio. The proposed rule's scoring criteria appear to disadvantage MDOs whose rural markets have less diversity than others. For example, the racial diversity in the cities of Portland and Lewiston, Maine is much higher than the rural areas of Maine that the commenter also serves. Data on the diversity of the commenter's entire service area does not accurately reflect the diversity of its rural areas.

Response: The Agency disagrees that the scoring criteria provide for rural markets with less diversity than others. The statute requires that training and technical assistance be provided via organizations of varying sizes and that serve racially and ethnically diverse populations. Therefore, these data are requested to ensure that the Agency meets this intent.

Comment: One commenter recommended that the rule further define or list demographic groups being targeted.

Response: The Agency has identified the specific demographic groups in response to the comment. Demographic groups shall include gender, racial or ethnic minority status, and disability as defined by The Americans with Disabilities Act. (*See* § 4280.316(b)(1)(v))

Portfolio Management (Proposed § 4280.316(b)(2))

Comment: Two commenters expressed several similar concerns with this criterion. The issues cited by these commenters are:

(1) This criterion proposes to use a set of measures of portfolio performance that are not commonly used in the microenterprise and community development field, and that would not provide full or sufficient information on the level of risk in the applicant's loan portfolio. Specifically, proposed § 4280.316(b)(2)(i) requests that applicants "enter the total number of your microloans paying on time for the three previous fiscal years." The term "paying on time for the three previous fiscal years" is not defined, and could be interpreted numerous ways, including: The number of outstanding loans that never experienced a late payment over the course of the year, the number of loans that were current at year-end, or the number of loans that paid off as scheduled during the course of the year. However, this term might be defined by the applicant, none of the above is a widely-accepted measure of portfolio quality in the microenterprise or community development finance industry.

(2) Proposed § 4280.316(b)(2)(ii) requires applicants to "enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end." There are several issues with this approach. First, it conflates delinquent loans with loan losses, which are typically reported and assessed separately (in part because the commonly accepted definitions of these measures require different denominators when calculating a percentage value). Second, the measures required in the Proposed Rule involve the number of late or written off loans, not the dollar value of those loans. In assessing the level of risk in a portfolio, it is the value of loans at risk rather than the number that is most significant—as a delinquent or bad loan of $40,000 will necessarily pose more risk to a portfolio than a delinquent or bad loan of $4,000.

(3) The approach in the proposed rule does not request information on loans that are greater than 90 days in arrears, but have not yet been written off. These are the delinquent loans that generally pose the greatest risk to the lender, particularly if the lender does not have or adhere to a strict policy and time frame for writing off loans that have become significantly delinquent.

The commenters recommended that, in assessing portfolio quality, the rule require applicants provide information for the past three fiscal years on the following three measures:

(a) Portfolio at risk: Defined as the outstanding principal balance of loans with payments greater than 30 days past due, divided by the total dollar amount of outstanding loans, as of the last day of the fiscal year.

(b) Loan loss rate: Defined as the total dollar value of loans declared as written off or nonrecoverable, net of recoveries, divided by the average outstanding value of the portfolio over the course of the fiscal year.

(c) Restructured loan rate: The dollar amount of all loans that have been restructured, divided by the total dollar amount of outstanding loans as of the last day of the fiscal year.

Lastly, the commenters noted that they believe it is important to examine loans that have been restructured, as well as those that are delinquent and/or written off, because those loans do indicate risk to the portfolio.

Response: The Agency understands that microlenders nationwide may differ in their portfolio management definitions. In response, the Agency attempted to provide scoring criteria that could be best addressed by all entities as opposed to numerous criteria that would meet regionally-specific benchmarks.

Technical Assistance History (Proposed § 4280.316(b)(3))

Comment: One commenter was concerned about the burden imposed by the scoring criteria in proposed § 4280.316(b)(3)(i) through (iv). This commenter stated that the requirements to provide data on the total numbers and percentages of rural microentrepreneurs—including for minority, socially-disadvantaged, or disabled microentrepreneurs, and those in areas of outmigration—that received both microloans and technical assistance services for each of the previous three fiscal years are unduly burdensome. These requirements suggest that one of the primary measures of success for an MDO is the number of the microenterprises it serves that receives both technical assistance

and loans. The commenter believes that this assumption could be detrimental to the very microentrepreneurs that MDOs are serving.

The commenter's technical assistance programs are functionally independent of their lending programs so that the commenter can maintain the confidentiality of clients and because each program provides distinct services that meet the needs of their clients. In practice, many TA clients pursue loan funding from the commenter; however, microentrepreneurs seek technical assistance from the commenter for a variety of reasons, and many may not ultimately apply for a loan. Both services are critical to the success of rural microentrepreneurs. As a result of this programmatic structure, technical assistance and lending data are tracked in separate databases.

The commenter, therefore, recommended that the requirements of proposed § 4280.316(b)(3)(i) through (iv) be minimized because of the burdensome nature of collecting these data, at least in the currently proposed combinations.

Response: The Agency disagrees that the collection and maintenance of the proposed data is unduly burdensome and considers it to be an appropriate part of a soundly managed program. However, the criterion regarding data types were of concern to a number of commenters and have been revised in this document to clarify, and ease confusion, regarding what data to collect. The suggested data chart and scoring criteria have been revised as a part of the overall clarification of data and other application requirements. The revised requirements are located in § 4280.316.

Technical Assistance to Rural Microentrepreneurs (Proposed § 4280.316(b)(3)(i) and (ii))

Comment: Two commenters were concerned that the scoring criteria in proposed § 4280.316(b)(1)(i) and (ii) demonstrate the bias expressed in the proposed rule toward MDOs that engage only in lending and against MDOs that provide both lending and technical assistance or training technical assistance only. According to the commenters, this proposed scoring section will significantly penalize MDOs that provide both technical assistance and lending and will virtually exclude programs that in the past provided TA services only or even training to nonborrowers. Full service MDOs typically train far more microentrepreneurs than the number that receive loans, because the demand is greatest for training. Such MDOs would be penalized by the criteria for not providing loans to most of their trainees, because most trainees do not need loans or in other cases, use the training to develop skills to gain access to commercial credit.

According to the commenters, this "backward looking" scoring system fails to recognize the law's emphasis on MDOs having an "effective plan to develop a program to deliver services to rural microentrepreneurs." By failing to recognize this portion of the law, these sections will result in curtailing microenterprise development services in unserved and underserved rural areas by new rural MDOs, by rural MDOs which seek to expand their services, and by MDOs which may seek to expand their services into rural areas. The commenters recommended that the final rule develop a mechanism to recognize the eligibility of each of those types of MDOs by conforming to the law's prescription of allowing MDOs to develop an "effective plan" to deliver services to rural microentrepreneurs.

Response: The Agency disagrees that there is a bias toward entities that deliver microlending programs over entities that provide only technical assistance. However, to ensure like recognition of each applicant type, each set of scoring criterion allows for a maximum of 100 points so that each type of applicant is able to equitably compete against each other. In balance, the Agency has revised the rule to address all types of MDOs and provide for funds to MDOs that wish to participate through loans and/or grants. The changes are included in the rule, thus, address the concerns expressed by these commenters.

Socially-Disadvantaged (Proposed § 4280.316(b)(3)(iii))

Comment: Several commenters were concerned about the reference to "socially disadvantaged" in proposed § 4280.316(b)(3)(iii), stating that "socially disadvantaged" was not defined or not defined well enough. For example, one commenter noted that it is not stated whether "socially disadvantaged" includes gender (presumably female microentrepreneurs). According to the commenter, this appears inconsistent from proposed § 4280.316(b)(v), where gender is a specifically mentioned demographic group. The commenter, therefore, suggested that these provisions be made consistent and that the final rule clarify that female microentrepreneurs are specifically included in any definition of "socially disadvantaged."

Another commenter recommended either including a definition for "socially disadvantaged" under § 4280.302 that includes women and other disadvantaged groups, or expanding § 4280.316(b)(1)(v) to include an explanation of the term "socially disadvantaged." Ultimately, the commenter believes that female microentrepreneurs should be considered "socially disadvantaged" for the purposes of any provision under the proposed rule.

Response: As noted in response to a comment on the definition of "socially disadvantaged," the Agency agrees with the commenters that, as proposed, the rule did not adequately address whether gender was included in "socially disadvantaged." The Agency, however, has determined that it is unnecessary to include socially disadvantaged in the scoring criteria cited by the commenters and has removed that term from the rule. The Agency made this determination in consideration of Civil Rights reporting, which is based on demographic data and "socially disadvantaged" is not one of those data.

Administrative Expenses (Proposed § 4280.316(b)(5))

Comment: A number of commenters recommended removing this scoring criterion, all expressing similar reasons including:

- The Proposed Rule arbitrarily provides points on an application according to how much below 10 percent an MDO proposes using for administrative expenses, providing 0 points for 8 to 10 percent of the TA grant used for administrative expenses. An MDO could be penalized for doing precisely what the law allows. This section of the rule also has the potential to penalize non-profits (a focused eligible organization throughout the proposed rule) that may have no other access to funds for administrative expenses.
- This is a punitive measure for rural MDOs who have few resources for administration and operations. Corporate and foundation grants that contribute to administrative operations are largely unavailable to support nonprofit, community based MDOs in rural areas. This criterion would put such agencies at disadvantage, despite their track record of producing positive economic outcomes.
- It is punitive measure for rural MDOs who have few resources for administration and operations. Small, nonprofit community-based MDOs have few sources of discretionary funds for overhead. These criteria would put such

agencies at disadvantage to larger institutions.

• Depending on the definition of administration expenses, it could be that this provision would penalize organizations that are seeking to build the organizational capacity to expand their lending and training activities in accordance with and support of the intent of this program.

• The law states in section 379E(b)(4)(C) that not more than 10 percent of a grant received by an MDO can be used to pay administrative expenses. The proposed rule proposes a tiered scoring system that favors MDOs who use fewer grant funds for administrative expenses. The commenter understands the Agency's desire to maximize the use of RMAP funds for the benefit of rural microentrepreneurs; however, the commenter believes the proposed scoring system will disproportionately favor MDOs with the ability to fund administrative expenses with other funding streams so that they can benefit from these criteria. Administrative funds are critical to the success of any microenterprise program and 10 percent is a very reasonable, even modest, amount to budget for these purposes. The commenter recommended that the Agency align the proposed rule with the law and remove the tiered system proposed in the rule.

• Scrimping on administration is not a good way to run an effective program. MDOs should not receive points for reporting administrative costs that are either artificial or so low that the organization will be badly run. The statute provides for up to 10 percent for administrative costs.

Four commenters suggested replacing this criterion with a statement on administrative expenses that conforms to the law. One commenter also noted that these comments apply equally to proposed § 4280.316(c)(8).

Response: It is not the Agency's intent to force entities into scrimping. Rather, the intent is to score in favor of an applicant's ability to provide services in a cost effective and efficient manner.

MDOs With 3 Years or Less Experience (Proposed § 4280.316(c))

Comment: Two commenters were concerned that the scoring system did not request any historic information on the organization's microenterprise activities beyond the date on which it opened its doors for business as an MDO or similar entity. While it is understandable that the proposed rule would not request or substantially weigh historic data for an organization that is less than a year old, for an organization between 1 and 3 years old, certainly information on the organization's loan volume, diversity, history of TA provision, and portfolio management and quality is relevant, and in fact, essential to the application and scoring process. According to the commenters, if such data are not submitted and evaluated, the Agency runs the risk of selecting organizations for funding that may have developed strong plans, but failed to execute them well during their initial years of operation.

The commenters, therefore, recommended that all applicants with more than one year of operations as an MDO be required to submit information on their loan volume, diversity, history of TA provision and portfolio quality, and that this information be evaluated in the scoring process.

Response: The Agency disagrees. The Agency chose to examine new entities as those entities with 3 years of experience or less and based on their ability to meet certain criteria designed for this specific group of applicants. It was determined that such new entities, including those with 3 years of experience or less, will have little or unreliable data by which to compare or score historical activity and borrower success. Rather, the Agency anticipated looking more prospectively for this group.

Scoring Range (Proposed § 4280.316(c)(3) and (c)(4))

Comment: One commenter suggested that the scoring of the criteria in proposed § 4280.316(c)(3) and (c)(4) not be based on a range, but instead be a scoring scheme in which the applicant receives a certain amount of points or not depending on whether they have provided the appropriate documentation. The commenter believes that allowing for ranges is not objective and raises issues with subjectivity. The commenter believes that providing for specific points to be awarded will be simpler than using ranges.

Response: As noted in a response to another comment concerning the provision of a range for scoring, the Agency believes that ranges are appropriately identified for these scoring criteria identified by the commenter. For this and the other criteria in which scoring ranges are provided, it will be up to the applicant as to how much material to provide in addressing each criterion and the quality of that material. To help ensure consistency in scoring these criteria among Agency staff, the Agency will be providing guidelines to Agency staff on how to score each of these criteria. Finally, for those criteria that require a standard set of points per item, a specific number of points will be awarded for a specific set of benchmarks. Thus, the scoring system provides for a combination of objective and more subjective scoring.

Enhancement Grants (Proposed § 4280.316(d))

Comment: Two commenters pointed out the statutory provisions related to significant outward migration were not proposed for scoring enhancement grants, as required in section 379E(b)(4)(A)(ii) of the statute, which states that an emphasis will be placed on MDOs that are located in areas that have suffered "significant outward migration." The commenters noted that in the proposed rule scoring description nothing is said about MDOs located in such areas, only the "number of counties or other jurisdictions of the service area" that suffer from significant outmigration (as defined). The scoring matrix in the proposed rule allows only up to 10 points (of the 45 basic points for all applicants) for service to outmigration areas, an issue of emphasis in the law. The commenters suggested that the final rule place an emphasis on MDOs located in areas of "significant outward migration" as stated in the law, and that greater emphasis through the point system be placed on MDO service to an outmigration area for those MDOs seeking grants. The commenters believe it is important to focus on location of MDOs because it is crucial to provide incentives and funding to create more MDOs in rural areas suffering from significant outmigration and because, if MDOs are located in such areas, they will be more attuned to the services necessary for the entrepreneurs in that area.

Response: The Agency agrees that the proposed rule did not appropriately address outmigration as a scoring criterion for enhancement grants, as required by the statute. While the Agency appreciates the commenter's suggestion, opinions differ widely on how best to approach and enhancement grant category to this program. Therefore, the Agency is requesting comments on this subject (*see* Section V of this preamble). Comments will be considered prior to publication of the final rule.

MDOs With More Than 5 Years Experience Under This Program (Proposed § 4280.316(e))

Comment: One commenter recommended revising the application requirements in proposed § 4280.316(e)

to ensure that applicants are representative of their communities, working in partnership with other local and regional development entities and are linked to a broader local or regional economic development planning effort. If the applicant does not currently possess these additional criteria, then they should still be encouraged to develop a plan to enhance these connections in their application and be scored favorably for developing these plans.

Response: The Agency disagrees that applicants should be required to work in partnership with other entities. The goal of the program is to enhance the network of MDOs and increase services in that sector. While we do not discourage partnerships and participation in regional planning, the Agency will not require partnering.

Selection of Applications for Funding (§ 4280.317)

Comment: In reference to proposed § 4280.317(d), one commenter suggested removing the wording "If your application is unsuccessful" and change the end of this sentence to read "non-selected applications."

Response: As noted earlier in this preamble, this proposed paragraph was removed from the rule because it is considered internal procedures and does not need to be in the rule.

Loans From Microlenders to Microentrepreneurs and Microenterprises (§ 4280.322)

Comment: Three commenters expressed concern with the requirements specified in proposed § 4280.322(b)(1), (b)(3), and (d), noting that these requirements are not in the authorizing statute. According to one of the commenters, these loan terms may have merit, but could also constrain the ability of MDOs to provide credit to microentrepreneurs in rural areas. The other commenter stated that, taken as a whole, these requirements limit the ability of local organizations to craft a lending program that can address the specific needs of its local market. One of the commenters, therefore, recommended that these requirements be removed.

One of the commenters noted that the MDO is responsible for operating a successful microloan program in the context of the communities they serve and, therefore, it is not appropriate for RMAP at proposed § 4280.322(b)(1) to place a cap (*i.e.,* the 7.5 percent spread) on the interest rate charged to the microborrower. According to the commenter, the MDO should have the flexibility to price their microloans as they see fit for the sustainability of their fund and based on the risk and the cost of its operation.

One of the commenters recommended that § 4280.322(b)(3) be revised to limit the microloan term to no longer than the term of the loan with the Agency rather than the proposed limit of no more than 10 years. A third commenter also stated that the MDO should have the expressed permission to establish terms of repayment (fees, late fees and penalties, amortizations and deferrals, etc.) as they deem appropriate and workable.

One of the commenters noted that proposed § 4280.322(d) includes a statement that borrowers will be subject to a "credit elsewhere" test, but indicates that bank rejection letters will not be required. The commenter was unclear as to the purpose of this requirement and how an MDO should meet it. The commenter, therefore, recommended that this requirement be dropped.

Response: The Agency agrees with the commenters that microlenders know their market and should be able to design programs to meet those markets. Section 4280.322(b) recognizes this in allowing the terms and conditions for microloans to be negotiated by the microborrower and the microlender. The Agency agrees that the rule does not need to implement a maximum margin that a lender can charge the microborrower, but is still concerned that the rate must be "reasonable." The Agency has removed the specified margin requirement and in its place added the provision (*see* § 4280.322(b)(3)) that the microlender may establish its margin of earnings, but may not adjust the margin so as to violate Fair Credit Lending laws. Further, margins must be reasonable so as to ensure that microloans are affordable to the microborrowers.

With regard to the suggestion concerning adjusting the term of loan from "no more than 10 years" to "no longer than the term of the loan with the Agency," the Agency has not revised the rule because such a revision would put the microlender and the agency at increased risk in the latter years of the term and would diminish the capacity of the microlender to revolve its funds into and out of the RMRF.

Finally, with regard to the credit elsewhere test, the Agency is including this provision to ensure that only those in the most need of program resources receive assistance under this program. Thus, the Agency has not revised this provision.

Credit Elsewhere (Proposed § 4280.322(d))

Comment: One commenter suggested that the last two sentences of proposed § 4280.322(d) be removed.

Response: The Agency disagrees with the suggestion to delete the last two sentences of this paragraph. The Agency specifically does not want to require denial letters from other lenders to be part of this documentation because the Agency does not want such denial letters to negatively affect the microborrower's credit report as it works to build credit.

Comment: One commenter suggested that the rule should allow the microborrower to determine what goes in his file to document credit elsewhere.

Response: The Agency disagrees with the commenter's suggestion to allow the microborrower to determine what goes into the file to document credit elsewhere. The microlender determines whether or not this test is met and as such it is the microlender's responsibility to clearly identify what it needs to make this determination. Furthermore, this will provide consistency in the microlender's determination across microborrowers. The Agency reserves the right to examine microlender files to ensure that program requirements are met (§ 4280.311(h)(6)).

Eligible Purposes (Proposed § 4280.322(f))

Comment: One commenter suggested that the list of authorized microloan purposes be prefaced with a statement that the MDO is "not limited to" these uses.

Response: While the use of "including" means that the list is not exhaustive, the Agency has included the text suggested by the commenter to ensure clarity.

Comment: One commenter stated that the prohibition at proposed § 4280.322(f) on any construction or demolition was too inflexible; the remodeling of a suitable business space often requires this.

Response: The Agency included construction and demolition as an ineligible loan purpose in order to expedite loan processing by mitigating the need to conduct environmental evaluations. The Agency notes that other Rural Development programs can provide construction financing. Thus, the Agency has not revised the rule as suggested by the commenter.

Ineligible Loan Purposes (§ 4280.323)

Comment: One commenter asked if lines of credit would be an eligible or

ineligible purpose. The commenter pointed out that lines of credit are not listed under either eligible purposes or ineligible purposes and recommended that the rule needs to be clear whether lines of credit are eligible or not because, in part, the IRP allows lines of credit under certain circumstances.

Response: Lines of credit are not an eligible loan purpose for microloans under RMAP. The Agency agrees with the commenter that this was not indicated in the proposed rule and, therefore, has added a provision to § 4280.323 that specifically identifies lines of credit as an ineligible loan purpose for RMAP loans.

Comment: One commenter suggested that tenant improvements, debt refinancing, and business acquisition should be expressly permitted.

Response: The Agency has determined that indication of eligible and ineligible activities is sufficient, but has added debt refinancing and business acquisition to the list of eligible activities for clarity. Tenant improvements are already sufficiently covered by § 4280.322(f)(2) and (f)(3). Any legal business purpose not identified as ineligible in § 4280.323 is acceptable.

Comment: One commenter stated that the ineligible purposes at proposed § 4280.323(c) should simply disallow relending to Agency or MDO personnel. Such lending simply has the appearance of a conflict of interest and should never be allowed. On the other hand, there is no conflict of interest in lending to military, National Guard members, or government employees aside from Rural Development employees, and this should simply be permitted.

Response: Microloans to Agency personnel and MDO personnel are prohibited. Regarding military personnel, based on Agency experience, a pattern of difficulty in obtaining financial assistance has begun to emerge. The language proposed regarding this issue was initially confusing as it was posted in the ineligibility section as an exception. As a result, the language has been moved to § 4280.322(g) as an eligible purpose. In clarifying the language, the Agency hopes to encourage a greater level of lending to military personnel. Regarding Tribal government employees, language regarding loans to Tribal employees has been eliminated to ensure that Tribal microlenders are treated as all other microlenders in regards to conflicts of interest.

Comment: In reference to proposed § 4280.323(d), one commenter recommended that a definition for "Agency employee family member" be included. The commenter also raised questions concerning how the definition would be crafted. For example, how would domestic partners and same-sex married parties be treated? The commenter then asked, how would this be monitored? How would an Agency employee possibly know all Agency employee family members?

Response: The Agency agrees with the commenter that a definition for "family member" is needed. The Agency has replaced "family member" with "close relative." Close relative is being defined as: Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Comment: One commenter asked why RMAP discriminated against military personnel and Tribal members under proposed § 4280.323(i) and (j).

Response: The Agency disagrees with the commenter's characterization of the proposed rule as discriminating against active military personnel and Tribal employees. Language specific to military personnel is included to ensure specific attention to the needs of veterans. Language regarding loans to Tribal employees has been eliminated to ensure that Tribal microlenders are treated as all other microlenders in regards to conflicts of interest.

V. Request for Comments

The Agency is interested in receiving comments on all aspects of the interim rule. Areas in which the Agency is seeking specific comments are identified below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

1. *Enhancement grants.* The Agency is seeking comments regarding how to incorporate a network enhancement grant program for microenterprise development organizations in their support of rural microentrepreneurs in accordance with Section 379E(b)(4)(A)(i)(I) of the 2008 Farm Bill. Please be sure to include your rationale for your suggestions.

2. The Agency is seeking comment on whether the 2-year deferral period allowing microlenders not to make any payments on a loan to the Agency (*see* § 4280.311(e)(4)) under this program should be automatic (*i.e.,* the default) or whether the Agency should establish specific criteria for determining whether or not payments would be deferred. Please be sure to include your rationale for your suggestions.

List of Subjects in 7 CFR 4280

Business programs, Grant programs, Loan programs, Microenterprise development organization, Microentrepreneur, Rural areas, Rural development, Small business.

■ For the reasons set forth in the preamble, chapter XLII of title 7 of the Code of Federal Regulations is amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

■ 1. Part 4280 is amended by adding a subpart D to read as follows:

PART 4280—LOANS AND GRANTS

Subpart D—Rural Microentrepreneur Assistance Program

Sec.

4280.301 Purpose and scope.
4280.302 Definitions and abbreviations.
4280.303 Exception authority.
4280.304 Review or appeal rights and administrative concerns.
4280.305 Nondiscrimination and compliance with other Federal laws.
4280.306 Forms, regulations, and instructions.
4280.307 4280.309 [Reserved]
4280.310 Program requirements for MDOs.
4280.311 Loan provisions for Agency loans to microlenders.
4280.312 Loan approval and closing.
4280.313 Grant provisions.
4280.314 [Reserved]
4280.315 MDO application and submission information.
4280.316 Application scoring.
4280.317 Selection of applications for funding.
4280.318 4280.319 [Reserved]
4280.320 Grant administration.
4280.321 Grant and loan servicing.
4280.322 Loans from the microlenders to the microentrepreneurs.
4280.323 Ineligible microloan purposes and uses.
4280.324 4280.399 [Reserved]
4280.400 OMB control number.

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2009s.

Subpart D—Rural Microentrepreneur Assistance Program

§ 4280.301 Purpose and scope.

(a) This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the program will make direct loans, and provide grants to selected Microenterprise Development

Organizations (MDOs). Selected MDOs will use the funds to:

(1) Provide microloans to rural microentrepreneurs and microenterprises;

(2) Provide business based training and technical assistance to rural microborrowers and potential microborrowers; and

(3) Perform other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders, as defined in § 4280.302, for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for startup and growing microenterprises. Eligible microlenders will also be automatically eligible to receive microlender technical assistance grants to provide technical assistance and training to microentrepreneurs that have received or are seeking a microloan under this program.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to MDOs that have sources of funding other than program funds for making or facilitating microloans.

§ 4280.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions apply to the terms used in this subpart.

Administrative expenses. Those expenses incurred by an MDO for the operation of services under this program. Not more than 10 percent of TA grant funding may be used for such expenses.

Agency. USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Agency personnel. Individuals employed by the Agency.

Applicant. The legal entity, also referred to as a microenterprise development organization or MDO, submitting an application to participate in the program.

Application. The forms and documentation submitted by an MDO for acceptance into the program.

Award. The written documentation, executed by the Agency after the application is approved, containing the terms and conditions for provision of financial assistance to the applicant. Financial assistance may constitute a loan or a grant or both.

Business incubator. An organization that provides temporary premises at below market rates, technical assistance, advice, use of equipment, and may provide access to capital, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business.

Close relative. Individuals who are closely related by blood, marriage, or adoption, or live within the same household: a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan and/or grant agreement, or other related documents evidencing the loan.

Delinquency. Failure by an MDO to make a scheduled loan payment by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Eligible project cost. The total cost of a microborrower's project for which a microloan is being sought from a microlender less any costs identified as ineligible in § 4280.323.

Facilitation of access to capital. For purposes of this program, facilitation of access to capital means assisting a technical assistance client of the TA-only grantee in obtaining a microloan whether or not the microloan is wholly or partially capitalized by funds provided under this program.

Federal Fiscal year (FY). The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Full-time equivalent employee (FTE). The Agency uses the Bureau of Labor Statistics definition of full-time jobs as its standard definition. For purposes of this program, a full-time job is a job that has at least 35 hours in a work week. As such, one full-time job with at least 35 hours in a work week equals one FTE; two part-time jobs with combined hours of at least 35 hours in a work week equals one FTE, and three seasonal jobs equals one FTE. If an FTE calculation results in a fraction, it should be rounded up to the next whole number.

Indian tribe. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Loan loss reserve fund (LLRF). An interest-bearing deposit account that each microlender must establish and maintain in an amount equal to not less than 5 percent of the total amount owed by the microlender under this program to the Agency to pay any shortage in the RMRF caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received financial assistance from a microlender under this program in an amount of $50,000 or less.

Microenterprise. Microenterprise means:

(i) A sole proprietorship located in a rural area; or

(ii) A business entity, located in a rural area, with not more than 10 full-time-equivalent employees. Rural microenterprises are businesses employing 10 people or fewer that are in need of $50,000 or less in business capital and/or in need of business based technical assistance and training. Such businesses may include any type of legal business that meets local standards of decency. Business types may also include agricultural producers provided they meet the stipulations in this definition.

(iii) All microenterprises assisted under this regulation must be located in rural areas.

Microenterprise development organization (MDO). An organization that is a non-profit entity; an Indian tribe (the government of which tribe certifies that no MDO serves the tribe and no RMAP exists under the jurisdiction of the Indian tribe); or a public institution of higher education; and that, for the benefit of rural microentrepreneurs and microenterprises:

(i) Provides training and technical assistance and/or;

(ii) Makes microloans or facilitates access to capital or another related service; and/or

(iii) Has a demonstrated record of delivering, or an effective plan to develop a program to deliver, such services.

Microentrepreneur. An owner and operator, or prospective owner and operator, of a microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section, as determined by the Secretary. All microentrepreneurs assisted under this regulation must be located in rural areas.

Microlender. An MDO that has been approved by the Agency for participation under this subpart to make microloans and provide an integrated program of training and technical assistance to its microborrowers and prospective microborrowers.

Microloan. A business loan of not more than $50,000 with a fixed interest rate and a term not to exceed 10 years.

Military personnel. Individuals, regardless of rank or grade, currently in active United States military service with less than 6 months remaining in their active duty service requirement.

Nonprofit entity. A private entity chartered as a nonprofit entity under State Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural microloan revolving fund (RMRF). An exclusive interest-bearing account on which the Agency will hold a first lien and from which microloans will be made; into which payments from microborrowers and reimbursements from the LLRF will be deposited; and from which payments will be made by the microlender to the Agency.

Rural or rural area. For the purposes of this program, the terms "rural" and "rural area" are synonymous and are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest applicable decennial census for the State; and the contiguous and adjacent urbanized area.

(i) For purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

(ii) Notwithstanding any other provision of this paragraph, within the areas of the County of Honolulu, Hawaii, and the Commonwealth of Puerto Rico, the Secretary may designate any part of the areas as a rural area if the Secretary determines that the part is not urban in character, other than any area included in the Honolulu census designated place (CDP) or the San Juan CDP.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance and training. The provision of education, guidance, or instruction to one or more rural microentrepreneurs to prepare them for self-employment; to improve the state of their existing rural microenterprises; to increase their capacity in a specific technical aspect of the subject business; and, to assist the rural microentrepreneurs in achieving a degree of business preparedness and/or functioning that will allow them to obtain, or have the ability to obtain, one or more business loans of $50,000 or less, whether or not from program funds.

Technical assistance grant. A grant, the funds of which are used to provide technical assistance and training, as defined in this section.

(b) *Abbreviations.* The following abbreviations apply to the terms used in this subpart:

FTE—Full-time employee
LLRF—Loan loss reserve fund.
MDO—Microenterprise development organization.
RMAP—Rural microentrepreneur assistance program.
RMRF—Rural microloan revolving fund.
TA—Technical assistance.

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government and may not conflict with applicable law. No exceptions may be made regarding applicant eligibility, project eligibility, or the rural area definition. In addition, exceptions may not be made:

(a) To accept an applicant into the program that would not normally be accepted under the eligibility or scoring criteria; or

(b) To fund an interested party that has not successfully competed for funding in accordance with the regulations.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) *Review or appeal rights.* An applicant MDO, a microlender, or grantee MDO may seek a review of an adverse Agency decision under this subpart from the appropriate Agency official that oversees the program in question, and/or appeal the Agency decision to the National Appeals Division in accordance with 7 CFR part 11.

(b) *Administrative concerns.* Any questions or concerns regarding the administration of the program, including any action of the microlender, may be addressed to: USDA Rural Development, Rural Business-Cooperative Service, Specialty Programs Division or its successor agency, or the local USDA Rural Development office.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Any entity receiving funds under this subpart must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, DC 20250–9410, or call (866) 632–9992 (toll free) or (202) 401–0216 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application when the applicant completes Form RD 400–8, "Compliance Review". Post-award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§ 4280.306 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency's Web site at *http://www.rurdev.usda.gov/regs/,* and for grants on the Internet at *http://www.grants.gov.*

§§ 4280.307–4280.309 [Reserved]

§ 4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs.* To be eligible for a direct loan or grant award under this subpart, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (4) of this section, as applicable.

(1) *Type of applicant.* The applicant must meet the definition of an MDO under this program.

(2) *Citizenship.* For non-profit entities only, to be eligible to apply for status as an MDO, the applicant must be at least 51 percent controlled by persons who are either:

(i) Citizens of the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, American Samoa, or the Commonwealth of Puerto Rico; or

(ii) Legally admitted permanent residents residing in the U.S.

(3) *Legal authority and responsibility.* The applicant must have the legal authority necessary to carry out the purpose of the award.

(4) *Other eligibility requirements.* For potential microlenders only,

(i) The applicant must also provide evidence that it:

(A) Has demonstrated experience in the management of a revolving loan fund; or

(B) Certifies that it, or its employees, have received education and training from a qualified microenterprise development training entity so that the applicant has the capacity to manage such a revolving loan fund; or

(C) Is actively and successfully participating as an intermediary lender in good standing under the U.S. Small Business Administration (SBA) Microloan Program or other similar loan programs as determined by the Administrator.

(ii) An attorney's opinion regarding the potential microlender's legal status and its ability to enter into program transactions is required at the time of initial entry into the program. Subsequent to acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the microlender have occurred.

(b) *Minimum score.* Once deemed eligible, an entity will be evaluated based on the scoring criteria in § 4280.316 for adequate qualification to participate in the program. Eligible MDOs must score a minimum of seventy points (70 points) in order to be considered to receive an award under this subpart.

(c) *Ineligible applicants.* An applicant will be considered ineligible if it:

(1) Does not meet the definition of an MDO as provided in § 4280.302;

(2) Is debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs; and

(3) Has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court).

(d) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt.

(e) *Application eligibility and qualification.* An application will be considered eligible for funding if it is submitted by an eligible MDO. The applicant will qualify for funding based on the results of review, scoring, and other procedures as indicated in this subpart, and will further:

(1) Establish an RMRF, or add capital to an RMRF originally capitalized under this program and establish or continue a training and TA program for its microborrowers and prospective microborrowers; or

(2) Fund a TA-only grant program to provide services to rural microentrepreneurs and microenterprises.

(f) *Business incubators.* Because the purpose of a business incubator is to provide business-based technical assistance and an environment in which micro-level, very small, and small businesses may thrive, a microlender that meets all other eligibility requirements and owns and operates a small business incubator will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funding to lend to an eligible microenterprise tenant, without creating a conflict of interest under § 4280.323(c).

§ 4280.311 Loan provisions for Agency loans to microlenders.

(a) *Purpose of the loan.* Loans will be made to eligible and qualified microlenders to capitalize RMRFs that it will administer by making and servicing microloans in one or more rural areas.

(b) *Eligible activities.* Microlenders may make microloans for qualified business activities and use Agency loan funds only as provided in § 4280.322.

(c) *Ineligible activities.* Microlenders may not use RMRF funds for administrative costs or expenses and may not make microloans under this program for ineligible purposes as specified in § 4280.323.

(d) *Cost share.* The Federal share of the eligible project cost of a microborrower's project funded under this section shall not exceed 75 percent. The cost share requirement shall be met by the microlender using either of the options identified in paragraphs (d)(1) and (2) of this section in establishing an RMRF. A microlender may establish multiple RMRFs utilizing either option. Whichever option is selected for an RMRF, it must apply to the entire RMRF and all microloans made with funds from that RMRF.

(1) *Microborrower project level option.* The loan covenants between the Agency and the microlender and the microlender's lending policies and procedures shall limit the microlender's loan to the microborrower to no more than 75 percent of the eligible project cost of the microborrower's project and require that the microborrower obtain the remaining 25 percent of the eligible project cost from non-Federal sources. The non-Federal share of the eligible project cost of the microborrower's project may be provided in cash (including through fees, grants (including community development block grants), and gifts) or in the form of in-kind contributions.

(2) *RMRF level option.* The microlender shall capitalize the RMRF at no more than 75 percent Agency loan funds and not less than 25 percent non-Federal funds, thereby allowing the microlender to finance 100 percent of the microborrower's eligible project costs. All contributed funds shall be maintained in the RMRF.

(e) *Loan terms and conditions for microlenders.* Loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency and any non-Federal share will be deposited into an interest-bearing account that will be the RMRF account.

(2) The RMRF account, including any interest earned on the account and the microloans made from the account, will be used to make fixed-rate microloans, to accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency and, with the advance written approval of the Agency, to supplement the LLRF with interest earnings (from payments received or from account earnings) from the RMRF.

(3) The term of a loan made to a microlender will not exceed 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the microlender and the Agency.

(4) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. Voluntary payments will be accepted.

(i) Interest will accrue during the deferral period only on funds disbursed by the Agency.

(ii) The deferral period will begin on the day the Agency loan to the microlender is closed.

(iii) Loan repayments will be made in equal monthly installments to the Agency beginning on the last day of the 24th month of the life of the loan.

(5) Partial or full repayment of debt to the Agency under this program may be made at any time, including during the deferral period, without any pre-payment penalties being assessed.

(6) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio.

(7) The Agency may call the entire loan due and payable prior to the end of the full term, due to any non-performance, delinquency, or default on the loan.

(8) Loan closing between the microlender and the Agency must take place within 90 days of loan approval or funds will be forfeited and the loan will be deobligated.

(9) Microlenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(10) A microlender must make one or more microloans within 60 days of any disbursement it receives from the Agency. Failure to make a microloan within this time period may result in the microlender not receiving any additional funds from the Agency and may result in the Agency demanding return of any funds already disbursed to the microlender.

(11) Microlenders may request in writing, and receive additional disbursements not more than quarterly, until the full amount of the loan to the microlender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement must be accompanied by a description of the microlender's anticipated need. Such description will indicate the amount and number of microloans anticipated to be made with the funding.

(12) Each loan made to a microlender during its first five years of participation in this program will bear an interest rate of 2 percent. After the fifth year of an MDO's continuous and satisfactory participation in this program, each new loan made to the microlender will bear an interest rate of 1 percent. Satisfactory participation requires a default rate of 5 percent or less and a pattern of delinquencies of 10 percent or less. Except in the case of liquidation or early repayment, loans to microlenders must fully amortize over the life of the loan.

(13) During the initial deferral period, each loan to a microlender will accrue interest at a rate of 1 or 2 percent based on the ultimate interest rate on the loan. Interest accrued during the 2-year deferral period will be capitalized so that, during the 24th month of the initial deferral period, the microlender's debt to the Agency will be calculated and amortized over the remaining life of the loan. The first payment will be due to the Agency on the last day of the 24th month of the life of the loan.

(14) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated.

(15) The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(16) If a microlender makes a withdrawal from the RMRF for any purpose other than to make a microloan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the LLRF, the Agency may restrict further access to withdrawals from the account by the microlender.

(17) In the event a microlender fails to meet its obligations to the Agency, the Agency may pursue any combination of the following:

(i) Take possession of the RMRF and/or any microloans outstanding, and/or the LLRF;

(ii) Call the loan due and payable in full; and/or

(iii) Enter into a workout agreement acceptable to the Agency, which may or may not include transfer or sale of the portfolio to another microlender (whether or not funded under this program) deemed acceptable to the Agency.

(f) *Loan funding limitations.*

(1) *Minimum and maximum loan amounts.* The minimum loan amount a microlender may borrow under this program will be $50,000. The maximum any microlender may borrow on a single loan under this program, or in any given Federal fiscal year, will be $500,000. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed $2,500,000.

(2) *Use of funds.* Loans must be used only to establish or recapitalize an existing Agency funded RMRF out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made. In some instances, as described in § 4280.311(e)(2), interest earned by these funds may be used to fund and recapitalize both RMRF and the LLRF.

(g) *Loan loss reserve fund (LLRF).* Each microlender that receives one or more loans under this program will be required to establish an interest-bearing LLRF.

(1) *Purpose.* The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more microborrowers to repay their loans on a timely basis.

(2) *Capitalization and maintenance.* The LLRF is subject to each of the following conditions:

(i) The microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender under this program to the Agency. If the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The Agency will hold a security interest in the account and all funds therein until the MDO has repaid its debt to the Agency under this program.

(ii) No Agency loan funds may be used to capitalize the LLRF.

(iii) The LLRF must be held in an interest-bearing, Federally-insured deposit account separate and distinct from any other fund owned by the microlender.

(iv) The LLRF must remain open, appropriately capitalized, and active until such time as:

(A) All obligations owed to the Agency by the microlender under this program are paid in full; or

(B) The LLRF is used to assist with full repayment or prepayment of the microlender's program debt.

(v) Earnings on the LLRF account must remain a part of the account except as stipulated in § 4280.311(e)(2).

(3) *Use of LLRF.* The LLRF must be used only to:

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan; that is, when a loss has been paid to the RMRF, from the LLRF, the microlender must, within 30 days, replenish the LLRF, with non-federal funds, to the required level;

(ii) Accept non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the amount owed to the Agency by the microlender under this program;

(iii) Accrue interest (interest earnings accrued by the LLRF will become part of the LLRF and may be used only for eligible purposes); and

(iv) Prepay or repay the Agency program loan.

(4) *LLRF funded at time of closing.* The LLRF account must be established by the microlender prior to the closing of the loan from the Agency. At the time of initial loan closing, sources of funding for the LLRF must be identified by the microlender so that as microloans are made, the amount in the LLRF can be built over time to an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under this program. After the first

disbursement is made to a microlender, further disbursements will only be made if the LLRF is funded at the appropriate amount. After the initial loan is made to a microlender, subsequent loan closings will require the LLRF to be funded in an amount equal to 5 percent of the anticipated initial drawdown of funds for the RMRF. Federal funds, except where specifically permitted by other laws, may not be used to fund LLRF.

(5) *Additional LLRF funding.* In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio, on the part of a microlender, the Agency may require additional funding be put into the LLRF; however, the Agency may never require an LLRF of more than 10 percent of the total amount owed by the microlender.

(h) *Recordkeeping, reporting, and oversight.* Microlenders must maintain all records applicable to the program and make them available to the Agency upon request. Microlenders must submit quarterly reports as specified in paragraphs (h)(1) through (4) of this section. Portfolio reporting requirements must be met via the electronic reporting system. Other reports, such as narrative information, may be submitted as hard copy in the event the microlender, grantee, or Agency do not have the capability to submit or accept same electronically.

(1) *Periodic reports.* On a quarterly basis, within 30 days of the end of the calendar quarter, each microlender that has an outstanding loan under this section must provide to the Agency:

(i) Quarterly reports, using an Agency-approved form, containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made. At a minimum, these reports must identify each microborrower under this program and should include a discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as provided in the application package;

(ii) SF–PPR, "Performance Progress Report" cover sheet, performance measures (SF–PPR–A), and activity based expenditures (SF–PPR–E); and

(iii) SF–270, "Request for Advance or Reimbursement".

(2) *Minimum retention.* Microlenders must provide evidence in their quarterly reports that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to a minimum of 105 percent of the amount owed by the microlender to the Agency unless the Agency has established a higher LLRF reserve requirement for a specific microlender.

(3) *Combining accounts and reports.* If a microlender has more than one loan from the Agency, a separate report must be made for each except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when:

(i) The underlying loans have the same rates, terms and conditions;

(ii) The combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate RMRF reports had been prepared; and

(iii) The accompanying LLRF fund reports also provide the same level of transparency and information for each loan as if separate LLRF reports had been prepared.

(iv) The Agency must approve the combining of accounts and reports in writing before such accounts are combined and reports are submitted.

(4) *Delinquency.* In the event that a microlender has delinquent loans in its RMAP portfolio, quarterly reports will include narrative explanation of the steps being taken to cure the delinquencies.

(5) *Other reports.* Other reports may be required by the Agency from time to time in the event of poor performance, one or more work out agreements or other such occurrences that require more than the usual set of reporting information.

(6) *Site visits.* The Agency may, at any time, choose to visit the microlender and inspect its files to ensure that program requirements are being met.

(7) *Access to microlender's records.* Upon request by the Agency, the microlender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any records pertaining to operation and administration of this program. Such inspection and copying may be made during regular office hours of the microlender or at any other time agreed upon between the microlender and the Agency.

(8) *Changes in key personnel.* Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

§ 4280.312 Loan approval and closing.

(a) *Loan approval and obligating funds.* The loan will be considered approved on the date the signed copy of Form RD 1940–1, "Request for Obligation of Funds," is signed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency provided the microlender has the legal authority to contract for a loan, and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements and has signed Form RD 1940–1.

(b) *Letter of conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, "Letter of Intent to Meet Conditions," to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The Agency will review any requests for changes to the letter of conditions. The Agency may approve only minor changes that do not materially affect the microlender. Changes in legal entities prior to loan closing will not be approved.

(c) *Loan closing.*

(1) Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up and the LLRF has been, or will be, funded as described in § 4280.311(g)(4). Such evidence shall consist of:

(i) A pre-authorized debit form allowing the Agency to withdraw payments from the RMRF account, and in the event of a repayment workout, from the LLRF account;

(ii) An Agency-approved automatic deposit authorization form from the depository institution providing the Agency with the RMRF account number into which funds may be deposited at time of disbursement to the microlender;

(iii) A statement from the depository institution as to the amount of cash in the LLRF account;

(iv) An Agency-approved promissory note must be executed at loan closing; and

(v) An appropriate security agreement on the LLRF and RMRF accounts.

(2) At loan closing, the microlender must certify that:

(i) All requirements of the letter of conditions have been met and

(ii) There has been no material adverse change in the microlender or its financial condition since the issuance of the letter of conditions. If one or more adverse changes have occurred, the microlender must explain the changes and the Agency must determine that the microlender remains eligible and qualified to participate as an MDO.

(3) The microlender will provide sufficient evidence, which may include but is not limited to, mechanics' lien waivers or in their absence receipts of

payment, that no lawsuits are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§ 4280.313 Grant provisions.

(a) *General.* The following provisions apply to each type of grant offered under this program unless otherwise specified annually in a **Federal Register** notice. Competition for these funds will occur as a part of the application and qualification process of becoming a microlender. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, grant funds will be made available automatically based on lending and the availability of funds.

(1) *Grant amounts.*

(i) The maximum TA grant amount for a microlender is 25 percent of the first $400,000 of outstanding microloans owed to the microlender under this program, plus an additional 5 percent of the outstanding loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. This calculation leads to a maximum grant of $205,000 annually for any microlender to provide technical assistance to its clients. These grants will be awarded annually.

(ii) The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. The amount of funding available for TA funding will be announced annually and will be based on the availability of funds. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(2) *Matching requirement.* The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services. Unless specifically permitted by laws other than the statute authorizing RMAP, matching contributions must be made up of non-Federal funding.

(3) *Administrative expenses.* Not more than 10 percent of a grant received by a MDO for a Federal fiscal year (FY) may be used to pay administrative expenses. MDOs must submit an annual budget of proposed administrative expenses for Agency approval. The Agency has the right to deny the 10 percent and to fund administration expenses at a lower level.

(4) *Ineligible grant purposes.* Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(i) Grant application preparation costs;

(ii) Costs incurred prior to the obligation date of the grant;

(iii) Capital improvements;

(iv) Political or lobbying activities;

(v) Assistance to any ineligible entity;

(vi) Payment of any judgment or debt owed; and

(vii) Payment of any costs other than those allowed in paragraphs (b)(1) and (c) of this section.

(5) *Changes in key personnel.* Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

(b) *Grants to assist microentrepreneurs (Microlender Technical Assistance (TA) Grants).* The capacity of a microlender to provide an integrated program of microlending and technical assistance will be evaluated during the scoring process. An eligible MDO selected to be a microlender will be eligible to receive a microlending TA grant if it receives funding to provide microloans under this program.

(1) *Purpose.* The Agency shall make microlender TA grants to microlenders to assist them in providing marketing, management, and other technical assistance to rural microentrepreneurs and microenterprises that have received or are seeking one or more microloans from the microlender.

(2) *Grant amounts.* Microlender TA grants will be limited to an amount equal to not more than 25 percent of the total outstanding balance of microloans made under this program and active by the microlender as of the date the grant is awarded for the first $400,000 plus an additional 5 percent of the loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. Funds cannot be used to pay off the loans. During the first year of operation, the percentage will be determined based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. Any grant dollars obligated, but not spent, from the initial grant, will be subtracted from the subsequent year grant to ensure that obligations cover only microloans made and active.

(3) *TA grant fund uses and limitations.* The microlender will agree to use TA grant funding exclusively for providing technical assistance and training to eligible microentrepreneurs and microenterprises, with the exception that up to 10 percent of the grant funds may be used to cover the microlender's administrative expenses, except as may be reduced as provided under § 4280.313(a)(4). The following limitations will apply to TA grant funding:

(i) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required, in the application materials, to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes. Applicants will be scored accordingly, with those using less than 10 percent of the funding for administrative purposes being scored higher than those using 10 percent of the funding for administrative purposes.

(ii) While operating the program, the selected microlender will be expected to adhere to the estimates it provides in the application. If for any reason, the microlender cannot meet the expectations of the application, it must contact the Agency in writing to request a budget adjustment.

(iii) At no time will it be appropriate for the microlender to expend more than 10 percent of its grant funding on administrative expenses. Microlenders that go over 10 percent will be considered in performance default and may be subject to forfeiting funding.

(iv) Budget adjustments will be considered within the 10 percent limitation and approved or denied on a case-by-case basis.

(c) *TA-only grants.* Grants will be competitively made to MDOs for the purpose of providing technical assistance and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based technical assistance and training to eligible microentrepreneurs and microenterprises, but do not seek funding for an RMRF. Entities receiving microlending TA grants will not be eligible to apply for TA-only grants.

(1) *Grant term.* TA-only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(2) *Funding level.* The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(3) *Loan referencing.* TA-only grantees will be required to:

(i) Refer clients to internal or external non-program funded lenders for loans of $50,000 or less and

(ii) Collect data regarding such clients. TA-only grantees will be

considered successful if a minimum of 1- in-5 TA clients are referred for a microloan and are operating a business within 18 months of receiving technical assistance.

(4) *Facilitation of access to capital.* Technical assistance-only grantees will be expected to provide training and technical assistance services to the extent that access to capital for eligible microentrepreneurs and microenterprises is facilitated by referral to either an internal or external non-program loan fund so that these clients may take advantage of available financing programs.

(5) *Microlender funding.* No entity will receive grant funding as both a microlender and a TA-only provider; that is, RMAP microlenders are not eligible for TA-only funding and an MDO receiving TA-only funding are not eligible for microlender funding.

(d) *Grant agreement.* For any grant to an MDO or microlender, the Agency will notify the approved applicant in writing, using an Agency-approved grant agreement setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Department regulations are complied with.

§§ 4280.314 [Reserved]

§ 4280.315 MDO application and submission information.

(a) *Initial and subsequent applications.* Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual **Federal Register** Notice for Solicitation of Applications (NOSA) or a Notice of Funding Availability (NOFA), depending on the availability of funds at the time of publication.

(1) The information required in this section is necessary for an application to be considered complete.

(2) When preparing applications, applicants are strongly encouraged to review the scoring criteria in § 4280.316 and provide documentation that will support a competitive score.

(3) Only those applicants that meet the basic eligibility requirements in § 4280.310 will have their applications fully scored and considered for participation in the program under this section.

(b) *Content and form of submission.* The content and form requirements will differ based on the nature of the application. All applicants must provide the information specified in paragraph (c) of this section. Additional application information is required in paragraph (d) of this section depending on the type of application being submitted.

(c) *Application information for all applicants.* All applicants must provide the following information and forms fully completed and with all attachments:

(1) Standard Form-424, "Application for Federal Assistance."

(2) Standard Form-424A, "Budget Information—Non-construction Programs."

(3) Standard Form-424B, "Assurances—Non-construction Programs."

(4) For entities that are applying for more than $150,000 in loan funds and/or more than $100,000 in grant funds, only, SF LLL, "Disclosure of Lobbying Activities."

(5) AD 1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transaction."

(6) For entities applying for program loan funds to become an RMAP microlender only, Form RD 1910–11, "Certification of No Federal Debt."

(7) Form RD 400–8, "Compliance Review."

(8) Demonstration that the applicant is eligible to apply to participate in this program. To demonstrate eligibility, applicants must submit documentation that the applicant is an MDO as defined in § 4280.302, as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements;

(ii) If a nonprofit entity, a copy of the applicant's bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(iii) If an Indian tribe, evidence that the applicant is a Federally-recognized Indian tribe, and that the tribe neither operates nor is served by an existing MDO;

(iv) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(v) For nonprofit applicants only, a Certificate of Good Standing, not more than 6 months old, from the Office of the Secretary of State in the State in which the applicant is located. If the applicant has offices in more than one state, then the state in which the applicant is organized and licensed will be considered the home location.

(9) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under this program with similar rates and terms.

(10) Form RD 400–4, "Assurance Agreement."

(d) *Type of application specific information.* In addition to the information required under paragraph (c) of this section, the following information is also required, as applicable:

(1) The information specified in § 4280.316(a).

(2) An applicant for status as a microlender with more than 3 years of experience as an MDO seeking to participate as a microlender must provide the additional information specified in § 4280.316(b). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(3) An applicant for status as a microlender with 3 years or less experience as an MDO seeking to participate as a microlender must provide the additional information specified in § 4280.316(c). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(4) All applicants seeking status as a microlender must identify in their application which cost share option(s) the applicant will utilize, as described in § 4280.311(d), to meet the Federal cost share requirement. If the applicant will utilize the RMRF-level option, the applicant shall identify the amount(s) and source(s) of the non-Federal share.

(5) An applicant seeking TA-only grant funding must provide the additional information specified in § 4280.316(e).

(e) *Application limits.* Paragraph (d) of this section sets out three types of funding under which applications may be submitted. MDOs may only submit and have pending for consideration, at any given time, one application, regardless of funding category.

(f) *Completed applications.* Applications that fulfill the requirements specified in paragraphs (a) through (e) of this section will be fully reviewed, scored, and ranked by the Agency in accordance with the provisions of § 4280.316.

§ 4280.316 Application scoring.

Applications will be scored based on the criteria specified in this section using only the information submitted in

the application. The total available points per application are 100. Points will be awarded as shown in paragraphs (a) through (e) of this section. Awards will be based on the ranking, with the highest ranking applications being funded first, subject to available funding.

(a) *Application requirements for all applicants.* All applicants must submit the eligibility information described in § 4280.315. Only those applicants deemed eligible will be scored for qualification. Qualification information provides the complete forms and information necessary to determine a baseline of capacity. Additional information is specified depending on the level of experience or type of funding being applied for. The maximum points available in this part of the application are 45. In addition to the eligibility information, all applicants will submit:

(1) An organizational chart clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are management positions and those positions essential to the operation of microlending and TA programming. Up to 5 points will be awarded.

(2) Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under this program. There should be a corresponding resume for each of the key individuals noted and named on the organizational chart. Points will be awarded based on the quality of the resumes and on the ability (based on the resumes) of the key personnel to administer the program. Up to 5 points will be awarded.

(3) A succession plan to be followed in the event of the departure of personnel key to the operation of the applicant's RMAP activities. Up to 5 points will be awarded.

(4) Information indicating an understanding of microenterprise development concepts. Provide those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of technical assistance. Up to 5 points will be awarded.

(5) Copies of the applicant's most recent, and two years previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its bottom line fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant's organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development. The mission statement may or may not be a part of a larger statement. For example, if the mission statement is included in the by-laws or other organizational documents, please so note, direct the reviewer to the proper document, and do not submit these documents twice. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served. Describe the service area, which must be rural as defined. State the number of counties or other jurisdictions to be served. Describe the demographics of the service area and whether or not the population is a diverse population. Note that the applicant will not be scored on the size of the service area, but on its ability to fully cover the service area as described. Up to 10 points will be awarded.

(b) *Program loan application requirements for MDOs seeking to participate as RMAP microlenders with more than 3 years of experience.* In addition to the information required under paragraph (a) of this section, applicants with more than 3 years of experience as a microlender also must provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) *History of provision of microloans.* The applicant must provide data regarding its history of making microloans for the three years previous to this application by answering the questions in paragraphs (b)(1)(i) through (vi) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Figure 1 presents an example of the format and data required. The maximum number of points under this criterion is 20.

Figure 1. Example of Format and Data Requirements

Data item	Federal FY			
	Last fiscal year	Year before last fiscal year	2nd year before last fiscal year	Total
Total # of Microloans Made				
Total $ Amount of Microloans Made				
# of Microloans Made in Rural Areas				
Total $ Amount of Microloans Made in Rural Areas				
# of Microloans Made to Racial and Ethnic Minorities				
# of Microloans Made to women				
# of Microloans Made to the Disabled				

(i) Number and amount of microloans made during each of the three previous Federal FYs. Do not include current year information. A narrative may be included as a separate attachment, not in the body of the suggested table.

(ii) Number and amount of microloans made in rural areas in each of the three years prior to the year in which the application is submitted. If the history of providing microloans in rural areas shows:

(A) More than the three consecutive years immediately prior to this application, 5 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 3 points will be awarded;

(C) At least 6 months, but not more than one year immediately prior to this application, 1 point will be awarded.

(iii) Percentage of number of loans made in rural areas. Calculate and enter the total number of microloans made in rural areas as a percentage of the total number of all microloans made for each of the past three Federal FYs. If the

percentage of the total number of microloans made in rural areas is:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 but less than 50 percent, 1 point will be awarded.

(iv) The percentage of dollar amount of loans made in rural areas. Enter the dollar amount of microloans made in rural areas as a percentage of the dollar amount of the total portfolio (rural and non-rural) of microloans made for each of the previous three Federal FYs. If percentage of the dollar amount of the microloans made in rural areas is:

(A) 75 percent or more of the total amount, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(v) Each applicant shall compare the diversity of its entire microloan portfolio to the demographic makeup of its service area (as determined by the latest applicable decennial census for the State) based on the number of microloans made during the three years preceding the subject application. Demographic groups shall include gender, racial and ethnic minority status, and disability (as defined in The Americans with Disabilities Act). Points will be awarded on the basis of how close the MDO's microloan portfolio matches the demographic makeup of its service area. A maximum of 5 points will be awarded.

(A) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each within 5 or less percent of the demographic makeup, 5 points will be awarded.

(B) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each within 10 or less percent of the demographic makeup, 3 points will be awarded.

(C) If at least one loan has been made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percent of the demographic makeup or if no loans have been made to one of the demographic groups and if the percentage of loans made to each of the other demographic groups is each within 10 or less percent of the demographic makeup, 1 point will be awarded.

(D) If no loans have been made to two or more demographic groups, no points will be awarded.

(2) *Portfolio management.* Each applicant's ability to manage its portfolio will be determined based on the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. The maximum number of points under this criterion is 10.

(i) Enter the total number of your microloans paying on time for the three previous Federal FYs. If the total number of microloans paying on time at the end of each year over the prior three Federal FYs is:

(A) 95 percent or more, 5 points will be awarded;

(B) At least 85 percent but less than 95 percent, 3 points will be awarded;

(C) Less than 85 percent, 0 points will be awarded.

(ii) Enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end for the three previous Federal FYs. If the total number of these microloans is:

(A) 5 percent or less of the total portfolio, 5 points will be awarded;

(B) More than 5 percent, 0 points will be awarded.

(3) *History of provision of technical assistance.* Each applicant's history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. The maximum number of points under this criterion is 15.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three Federal FYs.

(ii) Provide the percentage of the total number of only rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of loans made during the past three Federal FYs). If provision of both microloans and technical assistance to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three Federal FYs. If the demonstrated provision of microloans and technical assistance to these rural microentrepreneurs and rural microenterprises is at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iv) Provide the ratio of TA clients that also received microloans during each of the previous three Federal FYs. If the ratio of clients receiving technical assistance to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(4) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training methods used by the applicant organization to provide such technical assistance and discussing the outcomes of their endeavors. Technical assistance is defined in § 4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iv) of this section. The maximum number of points under this criterion is 5.

(i) Applicants that have used more than one method of training and technical assistance (*e.g.,* classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 2 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded 1 point.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the average level of evaluation scores is "good" or higher will be awarded 1 point.

(iv) Applicants that present their narrative information clearly and concisely (five pages or less) and at a level expected by trainers and teachers will be awarded 1 point.

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this criterion is 5. If the percentage of grant

funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 point will be awarded.

(c) *Application requirements for MDOs seeking to participate as RMAP microlenders with 3 years or less experience.* In addition to the information required under paragraph (a) of this section, an applicant MDO with 3 years or less experience that is applying to be a microlender must submit the information specified in paragraphs (c)(1) through (8) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of loan and grant funding. Provide goals and milestones for planned microlending and technical assistance activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five years after the date of application. The narrative work plan should be not more than five pages in length. Up to 10 points will be awarded.

(2) The applicant will provide the date that it began business as an MDO or other provider of business education and/or facilitator of capital. This date will reflect when the applicant became licensed to do business, in good standing with the Secretary of State in which it is registered to do business, and regularly paid staff to conduct business on a daily basis. If the applicant has been in business for:

(i) More than 2 years but less than 3 years, 5 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 3 points will be awarded;

(iii) At least 6 months, but not more than 1 year, 1 point will be awarded;

(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded. (If more than 3 full years, the applicant must apply under the provisions for MDOs with more than 3 years experience as specified in § 4280.315.)

(3) The applicant must describe in detail any microenterprise development training received by it as a whole, or its employees as individuals, to date. The narrative may refer reviewers to already submitted resumes to save space. The training received will be rated on its topical variety, the quality of the description, and its relevance to the organization's strategic plan. The applicant should not submit training brochures or conference announcements. Up to 10 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on rural microentrepreneurial development, and the current average caseload for each. Indicate how the caseload ratio does or does not optimize the applicant's ability to perform the services described in the work plan. Discuss how Agency grant funding will be used to assist with TA program delivery and how loan funding will affect the portfolio. Up to 5 points will be awarded.

(5) The applicant must indicate any training organizations with which it has a working relationship. Provide contact information for references regarding the applicant's capacity to perform the work plan provided. If the recommendations received from references are:

(i) Generally excellent, 5 points will be awarded;

(ii) Generally above average, 3 points will be awarded;

(iii) Generally average, 1 point will be awarded;

(iv) Generally less than average, 0 points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for same. Up to 5 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 10 points will be awarded.

(8) The applicant will identify its proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(d) *Application requirements for MDOs seeking technical assistance-only grants.* TA-only grants may be provided to MDOs that are not RMAP microlenders seeking to provide training and technical assistance to rural microentrepreneurs and rural microenterprises. An applicant seeking a TA-only grant must submit the information specified in paragraphs (d)(1) through (4) of this section. The total number of points available under this section, in addition to the 45 points available in paragraph (a) of this section, is 55, for a total of 100 points.

(1) *History of provision of technical assistance.* Each applicant's history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (d)(1)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. The maximum number of points under this criterion is 20.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three Federal FYs.

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of rural and non-rural microloans made during the past three Federal FYs). If provision of both technical assistance and resultant microloans to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural microentrepreneurs by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three Federal FYs. If the demonstrated provision of technical assistance and resultant microloans to these rural microentrepreneurs when compared to the total number of microentrepreneurs assisted, is at a rate of:

(A) 75 percent or more, 10 points will be awarded;

(B) At least 50 percent but less than 75 percent, 7 points will be awarded;

(C) At least 25 percent but less than 50 percent, 5 point will be awarded.

(iv) Provide the ratio of TA clients that also received microloans during each of the last three years. If the ratio of clients receiving technical assistance to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(2) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization to provide technical assistance and discussing the outcomes of their endeavors. The narrative will be scored as specified in paragraphs (d)(2)(i) through (iv) of this section. The maximum number of points under this criterion is 20.

(i) Applicants that have used more than one method of training and technical assistance (*e.g.,* classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded points under either of the following paragraphs, but not both.

(A) News stories that highlight businesses made successful as a result of technical assistance, 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of technical assistance, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the evaluation scores are generally:

(A) Excellent, 5 points will be awarded.

(B) Good, 3 points will be awarded.

(C) Less than good, 0 points will be awarded.

(iv) Applicants that present well-written narrative information that is clearly and concisely written and is five pages or less will be awarded 5 points.

(3) *Technical assistance plan.* Submit a plan for the provision of technical assistance explaining how the funding will benefit the current program and how it will allow the applicant to expand its non-program microlending activities. Up to 10 points will be awarded

(4) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 1 point will be awarded.

(e) *Re-application requirements for participating microlenders with more than 5 years experience as a microlender under this program.*

(1) Microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application that includes the following:

(i) A letter of request for funding stating the amount of loan and/or grant funds being requested;

(ii) An indication of the loan and/or grant amounts being requested accompanied by a completed SF 424 and any pertinent attachments;

(iii) An indication of the number and percent of program microentrepreneurs and microenterprises remaining in business for two years or more after microloan disbursement; and

(iv) A recent resolution of the applicant's Board of Directors approving the application for debt.

(2) The Agency, using this request, and data available in the reports submitted under previous fundings, will review the overall program performance of the applicant over the life of its participation in the program to determine its continued qualification for subsequent funding. Requirements include:

(i) A default rate of 5 percent or less;

(ii) A pattern of delinquencies during the period of participation in this program of 10 percent or less;

(iii) A pattern of use of TA dollars that indicates at least one in ten TA clients receive a microloan;

(iv) A statement discussing the need for more funding, accompanied by account documentation showing the amounts in each of the RMRF and LLRF accounts established to date; and

(v) A pattern of compliance with program reporting requirements.

(3) Shortened applications under this section will be rated on a pass or fail basis. Passing applications will be assigned a score of 90 points and will be ranked accordingly in the quarterly competitions. Failing applications will be scored 0.

§ 4280.317 Selection of applications for funding.

All applications received will be scored using the scoring criteria specified in § 4280.316. Because each set of applicants is scored on a 100 point scale, applications will be ranked together. Shortened applications can only receive 90 points. Within funding limitations, applications will be funded in descending order, from the highest ranking application down. If two or more applications score the same, the Administrator may prioritize such applications to help the program achieve overall geographic diversity.

(a) *Timing and submission of applications.*

(1) All applications must be submitted as a complete application, in one package. Packages must be bound in a three ring binder and evidence must be organized in the order of appearance in § 4280.315 of this document. Applications that are unbound, disorganized, or otherwise not ready for evaluation will be returned.

(2) Applications will be accepted on a quarterly basis using Federal fiscal quarters. Deadlines and specific application instructions will be published annually in the **Federal Register**.

(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 70 points or more, for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after 4 quarters will be returned.

(b) *Availability of funds.* If an application is received, scored, and ranked, but insufficient funds remain to fully fund it, the Agency may elect to fund an application requesting a smaller amount that has a lower score. Before this occurs, the Agency, as applicable, will provide the higher scoring applicant the opportunity to reduce the amount of its request to the amount of funds available. If the applicant agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine that the project is financially feasible at the lower amount.

(c) *Applicant notification.* The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and closing procedures for the loans and/or grants to awardees.

(d) *Closing.* Awardees unable to complete closing for obligation within 90 days will forfeit their funding. Such funding will revert back to the Agency for later use.

§§ 4280.318–4280.319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight.* Any MDO receiving a grant under this program is subject to Agency oversight, with site visits and inspection of records occurring at the discretion of the Agency. In addition, MDOs receiving a grant under this subpart must submit reports, as specified in paragraphs (a)(1) through (3) of this section.

(1) On a quarterly basis, within 30 days after the end of each Federal fiscal quarter, the microlender will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including:

(i) SF–PPR, "Performance Progress Report," including narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This report will include information on the microlender's technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) As appropriate, SF–270; and

(iii) If requesting grant funding at the time of reporting, SF–PPR–E, "Activity Based Expenditures."

(2) If a microlender has more than one grant from the Agency, a separate report must be made for each.

(3) Other reports may be required by the Agency from time to time in the event of poor performance or other such occurrences that require more than the usual set of reporting information.

(b) *Payments.* The Agency will make grant payments not more often than on a quarterly basis. The first payment may be made in advance and will equal no more than one fourth of the grant award. Payment requests must be submitted on Standard Form 270 and will only be paid if reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs:

(a) *Grants.* Grants will be serviced in accordance with all applicable regulations:

(1) Department of Agriculture regulations including, but not limited to 7 CFR part 1951, subparts E and O, parts 3015, 3016, 3017, 3018, 3019, and 3052; and

(2) Office of Management and Budget (OMB) regulations including, but not limited to, 2 CFR parts 215, 220, 230, and OMB Circulars A–110 and A–133.

(b) *Loans.* Loans to microlenders will be serviced in accordance with the following:

(1) Department of Agriculture regulations 7 CFR part 1951, subparts E, O, and R;

(2) Other Department of Agriculture regulations as may be applicable; and

(3) OMB Circular A–129.

§ 4280.322 Loans from the microlenders to microentrepreneurs.

The primary purpose of making a loan to a microlender is to enable that microlender to make microloans. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support microborrower success while enabling the microlender to repay the Federal Government.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be $50,000.

(b) *Microloan terms and conditions.* The terms and conditions for microloans made by microlenders will be negotiated between the prospective microborrower and the microlender, with the following limitations:

(1) No microloan may have a term of more than 10 years;

(2) The interest rate charged to the microborrower will be established at, or before the closing of the microloan; and

(3) The microlender may establish its margin of earnings but may not adjust the margin so as to violate Fair Credit Lending laws. Margins must be reasonable so as to ensure that microloans are affordable to the microborrowers.

(c) *Microloan insurance requirements.* The requirement of reasonable hazard, key person, and other insurance will be at the discretion of the microlender.

(d) *Credit elsewhere test.* Microborrowers will be subject to a "credit elsewhere" test so that the microlender will make loans only to those borrowers that cannot obtain business funding of $50,000 or less at affordable rates and on acceptable terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere or that the rates and terms available within the community at the time were outside the range of the microborrower's affordability. Evidence may include a comparison of rates, loan limitations, terms, etc. for other funding sources to those forth offered by the microlender). Denial letters from other lenders are not required.

(e) *Fair credit requirements.* To ensure fairness, microlenders must publicize their rates and terms on a regular basis. Microlenders are also subject to Fair Credit lending laws as discussed in § 4280.305.

(f) *Eligible microloan purposes.* Agency loan funds may be used to make microloans as defined in § 4280.302 for any legal business purpose not identified in § 4280.323 as an ineligible purpose. Microlenders may make microloans for qualified business activities and expenses including, but not limited to:

(1) Working capital;

(2) The purchase of furniture, fixtures, supplies, inventory or equipment;

(3) Debt refinancing;

(4) Business acquisitions; and

(5) The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funding. Neither interior decorating, nor the affixing of chattel to walls, floors, or ceilings are considered to be demolition or construction.

(g) *Military personnel.* Military personnel who are or seek to be a microentrepreneur and are on active duty with six months or less remaining in their active duty status may receive a microloan and/or technical assistance and training if they are otherwise qualified to participate in the program.

§ 4280.323 Ineligible microloan purposes and uses.

Agency loan funds will not be used for the payment of microlender administrative costs or expenses and microlenders may not make microloans under this program for any of purposes and uses identified as ineligible in paragraphs (a) through (p) of this section.

(a) Construction costs.

(b) Any amount in excess of that needed by a microborrower to accomplish the immediate business goal.

(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to:

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their close relatives as defined; and

(2) Financial assistance to any entity the result of which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.

(d) Distribution or payment to a microborrower when such will use any portion of the microloan for other than the purpose for which it was intended.

(e) Distribution or payment to a charitable institution not gaining revenue from sales or fees to support the operation and repay the microloan.

(f) Microloans to a fraternal organization.

(g) Any microloan to an applicant that has an RMAP funded microloan application pending with another microlender or that has an RMAP-funded microloan outstanding with another microlender that would cause the applicant to owe a combined amount of more than $50,000 to one or more microlenders under this program.

(h) Assistance to USDA Rural Development (Agency) employees, or their close relatives, as defined.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law, regulation, or enforceable land use restriction unless the microloan will result in curing or removing the violation.

(k) Microloans to lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

(m) Any lobbying activities as described in 7 CFR part 3018.

(n) Lines of credit.

(o) Subordinated liens.

(p) Use of an Agency funded loan to pay debt service on a previous Agency loan.

§§ 4280.324–4280.399 [Reserved]

§ 4280.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–XXXX. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: May 13, 2010.

Curtis A. Wiley,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–11931 Filed 5–27–10; 8:45 am]

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Federal Register

Friday,
May 28, 2010

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Amdt. No. 91–314]

RIN 2120–AI92

Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations by adding equipage requirements and performance standards for Automatic Dependent Surveillance—Broadcast (ADS–B) Out avionics on aircraft operating in Classes A, B, and C airspace, as well as certain other specified classes of airspace within the U.S. National Airspace System (NAS). ADS–B Out broadcasts information about an aircraft through an onboard transmitter to a ground receiver. Use of ADS–B Out will move air traffic control from a radar-based system to a satellite-derived aircraft location system. This action facilitates the use of ADS–B for aircraft surveillance by FAA and Department of Defense (DOD) air traffic controllers to safely and efficiently accommodate aircraft operations and the expected increase in demand for air transportation. This rule also provides aircraft operators with a platform for additional flight applications and services.

DATES: This final rule is effective on August 11, 2010. The compliance date for this final rule is January 1, 2020. Affected parties, however, do not have to comply with the information collection requirement in § 91.225 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 11, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Vincent Capezzuto, Surveillance and Broadcast Services, AJE–6, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–8637; e-mail *vincent.capezzuto@faa.gov*.

For legal questions concerning this final rule, contact Lorelei Peter, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3134; e-mail *lorelei.peter@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace, and Subpart III, Section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft (including regulations on safe altitudes) for navigating, protecting, and identifying aircraft, and the efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of sections 40103 and 44701 because it prescribes aircraft performance requirements to meet advanced surveillance needs to accommodate increases in NAS operations. As more aircraft operate within the U.S. airspace, improved surveillance performance is necessary to continue to balance the growth in air transportation with the agency's mandate for a safe and efficient air transportation system.

Guide to Terms and Acronyms Frequently Used in This Document

ACI–NA—Airports Council International-North America
ACSS—Aviation Communication and Surveillance Systems
ADIZ—Air Defense Identification Zone
ADS–B—Automatic Dependent Surveillance-Broadcast
ADS–C—Automatic Dependent Surveillance-Contract
ADS–R—Automatic Dependent Surveillance-Rebroadcast
AGL—Above Ground Level
AIA—Aerospace Industries Association of America
ALPA—Air Line Pilots Association, International
AOPA—Aircraft Owners and Pilots Association
ARC—Aviation Rulemaking Committee
ASA—Aircraft Surveillance Applications
ASAS—Aircraft Surveillance Applications System
ASDE–X—Airport Surface Detection Equipment, Model X
ASSA—Airport Surface Situational Awareness
ATC—Air Traffic Control
CAA—Cargo Airline Association
CDTI—Cockpit Display of Traffic Information
CNS—Communication, Navigation, and Surveillance
EAA—Experimental Aircraft Association
ELT—Emergency Locator Transmitter
ES—Extended Squitter
EUROCAE—European Organisation for Civil Aviation Equipment
EUROCONTROL—European Organisation for the Safety of Air Navigation
FAROA—Final Approach Runway Occupancy Awareness
FedEx—Federal Express
FIS–B—Flight Information Service–Broadcast
FL—Flight Level
GA—General Aviation
GAMA—General Aviation Manufacturers Association
GNSS—Global Navigation Satellite System
GPS—Global Positioning System
HAI—Helicopter Association International
IATA—International Air Transport Association
ICAO—International Civil Aviation Organization
MHz—Megahertz
MOPS—Minimum Operational Performance Standards
MSL—Mean Sea Level
NAC_P—Navigation Accuracy Category For Position
NAC_V—Navigation Accuracy Category for Velocity
NAS—National Airspace System
NBAA—National Business Aviation Association
NextGen—Next Generation Air Transportation System
NIC—Navigation Integrity Category
NM—Nautical Mile
NPRM—Notice of Proposed Rulemaking
NTSB—National Transportation Safety Board
OPD—Optimized Profile Descent
OMB—Office of Management and Budget
RAA—Regional Airline Association
RAIM—Receiver Autonomous Integrity Monitoring
RFA—Regulatory Flexibility Act
RNP—Required Navigation Performance
SANDIA—Sandia National Laboratories
SARPs—Standards and Recommended Practices
SCAP—Security Certification and Accreditation Procedures
SDA—System Design Assurance
SIL—Source Integrity Level
SSR—Secondary Surveillance Radar
TCAS—Traffic Alert and Collision and Avoidance System
TIS–B—Traffic Information Service-Broadcast
TMA—Traffic Management Advisor

TSO—Technical Standard Order
UAT—Universal Access Transceiver
UPS—United Parcel Service
URET—User Request Evaluation Tool
VFR—Visual Flight Rules
WAAS—Wide Area Augmentation System

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I. Background

While there is currently a drop in air travel due to a general economic downturn, delay and congestion continue to build in the nation's busiest airports and the surrounding airspace. The FAA must not only address current congestion, but also be poised to handle future demand that will surely return as the nation's economy improves. The FAA has been developing the Next Generation Air Transportation System (NextGen) for the purpose of changing the way the National Airspace System (NAS) operates. NextGen will allow the NAS to expand to meet future demand and support the economic viability of the system. In addition, NextGen will improve safety and support environmental initiatives such as reducing congestion, noise, emissions and fuel consumption through increased energy efficiency. for more information on NextGen, go to *http://www.faa.gov/about/initiatives/nextgen/.*

As part of NextGen development, the FAA has determined that it is essential to move from ground-based surveillance and navigation to more dynamic and accurate airborne-based systems and procedures if the agency is to enhance capacity, reduce delay, and improve environmental performance. Automatic Dependent Surveillance–Broadcast (ADS–B) equipment is an advanced surveillance technology that combines an aircraft's positioning source, aircraft avionics, and a ground infrastructure to create an accurate surveillance interface between aircraft and ATC. It is a key component of NextGen that will move air traffic control (ATC) from a radar-based system to a satellite-derived aircraft location system. ADS–B is a performance-based surveillance technology that is more precise than radar. ADS–B is expected to provide air traffic controllers and pilots with more accurate information to help keep aircraft safely separated in the sky and on runways. The technology combines a positioning capability, aircraft avionics, and ground infrastructure to enable more accurate transmission of information from aircraft to ATC.

ADS–B consists of two different services: ADS–B Out and ADS–B In. ADS–B Out, which is the subject of this

rulemaking, periodically broadcasts information about each aircraft, such as identification, current position, altitude, and velocity, through an onboard transmitter. ADS–B Out provides air traffic controllers with real-time position information that is, in most cases, more accurate than the information available with current radar-based systems. With more accurate information, ATC will be able to position and separate aircraft with improved precision and timing.

ADS–B In refers to an appropriately equipped aircraft's ability to receive and display another aircraft's ADS–B Out information as well as the ADS–B In services provided by ground systems, including Automatic Dependent Surveillance–Rebroadcast (ADS–R),[1] Traffic Information Service–Broadcast (TIS–B),[2] and, if so equipped, Flight Information Service–Broadcast (FIS–B).[3] When displayed in the cockpit, this information greatly improves the pilot's situational awareness in aircraft not equipped with a traffic alert and collision avoidance system (TCAS)/ airborne collision avoidance system (ACAS). Benefits from universal equipage for ADS–B In currently are not substantiated, and standards for ADS–B In air-to-air applications are still in their infancy. Thus it is premature to require operators to equip with ADS–B In at this time. This rule, however, imposes certain requirements that will support some ADS–B In applications.

As noted in the preamble of the Notice of Proposed Rulemaking (NPRM) associated with this rule, published in the **Federal Register** on October 5, 2007 (72 FR 56947), Congress enacted the "Century of Aviation Reauthorization Act" in 2003. That Act mandated that the Secretary of Transportation establish a Joint Planning and Development Office (JPDO) to manage NextGen-related work, including coordinating the development and use of new technologies for aircraft in the air traffic control system. Since 2006, Congress has appropriated over $500 million to the FAA for implementing ADS–B and developing air-to-air capabilities. The FAA remains committed to implementing NextGen and adopts this final rule, with some modifications, as discussed in further detail below.

A. Notice of Proposed Rulemaking

The FAA published the NPRM for ADS–B Out in the **Federal Register** on October 5, 2007 (72 FR 56947). The comment period for the NPRM was scheduled to close on January 3, 2008. In response to several commenters, the FAA subsequently extended the comment period to March 3, 2008 (72 FR 64966, Nov. 19, 2007). The FAA received approximately 190 comments to the docket on the NPRM. Commenters included air carriers, manufacturers, associations, Government agencies, and individuals.

B. ADS–B Aviation Rulemaking Committee

As part of the rulemaking effort, the FAA chartered an aviation rulemaking committee (ARC) on July 15, 2007, to provide a forum for the U.S. aviation community to make recommendations on presenting and structuring an ADS–B Out mandate, and to consider additional actions that may be necessary to implement its recommendations. The ADS–B ARC submitted its first report, "Optimizing the Benefits of Automatic Dependent Surveillance–Broadcast,"[4] on October 3, 2007.

The FAA also tasked the ARC to make specific recommendations concerning the proposed rule based on the comments submitted to the docket. The ARC submitted its second report, "Recommendations on Federal Aviation Administration Notice No. 7–15, Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements to Support Air Traffic Control (ATC) Service; Notice of Proposed Rulemaking,"[5] to the FAA on September 26, 2008.

To give the public an opportunity to comment on the recommendations received from the ARC, the FAA published a notice in the **Federal Register** on October 2, 2008 (73 FR 57270), reopening the comment period of the ADS–B Out NPRM docket for an additional 30 days. The purpose of reopening the comment period was to receive public comments on the ARC recommendations only. This comment period closed November 3, 2008, with the FAA receiving approximately 50 comments to the ARC's recommendations. Commenters included air carriers, manufacturers, associations, and individuals.

C. Summary of the Final Rule

This final rule will add equipage requirements and performance standards for ADS–B Out avionics. ADS–B Out broadcasts information about an aircraft through an onboard transmitter to a ground receiver. Use of ADS–B Out will move air traffic control from a radar-based system to a satellite-derived aircraft location system. As discussed more fully in the sections of this preamble describing equipage requirements and performance standards, operators will have two options for equipage under this rule—the 1090 megahertz (MHz) extended squitter[6] (ES) broadcast link or the Universal Access Transceiver (UAT) broadcast link.[7] Generally, this equipment will be required for aircraft operating in Classes A, B, and C airspace, certain Class E airspace, and other specified airspace. See section C.1. "Airspace" below for additional details.

The NPRM proposed performance requirements for ADS–B Out to be used for ATC surveillance. In addition, several aspects of the proposal would be necessary for future ADS–B In applications. The comments to the NPRM and the ARC recommendations raised significant concerns about the operational needs and costs of the proposed performance requirements, as well as the proposed antenna diversity requirement.

The FAA specifically proposed higher ADS–B Out and antenna diversity requirements than what is needed for ATC surveillance to enable certain ADS–B In applications. As discussed in further detail in this document, the FAA has reconsidered these elements in view of the comments and has changed the implementation plan for ADS–B.

The FAA has concluded that this rule will require only the performance requirements necessary for ADS–B Out. While certain requirements adopted in this rule will support some ADS–B In applications, the agency is not adopting

[1] ADS–R collects traffic information from each broadcast link and rebroadcasts it to ADS–B In-equipped operators on the other broadcast link. This is further explained in section B.2., Automatic Dependent Surveillance-Rebroadcast.

[2] TIS–B uses primary and secondary surveillance radars and multilateration systems to provide proximate traffic situational awareness, including position reports from aircraft not equipped with ADS–B. TIS–B data may not provide as much information as could be received directly from an aircraft's ADS–B Out broadcast, because of the required data processing. The TIS–B signal is an advisory service that is not designed for aircraft surveillance or separation, and cannot be used for either purpose.

[3] With FIS–B, aircraft equipped with 978 megahertz (MHz) Universal Access Transceiver (UAT) ADS–B In avionics can receive weather information, notices to airmen, temporary flight restrictions, and other relevant flight information, at no additional cost.

[4] A copy of this report is available from the Web site *http://www.regulations.gov.* To find the report, enter FAA–2007–29305–0009.1 in the search field.

[5] A copy of this report is available from the Web site *http://www.regulations.gov.* To find the report, enter FAA–2007–29305–0221.1 in the search field

[6] An extended squitter is a long message that Mode S Transponders transmit automatically, without needing to be interrogated by radar, to announce the own-ship aircraft's presence to nearby ADS–B equipped aircraft or ground based Air Traffic Control.

[7] The 1090 MHz ES broadcast link uses the 1090 MHz frequency. The UAT broadcast link uses the 978 MHz frequency.

the higher performance standards that would enable all of the initial ADS–B In applications. The agency is mindful, and operators are advised, that in accepting the commenters' and the ARC's positions regarding antenna diversity and position source accuracy, compliance with this rule alone may not enable operators to take full advantage of certain ADS–B In applications. Operators may voluntarily choose equipment that meets the higher performance standards in order to enable the use of these applications.

The following table provides an overview of the costs and benefits of this final rule.

SUMMARY OF COSTS AND BENEFITS

3% Discount Rate:	
Low Costs	$2.74
High Benefits	5.03
Net Benefits-High Benefit/ Low Cost	2.29
High Costs	5.47
Low Benefits	3.98
Net Benefits-Low Benefits/ High Costs	(1.49)
7% Discount Rate:	
Low Costs	2.15
High Benefits	2.74
Net Benefits-High Benefit/ Low Cost	0.59
High Costs	4.11
Low Benefits	2.09
Net Benefits-Low Benefits/ High Costs	(2.02)

1. Airspace

This final rule prescribes ADS–B Out performance requirements for all aircraft operating in Class A, B, and C airspace within the NAS; above the ceiling and within the lateral boundaries of a Class B or Class C airspace area up to 10,000 feet mean sea level (MSL); and Class E airspace areas at or above 10,000 feet MSL over the 48 contiguous United States and the District of Columbia, excluding the airspace at and below 2,500 feet above the surface.

The rule also requires that aircraft meet these performance requirements in the airspace within 30 nautical miles (NM) of certain identified airports [8] that are among the nation's busiest (based on annual passenger enplanements, annual airport operations count, and operational complexity) from the surface up to 10,000 feet MSL. In addition, the rule requires that aircraft meet ADS–B Out performance requirements to operate in Class E airspace over the Gulf of Mexico at and above 3,000 feet MSL within 12 NM of the coastline of the United States.

2. Datalink Requirements

ADS–B requires a broadcast link for aircraft surveillance and to support ADS–B In applications. Operators have two options for equipage under this rule— the 1090 MHz ES broadcast link or the UAT broadcast link. The 1090 MHz ES broadcast link is the internationally agreed upon link for ADS–B and is intended to support ADS–B In applications used by air carriers and other high-performance aircraft. The 1090 MHz ES broadcast link does not support FIS–B (weather and related flight information) because the bandwidth limitations of this link cannot transmit the large message structures required by FIS–B. The UAT broadcast link supports ADS–B In applications [9] and FIS–B, which are important for the general aviation (GA) community.

This final rule requires aircraft flying at and above 18,000 feet MSL (flight level (FL) 180) (Class A airspace) to have ADS–B Out performance capabilities using the 1090 MHz ES broadcast link. This rule also specifies that aircraft flying in the designated airspace below 18,000 feet MSL may use either the 1090 MHz ES or UAT broadcast link.

3. System Performance Requirements

When activated, ADS–B Out continuously transmits aircraft information through the 1090 MHz ES or UAT broadcast link. The accuracy and integrity of the position information transmitted by ADS–B avionics are represented by the navigation accuracy category for position (NAC_P), the navigation accuracy category for velocity (NAC_V), the navigation integrity category (NIC), the system design assurance (SDA), and the source integrity level (SIL).

In the proposed rule, the FAA referenced the accuracy and integrity requirements to the appropriate NAC_P, NAC_V, NIC, and SIL values defined in Technical Standard Order (TSO)–C166a [10] (for operators using the 1090 MHz ES broadcast link), and TSO–C154b [11] (for operators using the UAT broadcast link) as the baseline requirements for ADS–B Out equipment. TSO–C166a adopted the standards in RTCA, Inc.[12] (RTCA) DO–260A.[13] TSO–C154b adopted the standards in RTCA DO–282A.[14]

After the NPRM was published, the ADS–B ARC issued numerous recommendations in response to public comments on the TSOs referenced in the proposal. Based on the ARC recommendations and broad industry input, RTCA revised DO–260A to become DO–260B [15] and revised DO–282A to become DO–282B.[16] The new RTCA revisions include: (1) An allowance for transmitting a NIC of 7 on the surface, (2) procedures for correctly setting the NAC_V, (3) clarifying the latency requirements, (4) removing the vertical component of NAC_P, NAC_V, NIC, and SIL, (5) revising the definition of SIL to correspond to the definition in the FAA NPRM, (6) clarifying the definition of SIL by dividing it into SIL and SDA message elements, (7) creating a medium power single antenna class, and (8) redefining the bit for the "ADS–B In capability installed" message element.[17] DO–260B and DO–282B are more mature standards and fully support domestic and international ADS–B air traffic control surveillance. The updated standards do not increase performance requirements.

The FAA updated the TSOs in accordance with these new RTCA standards. In addition, the FAA has

[8] These airports are listed in appendix D to part 91.

[9] These applications include enhanced visual acquisition, conflict detection, enhanced visual approach, Airport Surface Situational Awareness (ASSA), and Final Approach Runway Occupancy Awareness (FAROA).

[10] Extended Squitter Automatic Dependent Surveillance–Broadcast (ADS–B) and Traffic Information Service—Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz).

[11] Universal Access Transceiver (UAT) Automatic Dependent Surveillance—Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz.

[12] RTCA, Inc. is a not-for-profit corporation formed to advance the art and science of aviation and aviation electronic systems for the benefit of the public. The organization functions as a Federal Advisory Committee and develops consensus-based recommendations on contemporary aviation issues. The organization's recommendations are often used as the basis for government and private sector decisions as well as the foundation for many FAA TSOs. For more information, *see http://www.rtca.org.*

[13] Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Services—Broadcast (TIS–B).

[14] Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance—Broadcast.

[15] Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance–Broadcast (ADS–B) and Traffic Information Services–Broadcast (TIS–B).

[16] Minimum Operational Performance Standards for Universal Access Transceiver Automatic Dependent Surveillance–Broadcast.

[17] A number of these items address issues with the current TSOs.

decided that it is necessary to require the new standards contained in TSO–C166b [18] (1090 MHz ES) and TSO–C154c [19] (UAT) as the minimum performance standards in this final rule.[20] The updated standards incorporate multiple changes that address public comments and the ARC's recommendations on the proposal. On September 11, 2009, the FAA announced in the **Federal Register** the availability of draft TSO–C166b and TSO–C154c for comment (74 FR 46831). The FAA issued final versions of the above TSOs on December 2, 2009. The FAA also added additional language in §§ 91.225 and 91.227 stating that equipment with an approved deviation under § 21.618 also meet the requirements of the rule.

In addition, this final rule specifies the performance requirements for accuracy and integrity (NAC_P, NAC_V, and NIC) in meters and nautical miles rather than referencing the numerical values used in DO–260B, DO–282B, or the NPRM. This change translates the values but does not alter the actual performance requirements. The FAA wants to avoid any misinterpretations of the performance requirements for this rule, if in the future, RTCA revises NAC_P, NAC_V, and NIC.

Table 1 summarizes the NAC_P, NAC_V, NIC, and SIL values proposed in the NPRM and their equivalent measurements, as noted in DO–260A and DO–282A. Table 2 summarizes NAC_P, NAC_V, NIC, SDA, and SIL values as defined in DO–260B and DO–282B. These two tables contain only the values applicable to the NPRM and the final rule. See DO–260B paragraph 2.2.3 or DO–282B paragraph 2.2.4 for complete information on all values.

Table 1. NAC_P, NAC_V, NIC, and SIL values as defined in DO–260A and DO–282A

	Value	Equivalent Measure as defined in DO–260A and DO–282A
NAC_P	5	Horizontal position accuracy < 926 meters (0.5 NM)
	8	Horizontal position accuracy < 92.6 meters (0.05 NM)
	9	Horizontal position accuracy < 30 meters; Vertical position accuracy < 45 meters
NAC_V	1	Horizontal velocity accuracy < 10 meters per second, Vertical velocity accuracy < 50 feet per second
NIC	7	Containment radius <0.2 NM
SIL	2	Per flight hour or per sample probability of exceeding the NIC containment radius $\leq 1x10^{-5}$ AND Per flight hour probability of failure causing false or misleading information being transmitted from the aircraft $\leq 1x10^{-5}$
	3	Per flight hour or per sample probability of exceeding the NIC containment radius $\leq 1x10^{-7}$ AND Per flight hour probability of failure causing false or misleading information being transmitted from the aircraft $\leq 1x10^{-7}$

[18] Extended Squitter Automatic Dependent Surveillance–Broadcast (ADS–B) and Traffic Information Service–Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz).

[19] Universal Access Transceiver (UAT) Automatic Dependent Surveillance–Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz.

[20] Operators with equipment installed that meets a later version of TSO–C166b or TSO–C154c, as applicable, are in compliance with this rule.

Table 2. NAC_P, NAC_V, NIC, SDA, and SIL values as defined in DO–260B and DO–282B

	Value	Equivalent Measure as defined in DO–260B and DO–282B
NAC_P	5	Horizontal position accuracy < 926 meters (0.5 NM)
	8	Horizontal position accuracy < 92.6 meters (0.05 NM)
	9	Horizontal position accuracy < 30 meters
NAC_V	1	Horizontal velocity accuracy < 10 meters per second
NIC	7	Containment radius < 0.2 NM
SDA	2	Per flight hour probability of an avionics system failure causing false or misleading information to be transmitted from the aircraft $\leq 1x10^{-5}$
	3	Per flight hour probability of an avionics system failure causing false or misleading information to be transmitted from the aircraft $\leq 1x10^{-7}$
SIL	2	Per flight hour or per sample probability of exceeding the horizontal NIC containment radius $\leq 1x10^{-5}$
	3	Per flight hour or per sample probability of exceeding the horizontal NIC containment radius $\leq 1x10^{-7}$

In this final rule, the NAC_P must be less than 0.05 NM. The NAC_V and NIC values are adopted as proposed. The NAC_V must be less than 10 meters per second. The NIC must be less than 0.2 NM. The SIL parameter from the NPRM has been divided into two separate parameters and is discussed in detail later in this document.[21] In this final rule, the SDA parameter must be less than or equal to $1x10^{-5}$ per hour, which is equivalent to an SDA of 2, and the SIL parameter must be less than or equal to $1x10^{-7}$ per hour or per sample, which is equivalent to a SIL of 3. Global navigation satellite system (GNSS) systems[22] will set their SILs based on a $1x10^{-7}$ per-hour probability. Operators must meet these performance requirements to operate in the airspace where ADS–B is required. Any ADS–B position source that meets the specified performance standards is acceptable and complies with the requirements in the final rule.

4. Antenna Diversity and Transmit Power Requirements

The aircraft antenna is a major contributor to ADS–B system link performance and an important part of the overall ADS–B Out system. In the NPRM, the FAA proposed an antenna diversity requirement that would support ADS–B In applications, such as Airport Surface Situational Awareness (ASSA) and Final Approach Runway Occupancy Awareness (FAROA).

The FAA has reconsidered the need for antenna diversity in view of the comments submitted. The agency has determined that a single bottom-mounted antenna is the minimum requirement for ATC surveillance. Furthermore, the analysis of ASSA and FAROA does not conclude that antenna diversity is required for these applications. As discussed later, the FAA decision to require a NAC_P less than 0.05 NM signifies that certain ADS–B In applications, including ASSA and FAROA, will not be fully supported.

If future analysis indicates that antenna diversity is required for ASSA and FAROA, a higher NAC_P than that required in this rule also would be necessary to support these applications. The FAA does not adopt antenna diversity as a requirement for ADS–B Out under this rule because it is not required to support ATC surveillance. Operators must note that this rule does not remove or modify any existing antenna diversity requirements for transponders or TCAS/ACAS.

Aircraft must transmit signals at a certain level of power to ensure ground stations and ADS–B In-equipped aircraft and vehicles can receive the transmitted signals. As proposed, the final rule requires UAT systems to broadcast at a 16-watt minimum-transmit power, and 1090 MHz ES systems to broadcast at a 125-watt minimum-transmit power.

5. Latency of the ADS–B Out Message Elements

When using an ADS–B system, aircraft receive information from a position source and process it with onboard avionics. The aircraft's ADS–B system then transmits position and other information to the ground stations through antenna(s) using either the UAT or 1090 MHz ES broadcast link. Generally, latency is the time lag between the time that position measurements are taken to determine the aircraft's position, and the time that the position information is transmitted by the aircraft's ADS–B transmitter. The latency requirements in this final rule, although different from the proposal, represent a more appropriate way to address latency. The proposal created ambiguities that are addressed in these modifications and are supported by the commenters. Under this rule, total

[21] In the NPRM, SIL was defined as surveillance integrity level and represented the maximum probability of exceeding the NIC containment radius and a maximum probability of a failure causing false or misleading data to be transmitted. In this final rule, SIL is referred to as source integrity level and defines the probability of exceeding the NIC containment radius; SDA represents the probability of transmitting false or misleading position information.

[22] Global navigation satellite system (GNSS) is a generic term for a satellite navigation system, such as the Global Positioning System (GPS), that provides autonomous worldwide geo-spatial positioning and may include local or regional augmentations.

latency cannot exceed 2.0 seconds. Within those 2.0 seconds, uncompensated latency cannot exceed 0.6 seconds. Total and uncompensated latency are explained in further detail in section II F. "Performance Requirements—Total And Uncompensated Latency."

6. Conforming Amendments and Editorial Changes

Section 91.225 requires ADS–B Out for operations in Class A, B, and C airspace. In the NPRM, the FAA inadvertently left out the proposed conforming amendments to §§ 91.130, 91.131, and 91.135, which address Class A, B, and C airspace. This rule amends these sections to include the ADS–B Out performance requirements for the appropriate airspace.

In addition, the regulatory text for § 91.225 has been reorganized from the proposed rule language. The restructuring of the text should make this section clearer and more reader-friendly.

Lastly, the proposed regulatory text has been moved from Appendix H to new § 91.227.

All substantive changes to this rule are fully discussed in Section II, Discussion of the Final Rule.

D. Differences Between the Proposed Rule and the Final Rule

Table 3 summarizes the substantive changes between the proposed rule and this final rule. Editorial changes and clarifications are explained elsewhere in this preamble.

TABLE 3.— SUBSTANTIVE DIFFERENCES BETWEEN THE PROPOSED RULE AND THE FINAL RULE

Issue area	The NPRM—	The final rule—
Technical Standard Order	Proposed performance standards as defined in TSO–C166a (1090 MHz ES) or TSO–C154b (UAT).	Requires performance standards as defined in TSO–C166b (1090 MHz ES) or TSO–C154c (UAT).
Airspace	Proposed requiring all aircraft above FL 240 to transmit on the 1090 MHz ES broadcast link.	Requires all aircraft in Class A airspace (FL 180 and above) to transmit on the 1090 MHz ES broadcast link.
	Proposed ADS–B performance standards for operations in all Class E airspace at and above 10,000 feet MSL.	Requires ADS–B performance standards for operations in Class E airspace at and above 10,000 feet MSL, excluding the airspace at and below 2,500 feet AGL.
NAC_P	Proposed a $NAC_P \geq 9$, which provides navigation accuracy < 30 meters.	Requires $NAC_P < 0.05$ NM. ($NAC_P \geq 8$)
NIC	Proposed changes in NIC be broadcast within 10 seconds.	Requires changes in NIC be broadcast within 12 seconds.
SIL	Proposed a SIL of 2 or 3	Requires an SDA of 2. Requires a SIL of 3.
Antenna Diversity	Proposed antenna diversity in all airspace specified in the rule.	Does not require antenna diversity.
Total Latency	Proposed latency in the position source < 0.5 seconds and latency in the ADS–B source < 1 second.	Requires uncompensated latency ≤ 0.6 seconds and maximum total latency ≤ 2.0 seconds.
Message Elements	Proposed a broadcast message element for "receiving ATC services".	Does not require a broadcast message element for "receiving ATC services."
An ability to turn off ADS–B Out.	Proposed that the pilot be able to turn off ADS–B transmissions if directed by ATC.	Does not require the pilot be able to disable or turn off ADS–B transmissions.

E. Separation Standards Working Group

The FAA established an internal Surveillance and Broadcast Systems Separation Standards Working group (SSWG) to develop methodologies and define metrics as appropriate that evaluate the end-to-end performance of ADS–B and wide area multilateration surveillance systems. These evaluations include investigating the integration of these technologies in conjunction with legacy surveillance technologies, that is, separation between target positions that are derived from ADS–B, radar, and wide area multilateration on ATC displays.

This SSWG was tasked to perform: (1) Analyses of performance using system models and simulations, including the identification of key performance drivers and the development of test scenarios; (2) preliminary evaluations with prototype system components to enable verification and validation of the models and as early evidence of system performance; and (3) analyses of test results, operational testing and dedicated separation standards flight tests for each key-site with fully functional end-to-end systems. Also included is a test period for each system where performance data is collected on aircraft operating in the surveillance service volume.

The SSWG analyses and evaluations are the basis for most of the performance requirements specified in this rule.[23]

II. Discussion of the Final Rule

Below is a more detailed discussion of the final rule relative to the comments received on the proposal:

A. Airspace

1. 2,500 Feet Above Ground Level Exclusion in Class E Airspace

The NPRM proposed that aircraft meet ADS–B Out performance requirements to operate in Class E airspace at and above 10,000 feet MSL over the 48 contiguous states and the District of Columbia.

Several commenters, including the DOD and the Experimental Aircraft Association (EAA), stated that the proposed ceiling of 10,000 feet MSL for aircraft without ADS–B would be a major hardship and safety issue for aircraft operators flying in mountainous terrain. Commenters and the ARC suggested that the final rule exclude Class E airspace at and below 2,500 feet above ground level (AGL), similar to the exclusion in § 91.215, ATC Transponder and Altitude Reporting Equipment and Use.

The FAA recognizes the benefit of excluding this airspace in the rule, particularly for visual flight rules (VFR) pilots flying in mountainous areas. This modification addresses airspace that is not affected by the agency's efforts to maximize NAS efficiency and capacity. Excluding this airspace from the rule minimizes any unnecessary financial and operational burdens being placed on aircraft operators who fly in mountainous areas that encroach on

[23] The SSWG findings are available from the Web site *http://www.regulations.gov*. The docket number for this rulemaking is FAA –2007–29305.

Class E airspace at and above 10,000 feet MSL, but choose not to equip for the ADS–B Out performance standards in this rule. Consequently, the final rule does not require ADS–B performance standards for operations 2,500 feet AGL and below in Class E airspace at and above 10,000 feet MSL.

2. Airspace for Which ADS–B Is Required

The NPRM proposed requiring ADS–B performance standards for operations in most classes of airspace where operators currently are required to carry a transponder.

Numerous commenters recommended that the FAA limit ADS–B performance requirements to aircraft operating in Class A airspace only, or Class A and B airspace only. Several commenters questioned the proposed ADS–B performance requirements in Class E airspace above 10,000 feet MSL. Many of these commenters made varying requests to the FAA concerning the proposed altitude for which ADS–B Out would be required, including 12,000 feet MSL, 15,000 feet MSL, FL 180, and FL 250. The United States Parachute Association noted that skydiving operations are typically conducted above 10,000 feet MSL and sometimes conducted in Class A, B, and C airspace.

ADS–B cannot be used for ATC surveillance if all aircraft are not appropriately equipped. Moreover, it is unreasonable to set up a regulatory framework and performance standards that are based on using two primary systems for surveillance; nor is it feasible to fund and maintain two such systems. The airspace requirements specified in this rule for ADS–B Out meet ATC surveillance needs.

Class B and C airspace have the highest volume of air carrier and GA traffic. They also experience the most complex transitions of aircraft from the en route environment to the terminal area. With the intricate nature of the airspace, current regulations dictate more stringent operational requirements to operate within Class B and C airspace areas.

In addition, ATC must have surveillance data for all aircraft operating in these areas to ensure appropriate situational awareness and to maximize the use of the NAS. ADS–B Out will enhance surveillance in controlled airspace areas where secondary surveillance radar (SSR) currently exists.

One commenter stated that the FAA should expand the airspace in which ADS–B is required and specifically recommended including Air Defense Identification Zones (ADIZ) [24] and Offshore Control Area Extensions.

This rule applies to aircraft operating within U.S. airspace, which extends 12 NM from the U.S. coast. (The airspace also includes the Washington, DC, Special Flight Rules Area (SFRA), referred to as an "ADIZ" prior to 2009.) Most of the airspace in the ADIZ falls outside the 12 NM boundaries.

3. Requests for Deviations From ADS–B Out Requirements

This rule requires operators to broadcast ADS–B Out information when operating in specified airspace. If an aircraft is not capable of meeting the performance requirements, the operator may request a deviation from the ATC facility responsible for that airspace. However, as noted in the NPRM, ATC authorizations may contain conditions necessary to provide the appropriate level of safety for all operators in the airspace. ATC may not be able to grant authorizations in all cases for a variety of reasons, including workload, runway configurations, air traffic flows, and weather conditions.

B. Dual-Link Strategy

The NPRM proposed a dual-link strategy for ADS–B Out broadcasts. Under the proposal, aircraft operating above FL 240 would be required to use the 1090 MHz ES broadcast link. Aircraft operating below FL 240 and in airspace where ADS–B Out performance requirements were proposed could use either the 1090 MHz ES or UAT broadcast link.

Many commenters suggested that a single-link system would reduce operational complexity. The commenters noted that the installation and maintenance costs of a dual-link system exceed those of a single-link system. Some of the commenters proposed a single-link solution but disagreed over which link should be chosen. Commenters supporting a single-link UAT system noted that 1090 MHz ES does not support FIS–B and is at risk for frequency congestion in a future air traffic management environment. Commenters supporting a single-link 1090 MHz ES system explained that UAT is not internationally interoperable and opposed a system that requires international operators to equip with both links.

Boeing noted that most of the NAS system delays are associated with arrivals and departures. Therefore, Boeing recommended that the airborne surveillance functions should provide benefits at all altitudes and on the ground. Ultimately, Boeing commented that a single 1090 MHz ES broadcast link would advance future ADS–B In applications at low altitudes.

In mandating ADS–B, the FAA is mindful that some members of the international air transport community and the GA community have already purchased ADS–B Out equipment, which use either the 1090 MHz ES or UAT broadcast link. The FAA finds that a dual-link system is necessary for the United States to meet the operational needs of all NAS operators. Moreover, if the FAA were to require one segment of the aviation community to equip to meet the needs of another segment of the community, this would present additional costs for some operators to equip.

1. Altitude To Require the 1090 MHz ES Datalink

Under the proposal, aircraft operating above FL 240 would be required to use the 1090 MHz ES broadcast link. Operators using only the UAT broadcast link would be limited to operations below FL 240.

The Air Line Pilots Association, International (ALPA) recommended that the FAA require operators to use 1090 MHz ES above 18,000 feet MSL to be consistent with the Class A airspace lower boundary (rather than introduce a new subclassification of established airspace). In addition, several GA commenters requested limiting ADS–B performance requirements to only Class A airspace. The EAA and some individuals stated that UAT would work just as well as 1090 MHz ES above FL 240 and that aircraft should be permitted to use exclusively UAT for operations above FL 240.

The final rule specifies FL 180 (the lower boundary of Class A airspace) as the ceiling for operating an aircraft equipped only with UAT. Using 1090 MHz ES at or above FL 180 provides a clear operational boundary for controllers and pilots, and does not create conditions of mixed equipage for existing or future applications. The FAA recognizes that this modification will affect certain operators that want to operate above FL 180 and equip only with UAT. However, the agency concludes that requiring 1090 MHz ES performance standards for operations in all of Class A airspace is not only reasonable for surveillance, but also establishes a baseline for ADS–B In.

The requirement to broadcast 1090 MHz ES at and above FL 180 does not

[24] An Air Defense Identification Zone (ADIZ) is an area of airspace over land or water in which the ready identification, location, and control of civil aircraft is required in the interest of national security.

preclude UAT reception of FIS–B services up to FL 240 for aircraft with a dual-link reception capability.

2. Automatic Dependent Surveillance-Rebroadcast (ADS–R)

Under a dual-link strategy, the FAA will use ADS–R to allow ADS–B In-equipped aircraft using one type of broadcast link to receive messages about aircraft transmitting on the other broadcast link.

Various commenters, including the Air Transport Association of America, Inc. (ATA), Airservices Australia, the Australia Civil Aviation Safety Authority, the Aircraft Owners and Pilots Association (AOPA), Boeing, British Airways, and the International Air Transport Association (IATA), expressed concern about a dual-link system. Some of these commenters asserted that the need for ADS–R introduces additional system-wide latency into the ADS–B system and poses a single point of failure for the degradation or loss of surveillance data. In their view, this could limit potential separation and efficiency improvements and affect the air-to-air surveillance element of future ADS–B In applications. In addition, some commenters expressed concern about the additional risk of faults or failures that could result from translating, merging, and rebroadcasting data from the 1090 and 978 MHz frequencies.

Some commenters, including Boeing, contended that ADS–R may not have sufficient growth capability to support future ADS–B In air-to-air applications. Such applications include merging and spacing, self separation, or using ADS–B data to supplement or replace TCAS because of potential of latency or loop delays. Rockwell-Collins stated that ADS–R should be able to support many ADS–B In air-to-air applications, including closely spaced parallel approaches and enhanced visual approach. It recommended developing ADS–R to support more demanding aircraft surveillance applications (ASA).[25]

Several commenters, including AOPA, asserted that the dual-link system presents a safety hazard because aircraft equipped with different links cannot "see" each other on ADS–B In displays in areas without ADS–R coverage. The commenters suggested providing ADS–R at all public airports where a mix of both systems will be encountered.

The FAA is deploying ADS–R in all areas where ADS–B ATC surveillance exists.[26] ADS–R collects traffic information broadcast on the 978 MHz UAT broadcast link and rebroadcasts the information to 1090 MHz ES users. Similarly, ADS–R collects traffic information provided on the 1090 MHz ES broadcast link and rebroadcasts the information to UAT users. ADS–R permits aircraft equipped with either 1090 MHz ES or UAT to take advantage of ADS–B In applications.

The FAA disagrees with the comments suggesting that ADS–R introduces safety issues because of the added latencies attributed to ADS–R processing. ATC automation systems do not require or use ADS–R to provide surveillance. The added latency in the rebroadcast of the original ADS–B message are measurably small and do not degrade the reported NAC_P, NAC_V, and NIC values. The ARC agreed in its report that the latency in ADS–R processing does not degrade the reporting of the position quality parameters.[27] Latency attributed to ADS–R does not compromise the safety of the initial ADS–B In applications.

The intended functions of ADS–B, as identified in the NPRM, are not compromised by the latency introduced with rebroadcasting the messages. However, future ADS–B In applications necessarily may be limited becauseof the latency associated with ADS–R.[28] The FAA has a strong interest in providing the option for operators to equip with UAT, so they may benefit from FIS–B service. In making the decision to use a dual-link strategy, the FAA acknowledged and weighed the fact that potential benefits of future applications may not be fully realized based on this decision. In situations where an airport is not within the planned ADS–B coverage area, the airport will not have ADS–R coverage. Consequently, an aircraft with ADS–B In will not have the benefit of ADS–R, and ADS–B In will not provide awareness of aircraft that are broadcasting on a different broadcast link.

If an aircraft leaves the ADS–B coverage area, there will be an indication to the pilot that the aircraft is no longer within range of ADS–R service. In this case, the pilot needs to maintain separation in the same manner done today, which is relying on visual scanning and directions from ATC. The FAA will ensure that the dual-link strategy does not impact safety as future applications are developed.

3. 1090 MHz Frequency Congestion

Boeing, Federal Express (FedEx), and IATA suggested that the FAA assess future 1090 MHz frequency congestion. The ARC supported the dual-link strategy, but recommended that the FAA study the necessary mitigations of 1090 MHz frequency congestion. The ARC specifically recommended that these mitigations ensure 1090 MHz ES is interoperable with ACAS and SSR, while providing sufficient air-to-air range to support NextGen ADS–B In applications.

Congestion on the 1090 MHz frequency is a risk shared by TCAS/ACAS and SSR systems using the Mode S transponder. The FAA conducted a study to assess 1090 MHz frequency congestion in the future air traffic environment.[29] The FAA is analyzing alternatives and will enact the necessary mitigations to reduce the 1090 MHz frequency congestion risk for ADS–B, TCAS, and SSR, while enabling ranges appropriate for many ADS–B In applications through 2035.

C. Performance Requirements—System

While some commenters supported the proposed performance requirements, numerous organizations and individuals commented that the performance requirements generally were too stringent, unnecessary, and would entail an undue economic burden on operators.

1. Performance Requirements Tailored to Operator, Airspace, or Procedure

The NPRM proposed specific performance requirements for ADS–B Out. Several commenters, including the Aerospace Industries Association of America (AIA), Boeing, the DOD, EAA, Honeywell, Lockheed Martin, and the ARC, asked the FAA to tailor the ADS–B performance requirements based on specific application requirements or airspace.

Lockheed Martin and the DOD noted that some military aircraft may not meet the proposed equipage requirements and would need accommodations to operate in ADS–B Out-designated airspace. One commenter was concerned that the DOD was exempt from the proposed requirements.

[25] ASA comprises a number of flight-deck-based aircraft surveillance and separation assurance capabilities that may directly provide flight crews with surveillance information and alerts.

[26] The service coverage volume for ADS–B In applications is explained in greater detail at *http://www.adsb.gov*.

[27] *ADS–B ARC Task II Report to the FAA* Appendix N, ADS–R Latency and Reliability Expectations (September 26, 2008), available on the Web site, *http:///www.regulations.gov,* FAA–2007–29305–0221.1.

[28] To date, the requirements for using ADS–B for advanced iterations of merging and spacing, and self separation have yet to be defined.

[29] A copy of this report is available from the Web site *http://www.regulations.gov*. The docket number for this rulemaking is FAA–2007–29305.

The FAA has determined that it is not operationally feasible to assign different performance requirements dependent on the nature of the operation. It would not be effective to require both pilots and controllers to verify specific performance parameters before any given operation or change of airspace. Therefore, the FAA is specifying minimum performance requirements for all ADS–B Out-equipped aircraft to operate in certain designated airspace.

No special allowance is made in this rule to relieve the military from the same performance requirements as the civilian aviation community. The FAA recognizes that the DOD and other Federal agencies are NAS users, and need access to all areas of the NAS today and in the future. This rule provides procedures for an aircraft that does not meet the ADS–B Out performance requirements, *i.e.,* to obtain an ATC authorized deviation to operate in the airspace for which ADS–B is required. The FAA will collaborate with the appropriate U.S. Government departments or agencies (including but not limited to DOD, and the Department of Homeland Security) to develop Memorandums of Agreement to accommodate their National defense mission requirements while supporting the needs of all other NAS users.

2. Navigation Accuracy Category for Position (NAC_P)

The NPRM proposed requiring a NAC_P greater than or equal to 9. This is equivalent to horizontal position accuracy of less than 30 meters and vertical position accuracy of less than 45 meters. A NAC_P of less than 30 meters horizontal would support ATC surveillance, ASSA, FAROA, and other future ADS–B In applications.

Airbus, ATA, Aviation Communication and Surveillance Systems (ACSS), Boeing, Rockwell-Collins, United Airlines, and United Parcel Service (UPS) questioned the necessity of a NAC_P greater than or equal to 9. The ARC recommended that the FAA institute NAC_P requirements based on domains of airspace defined by different types of operations, with minimum NAC_P values ranging from 5 through 9.[30] The ARC also recommended that when a NAC_P greater than or equal to 9 is necessary, operators should only be required to equip with a position source that could meet a NAC_P greater than or equal to 9 for 95 percent of an hour and meet a NAC_P greater than or equal to 8 for 99.9 percent of an hour.

Boeing commented that there is no need for vertical accuracy because neither ATC nor any of the initial ADS–B In applications require it. The ARC recommended that the FAA not apply the vertical position accuracy requirement associated with a NAC_P of 9 for surface operations. The ARC also recommended that the FAA modify the definition of a NAC_P of 9 in DO–260A and DO–282A. This modification would remove the vertical accuracy requirement if the aircraft is on the surface.

The FAA reviewed these comments and the necessary requirements for the ADS–B Out and ADS–B In applications that are contemplated today. A NAC_P of less than 0.05 NM is required for ATC surveillance. A NAC_P of less than 30 meters is required only for ASSA and FAROA. Because surface surveillance benefits enabled by ADS–B will only be fully available where Airport Surface Detection Equipment, Model X (ASDE–X) systems,[31] and ADS–R and TIS–B are in use, the FAA has reconsidered the universal requirement of a NAC_P of less than 30 meters.

While the higher NAC_P would support a limited number of ADS–B In applications, it could also increase costs [32] to all operators required to meet the ADS–B performance standards. Therefore, this final rule reduces the position accuracy reporting requirement and adopts a NAC_P of less than 0.05 NM. This NAC_P requirement applies to all aircraft operating in the airspace identified in this rule.

In addition, the FAA considered the comments regarding the vertical accuracy component of NAC_P. As there are no ATC separation services requirements for vertical accuracy or integrity, the FAA has removed the vertical accuracy and integrity requirement from NAC_P, NAC_V, NIC, and SIL in TSO–C154c and TSO–C166b.

3. Navigation Accuracy Category for Velocity (NAC_V)

The NPRM proposed requiring a NAC_V greater than or equal to 1, which is equivalent to velocity accuracy of less than 10 meters per second.

The European Organisation for the Safety of Air Navigation (EUROCONTROL) commented that a NAC_V of 1 is not sufficient for ATC services or advanced ADS–B In applications. The ARC recommended that NAC_V should not be required.

Different air navigation service providers may need different performance requirements depending on the airspace in which they implement ADS–B separation services. The FAA reviewed this requirement and concludes that a NAC_V is required for separation services in the United States. The agency modeled and calculated the NAC_V requirements for aircraft separation, using assumptions unique to the U.S. environment. Based on this analysis, the FAA determined that a horizontal velocity accuracy of less than 10 meters per second, as proposed in the NPRM, is required for ATC surveillance within the NAS.[33] Therefore, this requirement is adopted as proposed.

4. Navigation Integrity Category (NIC)

The NPRM proposed requiring a NIC greater than or equal to 7, which provides navigation integrity of less than 0.2 NM. Boeing questioned the necessity of this requirement. The ARC recommended that the FAA adopt NIC requirements based on airspace, with minimum NIC values ranging from 0 to 7.

The FAA reviewed this requirement and determined that a NIC of less than 0.2 NM is necessary for ATC separation services, particularly in the approach environment. Similar to the NAC_P, it is not practical to assign different NIC values based on types of airspace. Therefore, this rule requires a NIC of less than 0.2 NM.

5. Surveillance Integrity Level

The FAA's proposal for surveillance integrity level stated that the surveillance integrity level is based on both the design assurance level of the ADS–B Out avionics and the position source. Several commenters, including Rockwell-Collins, pointed out that the proposed definition was inconsistent with the surveillance integrity level definition provided in DO–260A. Commenters stated that DO–260A Change 2 defined surveillance integrity level as including only the position source. The ARC recommended that the FAA use the definition of surveillance integrity level found in RTCA DO–

[30] *ADS–B ARC Task II Report to the FAA 6* (September 26, 2008), available on the Web site, *http://www.regulations.gov,* FAA–2007–29305–0221.1.

[31] ASDE–X is a traffic management system for the airport surface that provides seamless coverage and aircraft identification to air traffic controllers. The system uses a combination of surface movement radar and transponder multilateration sensors to display aircraft position.

[32] *ADS–B ARC Report to the FAA* Appendix P, Programmatic Decision Analysis (September 26, 2008), available at *http://www.regulations.gov,* FAA–2007–29305–0221.1.

[33] A copy of the Separation Standards Working Group report is available from the Web site *http://www.regulations.gov.* The docket number for this rulemaking is FAA–2007–29305.

289,[34] which also limited the design assurance to the position source.

The FAA asserts that the design assurance of the ADS–B system needs to represent the complete system, and not a single piece of that system, to provide air traffic separation services. The FAA agrees that the inconsistency between the proposed rule and the RTCA standard is unworkable; however, RTCA has updated the design assurance requirements in DO–260B and DO–282B to include the entire ADS–B avionics system, rather than just the position source. The ADS–B system includes ADS–B transmission equipment, ADS–B processing equipment, position source, and any other equipment that processes the position data transmitted by the ADS–B system. The DO–260B change is consistent with the rule.

6. Source Integrity Level (SIL) and System Design Assurance (SDA)

In DO–260A (TSO–C166a) and DO–282A (TSO–C154b), SIL was defined as surveillance integrity level and represented two separate components: (1) The maximum probability of exceeding the NIC containment radius and (2) a maximum probability of a failure causing false or misleading data to be transmitted. DO–260B (TSO–C166b) and DO–282B (TSO–C154c) separate these two components into two distinct parameters. SIL is now referred to as source integrity level and defines the maximum probability of exceeding the NIC containment radius; SDA now defines the maximum probability of a failure causing false or misleading data to be transmitted.

The FAA proposed a SIL value of 2 or 3. A SIL of 2, as stated in TSO–C166a and TSO–C154b, represented: (1) A maximum probability of exceeding the NIC containment radius of $1x10^{-5}$ per hour or per sample; and (2) a maximum probability of a failure causing false or misleading data to be transmitted of $1x10^{-5}$ per hour.

A SIL of 3 represented: (1) A maximum probability of exceeding the NIC containment radius of $1x10^{-7}$ per hour or per sample and (2) a maximum probability of a failure causing false or misleading data to be transmitted of $1x10^{-7}$ per hour.

The FAA proposed these two values for SIL because its separation standards modeling determined that the probability of exceeding the NIC containment radius must be less than $1x10^{-7}$ per hour or per sample and the probability of a failure causing false or misleading data must be less than $1x10^{-5}$ per hour. The FAA's TSOs and the corresponding RTCA documents did not allow for this combination.

Therefore, in developing and issuing the NPRM, the FAA assumed that most operators, in upgrading their equipment for ADS–B, would equip with a global positioning system (GPS)[35] that would provide a NIC containment radius of $1x10^{-7}$ per hour (a SIL of 3). However, to require the associated maximum probability of failure causing false or misleading data to be transmitted at $1x10^{-7}$ per hour was not only unreasonable but also unnecessary. Therefore, the FAA proposed that a SIL of 2 was also acceptable.

With the separate SIL and SDA values available under DO–260B and DO–282B, the rule requires a maximum probability of exceeding the NIC containment radius of $1x10^{-7}$ per hour or per sample (which equates to a SIL of 3), and a maximum probability of $1x10^{-5}$ per hour of a failure causing false or misleading data to be transmitted (which equates to an SDA of 2).

Changing the proposed probability of exceeding the NIC containment radius from $1x10^{-5}$ per hour or per sample to $1x10^{-7}$ per hour or per sample should not impact NAS users. This is because currently available ADS–B Out systems using GNSS will provide an integrity metric based on $1x10^{-7}$ per hour.

7. Secondary Position Sources

The General Aviation Manufacturers Association (GAMA), IATA, and Rockwell-Collins commented that the final rule should specify separate performance requirements for secondary position sources in the event that their primary position source is unavailable.

The FAA disagrees that a separate set of requirements is necessary for secondary position sources because the rule does not require a secondary source. The NAC_P, NAC_V, NIC, SDA and SIL requirements in this rule apply regardless of the position source in use.

D. Performance Requirements—Antenna Diversity

The NPRM proposed that aircraft meet optimum system performance by equipping with both a top and a bottom antenna to support ADS–B In applications.

Several commenters, including AOPA, did not support this aspect of the proposal because antenna diversity significantly increases the cost of ADS–B. AOPA also noted that historical TCAS and transponder use does not indicate that dual antennas are necessary.

Airservices Australia and the Australia Civil Aviation Safety Authority noted that Australia is not requiring antenna diversity for GA aircraft. The ARC recommended allowing non-diversity antenna installations for VFR aircraft flying through Class B and C airspace and below 15,000 feet MSL (1090 MHz ES) or below 18,000 feet MSL (UAT), but not landing at a primary airport. The ARC also recommended that the FAA undertake further studies to assess and validate the need for antenna diversity in low-altitude airspace.

The FAA proposed dual antennas to support ADS–B Out and ADS–B In air-to-air applications. For ATC surveillance, only a single bottom-mounted antenna is necessary. The commenters and the ARC identified this element of the proposal as requiring significant costs for the GA operators.[36]

The FAA has reconsidered its initial strategy for launching the ADS–B requirements and is adopting the performance standards necessary for ATC surveillance. Therefore, this rule does not require antenna diversity for ADS–B to operate in any airspace. This change does not alter or affect antenna diversity requirements for other aircraft systems, such as transponders or TCAS II.

Operators should be aware that a dual antenna installation could provide additional benefits that are not included in the scope of this rule. Airport surface situational awareness or alerting applications may be compromised by a single-antenna installation. Operators who equip with a single antenna may not be able to accrue all available benefits from some or all future ADS–B In applications.

While requirements for these applications have not yet been fully defined, modeling performed by both the ARC and the FAA has indicated that a single antenna may not be able to perform adequately for surface applications. If the FAA, for example, issues a future mandate requiring surface performance capability, operators of single-antenna-equipped aircraft may need to upgrade the avionics installed on their aircraft.

Operators should also be aware that single-antenna installations are not as capable as dual-antenna installations of receiving ADS–B messages in an

[34] Minimum Aviation System Performance Standards (MASPS) for Aircraft Surveillance Applications (ASA).

[35] GPS is a U.S. satellite-based radio navigation system that provides a global-positioning service.

[36] *ADS–B ARC Task II Report to the FAA* Appendix T, Antenna Diversity Comments on Cost, (September 26, 2008), available at *http://www.regulations.gov,* FAA–2007–29305–0221.1.

environment with a highly congested spectrum. Because of increasing congestion on the 1090 MHz frequency over time, single-antenna installations of ADS–B may not be able to achieve the same range for ADS–B In applications as aircraft with two antennas.

This limitation on the upper bound of ADS–B In application range for single-antenna installations does not impact any of the application benefits cited in this rule. The FAA is actively pursuing strategies to mitigate spectrum congestion concerns of the 1090 MHz frequency. However, operators employing the 1090 MHz ES broadcast link should be aware that future air-to-air applications that require longer range reception may require dual antennas or a UAT system.

E. Performance Requirements—Transmit Power

The NPRM proposed that aircraft equipped with UAT would have a minimum 16-watt transmit power performance and aircraft equipped with 1090 MHz ES would have a minimum 125-watt transmit power performance. Some commenters, particularly AOPA, argued that the proposal was not warranted and imposed unnecessary expense. The ARC commented that using the existing power level without antenna diversity may provide the performance needed to make broader use of non-diversity antenna installations.

The FAA has determined that reducing the transmit power requirement would significantly impact the ground infrastructure. The FAA will rely on a series of approximately 800 ground stations to provide ATC separation services throughout the United States. The ground stations will be placed 150 to 200 miles apart and will require the minimum aircraft output power specified in the rule to ensure coverage. Lowering the aircraft output power requirements, as suggested by the commenters, would require the FAA to expand and redesign the ADS–B ground infrastructure. Consequently, the power levels remain unchanged in the final rule.

F. Performance Requirements—Total and Uncompensated Latency

In the NPRM, the FAA proposed to define latency as the time information enters the aircraft through the aircraft antenna(s) until the time it is transmitted from the aircraft. The FAA further proposed that the navigation sensor should process information received by the aircraft's antenna(s) and forward this information to the ADS–B broadcast link avionics in less than 0.5 seconds. The processed information then would be transmitted in the ADS–B message from the ADS–B Out broadcast link avionics in less than 1.0 second from the time it was received from the navigation sensor.

Several commenters, including Airbus, Boeing, EUROCONTROL, GAMA, and Honeywell, commented that the latency requirements are not well defined, are too stringent, and are not consistent with other standards.[37] United Airlines and UPS recommended that the FAA specify the accuracy of position information at the time of transmission. Boeing and Honeywell recommended that the FAA specify latency, based on the time of applicability of the position source.

The ARC stated that the FAA should: (1) Specify latency requirements at the aircraft level, not the equipment level; (2) specify the maximum uncompensated latency to minimize or eliminate installation wiring changes of existing ADS–B Out implementations, while meeting ATC surveillance requirements; (3) specify total latency and uncompensated latency; and (4) reference latency to the time of applicability of the position provided by the position sensor, rather than the time of measurement.

The FAA adopts three of the four ARC recommendations. First, the FAA agrees that latency must be defined at the aircraft level and not the equipment level. Second, the latency requirements are set at the maximum value that will allow ATC surveillance. Although the latency requirements will drive wiring changes in some aircraft, the requirements will minimize the number of aircraft affected to the maximum extent possible. Third, the FAA has defined the latency requirements as total latency and uncompensated latency. The FAA does not agree with the fourth recommendation to measure latency at the time of applicability. To do so would place latency requirements only on part of the overall system and specifically exclude the position source latency. Since the entire system's latency, including the position source, must be limited to ensure accuracy of the transmitted position the rule requires latency to be measured from the position source time of measurement and not the time of applicability.

This rule specifies two separate latency requirements: Total latency and uncompensated latency. Total latency is defined as the time between when measurements are taken to determine the aircraft's geometric position (latitude, longitude, and geometric altitude) and when the ADS–B transmitter broadcasts the aircraft's position. Under this rule, the total latency cannot exceed 2.0 seconds. Latency is compensated to account for the movement of the aircraft while the unit is processing the position information. The avionics usually compensate latency based on velocity but may also compensate based on acceleration.

Uncompensated latency is defined as the time the avionics does not compensate for latency. Under this rule, within the 2.0 second total latency allocation, a maximum of 0.6 seconds may be uncompensated latency. The avionics must compensate for any latency above 0.6 seconds up to the maximum of 2.0 seconds by extrapolating the position to the time of transmission.

Aircraft velocity, as well as position accuracy and integrity metrics (NAC_P, NAC_V, NIC, SDA, and SIL), must be transmitted with their associated position measurement, but are not required to be compensated.

G. Performance Requirements—Time To Indicate Accuracy and Integrity Changes

The NPRM proposed that changes in NIC and NAC_P must be broadcast within 10 seconds. This proposed requirement would bind the latency of the NIC and NAC_P, however this requirement would also bind the maximum amount of time an integrity fault can exist without an indication, as an integrity fault is indicated by changing the NIC and NAC_P to zero.

The ARC, GAMA, and Rockwell-Collins commented that 10.0 seconds is not enough time to indicate a change in the NIC. They specifically noted that GNSS position sources use the entire 10-second allocation, which does not allow time for the ADS–B equipment to actually transmit the change. Rockwell-Collins, GAMA, and the ARC recommended instead that changes in NIC and SIL be broadcast within 12.1 seconds.

Position sources typically provide an accuracy and integrity metric with each position that is output. To allow GNSS-based position sources time to detect and eliminate possible satellite faults, GNSS systems allow the integrity metric associated with a position to actually lag behind the output of the position. TSO–C145/146 and TSO–C196 GNSS systems have up to 8.0 seconds to alert to an

[37] The commenters specifically referenced the RTCA Airborne Surveillance Applications Minimum Aviation System Performance Standards and DO–303 Safety "Safety, Performance and Inoperability Requirements Document of the ADS–B Non-Radar-Airspace (NRA) Application."

integrity fault. TSO–C129 systems do not have an overarching integrity fault time-to-alert requirement, but they do have navigation mode specific integrity fault time-to-alert requirements. Specifically, TSO–C129 systems must indicate an integrity fault within 10 seconds in terminal and approach modes.

The requirement to indicate a change in NIC applies to the time between when a fault-free NIC is transmitted with a faulted position and when the NIC is updated to indicate the fault. Thus, the clock to indicate the change in NIC does not start at the onset of the fault, but rather at the broadcast of the faulted position from the ADS–B system. Thus, the total time to update the NIC is based on the cumulative effect of—(1) the position source fault detection and exclusion time, and (2) the worst-case asynchronous transmission difference between when the fault-free NIC with faulted position is transmitted and when the faulted NIC is transmitted.

The FAA reviewed the separation standards work to determine if a 12.0 second delay in the broadcast of an integrity fault would impact separation standards. The FAA found that no existing terminal and en route surveillance standards would be impacted with a 12.0 second delay, and thus the rule requires that changes in NIC be broadcast within 12.0 seconds.

The ARC, GAMA, and Rockwell-Collins also commented that changes in NAC_P, NAC_V, and SIL should be broadcast within 3.1 seconds versus 10.0 seconds. The FAA determined that there is no basis to tighten the requirement. Therefore, the 10.0 second requirement applies to indicating changes in NAC_P, NAC_V, SDA, and SIL.

H. Performance Requirements—Availability

The FAA did not propose any availability [38] requirements for this rule. The proposed rule generated multiple comments concerning statements in the preamble regarding availability and whether the FAA should require operators to accomplish a preflight determination of GNSS availability. Other commenters focused on a perceived requirement for operators to equip with avionics that had a system availability equivalent to Wide Area Augmentation System (WAAS) [39].

1. Preflight Determination of Availability

The proposal preamble explained that operators must verify ADS–B Out availability before flight as part of their pre-flight responsibilities. This is similar to the requirement for preflight determination of availability for certain Required Navigation Performance (RNP) [40] operations.

ATA argued that the process to determine availability could be time consuming for operators and that the FAA should provide further justification. Boeing stated that the NPRM did not include an availability requirement; therefore, the FAA should correct its statement in the NPRM preamble advising operators to make this part of their preflight actions.

The ARC recommended that the FAA provide preflight prediction systems that assess the ability of typical positioning sources to meet the position accuracy and integrity requirements.

This rule requires operators to meet the adopted minimum position accuracy and integrity performance requirements to operate in the airspace described in the rule. To facilitate compliance with the rule and assist pilots for the flight planning, the FAA will provide a preflight availability prediction service by 2013. Therefore, prior to departure, operators should verify that the predicted performance requirements will be met for the duration of the flight. This service will determine whether GNSS equipment is capable of meeting § 91.227 position accuracy and integrity requirements for operating in the airspace defined in this rule. Operators may also use their own preflight availability prediction tools, provided the predictions correspond to the performance of their equipment. The FAA advises operators to consult manufacturers' information on specific avionics and prediction services.

2. System Availability

Numerous commenters, including the DOD, contended that the proposal required WAAS (or implied that the positioning service used by the aircraft have an availability equivalent to WAAS.)

As stated in the NPRM, operators may equip with any position source. Although WAAS is not required, at this time it is the only positioning service that provides the equivalent availability to radar (99.9 percent availability). The FAA expects that future position sources such as GNSS using the L5 GPS signal, GPS using Galileo signals, and GPS tightly integrated with inertial navigation systems will also provide 99.9 percent availability. Operators who equip with other position sources, such as non-augmented GPS, may experience outages that limit their access to the airspace defined in this rule.

If an aircraft's avionics meet the requirements of this rule but unexpected GPS degradations during flight inhibit the position source from providing adequate accuracy (within 0.05 NM) and integrity (within 0.2 NM), ATC will be alerted via the aircraft's broadcasted data and services will be provided to that aircraft using the backup strategy. An aircraft that is not equipped to meet the requirements of this rule will not have access to the airspace for which ADS–B is required. The FAA notes that preflight availability verification eliminates any need for the system to meet a specified availability requirement upon installation.

I. Performance Requirements—Continuity

The FAA did not propose a continuity [41] requirement in the NPRM. Several commenters, including Airbus, GAMA, Rockwell-Collins, and the ARC, suggested that the FAA add a continuity requirement. These commenters argued that such a requirement would ensure that an aircraft could continue providing the ADS–B information throughout a flight.

Aircraft are to meet the performance requirements for the duration of the operation, not just a portion of the flight. The FAA's preflight availability prediction service will help pilots ensure that the aircraft can continue transmitting ADS–B information throughout their planned flight, based on expected operations. Unexpected

[38] RTCA DO–229, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment, defines the availability of a navigation system as the ability of the system to provide the required function and performance at the initiation of the intended operation. Availability is an indication of the ability of the system to provide usable service with the specified coverage area. Signal availability is the percentage of time that navigational signals transmitted from external sources are available for use. Availability is a function of both the physical characteristics of the environment and the technical capabilities of the transmitter facilities.

[39] WAAS is a U.S. wide-coverage augmentation system to GPS that calculates integrity and correction data on the ground and uses geostationary satellites to broadcast the data to GPS/SBAS (Satellite-Based Augmentation System (non-U.S.)) users.

[40] Required Navigation Performance (RNP) is a statement of the total aircraft navigation performance necessary for operation within a defined airspace.

[41] DO–229 defines the continuity of the system as the ability of the total system (comprising all elements necessary to maintain aircraft position within the defined airspace) to perform its function without interruption during the intended operation. More specifically, continuity is the probability that the specified system performance will be maintained for the duration of a phase of operation (presuming that the system was available at the beginning of that phase of operation), and predicted to exist throughout the operation.

failures will be accommodated, as described in the discussion on availability; therefore, there is no need for a separate continuity requirement.

J. Performance Requirements—Traffic Information Service—Broadcast Integrity (TIS–B)

The NPRM did not propose any changes to the standards for TIS–B. Boeing stated that the FAA's plans to implement TIS–B with a SIL of 0 would severely limit its utility for ADS–B In applications. Boeing recommended that the FAA change TIS–B to provide a SIL of 2 or greater, to be consistent with the SIL proposed for ADS–B Out. Honeywell commented that a TIS–B integrity level should be established for value-added, near-term applications. The ARC did not specifically comment on the TIS–B SIL, but did recommend that the FAA include a discussion of the FIS–B and TIS–B benefits in the preamble to the ADS–B Out final rule.

The TIS–B system is expected to support four of the five initial ADS–B In applications. The FAA acknowledges that future ADS–B In applications may require improved representation of the position integrity metrics. With the SIL and SDA changes incorporated in DO–260B and DO–282B and possible changes to future versions of DO–317, the FAA plans, outside of this rulemaking effort, to evaluate the usefulness of the broadcast of integrity parameters from TIS–B.

K. Broadcast Message Elements

1. NAC_P/NAC_V/NIC/SDA/SIL

The NPRM did not specifically propose NAC_P, NAC_V, NIC, or SIL as broadcast message elements in section 4 of appendix H to part 91, Minimum Broadcast Message Element Set for ADS–B Out. These requirements were specified in section 3 of appendix H to part 91, ADS–B Out Performance Requirements for NIC, NAC, and SIL.

Honeywell noted that NAC_P, NAC_V, NIC, and SIL are required message elements in DO–260A.

To resolve any questions, the FAA has repeated the indications for these elements in § 91.227(d)(16) through (19). In addition, and consistent with TSO–C166b and TSO–C154c, SIL and SDA are listed as separate values.

2. Receiving ATC Services

The NPRM proposed requiring the message element "Receiving ATC Services." Several commenters, including ACSS, Airbus, Boeing, EUROCONTROL, United Airlines, and UPS, commented that this message element is unnecessary and poorly defined. UPS and United Airlines suggested that the FAA use the ground automation system to accomplish the function of this message element. Some commenters also contended that this message element could require an additional user interface, which is not available on current equipment.

The ARC recommended that the FAA clarify the definition of this message element and explain how it can be implemented without pilot entry. The ARC also requested that the FAA research whether both "Receiving ATC Services" and "Mode 3/A Code" are necessary.

The FAA concludes that "Receiving ATC Services" is not necessary for ATC surveillance because this information can be directly inferred from the Mode 3/A code. Furthermore, this message element could increase costs for an additional user interface. Therefore, this rule does not include "Receiving ATC Services" as a required broadcast message element.

3. Length and Width of the Aircraft

The NPRM proposed requiring a message element to broadcast the length and width of the aircraft.

Airbus and EUROCONTROL commented that length and width information is not necessary for surveillance or airborne ADS–B Out applications. Airbus and an individual commenter noted that length and width information should be quantified relative to the aircraft position reference point or to a known offset.

GAMA and Rockwell-Collins noted that the TSOs allow some aircraft to continuously transmit "in-air" because these aircraft do not have a means to determine their air/ground status. Rockwell-Collins commented that the rule should require all aircraft to assess their air/ground status and broadcast the appropriate set of messages for that status. The ARC recommended that the FAA address this issue in the preamble to the final rule.

The FAA notes that TSO–C154c and TSO–C166b allow the operator to determine whether to transmit the aircraft's latitude and longitude referenced to the GPS antenna location or the ADS–B position reference point. The ADS–B position reference point is the center of a box, based on the aircraft length and width. With the position offset to the ADS–B reference point, the ADS–B is able to report the position of the edges of the aircraft. This rule does not require operators to apply the position offset because ATC surveillance does not require a position offset.

The FAA concludes that the requirement to transmit aircraft length and width is necessary because this message element will be used as an input for ASDE–X systems and allows the FAA to decommission ASDE–3 radars [42] that interface with ASDE–X, as well as the surface movement radar systems that are at certain ASDE–X sites without ASDE–3. The length-width code will be preset when ADS–B equipment, meeting the standards in TSO–C154c or TSO–C166b, is installed in the aircraft.

ADS–B equipment transmits an airborne position message when the aircraft is airborne, and a surface position message when the aircraft is on the ground. Aircraft automatically determine airborne or ground status and transmit the appropriate message. For aircraft that are unable to determine their air-ground status automatically, the RTCA standards and TSOs allow the aircraft to continuously transmit the airborne position message. However, the length width code is a required message element in this rule, and is only transmitted in the surface position message. Thus, to comply with the rule, the aircraft must automatically determine its air-ground status and transmit the surface position message which includes the length width code when on the ground.

4. Indication of the Aircraft's Barometric Pressure Altitude

The NPRM proposed a broadcast message that would report the aircraft's barometric pressure altitude. Several commenters, including the ARC, GAMA, Rockwell-Collins, Sandia National Laboratories (SANDIA), and UPS, identified an inconsistency regarding the barometric altitude message element between the proposed rule's preamble and regulatory text.

The FAA agrees that the NPRM preamble was not completely clear and should have better reflected the proposed regulatory text. The proposed regulatory text stated that the pressure altitude reported for ADS–B Out and Mode C/S transponder is derived from the same source for aircraft equipped with both a transponder and ADS–B Out. The FAA confirms that the barometric altitude reported from the aircraft's transponder and ADS–B Out must be derived from the same source.

In addition, the FAA is striking the January 1, 2020 compliance date from proposed § 91.217(b). If an operator chooses to use ADS–B before January 1,

[42] ASDE–3 is an airport radar that shows to tower controllers the location of aircraft on the surface.

2020, the operator must meet the provisions of that section.

5. Indication of the Aircraft's Velocity

The NPRM proposed a message element that would provide ATC with information about the aircraft's velocity and direction. However, the NPRM preamble mistakenly referred to velocity as airspeed. Several commenters, including Airbus, the ARC, Rockwell-Collins, SANDIA, and UPS, recommended that the message element reflect velocity instead of airspeed. Rockwell-Collins noted that velocity could be derived from other sources, including an inertial navigation system. ACSS, United Airlines, and UPS recommended that the FAA require the velocity source for ADS–B transmissions to be the most accurate velocity source on the aircraft. The ARC recommended that the issue of velocity source be referred to RTCA.

This message element will provide ATC with the aircraft's velocity, as well as a clearly stated direction and description of the rate at which an aircraft changes its position. The velocity must be transmitted with a NAC_V of less than 10 meters per second. Any velocity source that meets these requirements will comply with this rule. The FAA referred the question on velocity source to RTCA for further review, as the ARC recommended. RTCA determined that the velocity source must be the same source that provides the aircraft's position, and included this requirement in DO–260B and DO–282B.

6. Indication If Traffic Alert and Collision Avoidance System II or Airborne Collision Avoidance System Is Installed and Operating in a Mode That May Generate Resolution Advisory Alerts

The NPRM proposed requiring a message element that would (1) identify to ATC whether the aircraft is equipped with TCAS II or ACAS and (2) identify whether the equipment is operating in a mode that could generate resolution advisory alerts. Airbus asked for more information on why this message element is required. EUROCONTROL commented that this message element should be internationally harmonized before the FAA adopts this requirement. UPS asked whether this message should be indicated if the TCAS II is operated in the traffic advisory mode. The ARC sought to retain this message element, but asked the FAA to clarify its intended use in the final rule.

The TCAS installed and operating in a mode that can generate a resolution advisory message will be used by the FAA to monitor in-service performance to address NAS inefficiencies and take appropriate corrective actions. This information may also be used to support future ADS–B In applications. This message element was harmonized with the international community in the development of DO–260B and ED–102A.[43]

7. For Aircraft With an Operable Traffic Alert and Collision Avoidance System II or Airborne Collision Avoidance System, Indication If a Resolution Advisory Is in Progress

The NPRM proposed a message element to indicate that a resolution advisory is in progress. EUROCONTROL recommended that the FAA internationally harmonize this message element before adopting the requirement. Airbus noted that this element may be achieved with DO–260A.

Similar to the discussion in II.K.6. above, the message that a TCAS resolution advisory is in progress will be used by the FAA to monitor in-service performance to address NAS inefficiencies and take appropriate corrective actions. This information may also be used to support future ADS–B In applications. This message element was harmonized with the international community in the development of DO–260B and ED–102A.

8. Indication of the Mode 3/A Transponder Code Specified by ATC (Requires Flightcrew Entry)

The NPRM proposed a message element to transmit the aircraft's assigned Mode 3/A transponder code.

Several commenters, including ACSS, Boeing, SANDIA, and UPS, argued that this message element should not be necessary with ADS–B surveillance, and suggested deleting the requirement. GAMA expressed concern that different codes in the Mode 3/A transponder and the ADS–B could result in an indication of a traffic conflict. GAMA specifically recommended a one code entry or revising the automation to resolve conflicting information. Airbus and the ARC supported this message element requirement and the ARC requested more information on its intended use.

The FAA has determined that the same ATC-assigned Mode 3/A code must be transmitted by both the transponder and the ADS–B Out message. If the code transmitted by ADS–B differs from the Mode 3/A code transmitted by the transponder, it could result in duplicative codes or inaccurate reporting of aircraft position. If the aircraft's avionics are not capable of allowing a single point of entry for the transponder and ADS–B Out Mode 3/A code, the pilot must ensure that conflicting codes are not transmitted to ATC.

ATC uses the Mode 3/A code to identify aircraft that are under surveillance and possibly under ATC direction. This identifier is necessary to issue directions to specific aircraft about nearby air traffic. The Mode 3/A code and the International Civil Aviation Organization (ICAO) 24-bit address are duplicative for some functions. This duplication is necessary because many current ATC automation systems are not yet capable of using the ICAO 24-bit address. Therefore, the FAA retains this message element in the rule.

9. Indication of the Aircraft's Call Sign That Is Submitted on the Flight Plan, or the Aircraft's Registration Number (Aircraft Call Sign Requires Flightcrew Entry)

The NPRM proposed a requirement for this message element to indicate either the aircraft's call sign (as submitted on its flight plan), or the aircraft's registration number. An individual commenter disagreed with the required broadcast message element for aircraft identity and noted that it uses unnecessary bandwidth.

This message element correlates flight plan information with the data that ATC views on the radar display, and facilitates ATC communication with the aircraft. This message element also will support certain ADS–B In applications such as enhanced visual approach.

In the final rule, the regulatory text is amended to provide that an operator does not need to populate the call sign/aircraft registration field for a UAT equipped aircraft if he or she has not filed a flight plan, is not requesting ATC services, and is using a UAT self-assigned temporary 24-bit address. Although the FAA does not prohibit the anonymity feature, operators using the anonymity feature will not be eligible to receive ATC services, may not be able to benefit from enhanced ADS–B search and rescue capabilities, and may impact ADS–B In situational awareness benefits.

10. Indication If the Flightcrew Has Identified an Emergency, Radio Communication Failure, or Unlawful Interference (Requires Flightcrew Entry)

The NPRM proposed this message element to alert ATC that an aircraft is experiencing emergency conditions. Airbus asked the FAA to clarify which emergency/priority codes are required.

[43] EUROCAE MOPS for 1090 MHz Automatic Dependent Surveillance-Broadcast (ADS–B).

The ARC recommended that the FAA explain in the final rule the emergency status requirement and describe how it will be used.

This message element alerts ATC that the aircraft is experiencing emergency conditions and indicates the type of emergency. Both TSO–C154c and TSO–C166b identify six unique emergency codes. All emergency codes may be transmitted. Under this rule, only emergency, radio communication failure, and unlawful interference are required. This information will alert ATC to potential danger to the aircraft so it can take appropriate action. Message elements for minimum fuel, downed aircraft, and medical emergency are not required by this rule.[44] ADS–B equipment may automatically set these required emergency conditions based on the Mode 3/A code.

11. Indication of the Aircraft's "IDENT" to ATC (Requires Flightcrew Entry)

The NPRM proposed this message element to help controllers quickly identify a specific aircraft. United Airlines and UPS commented that they believe controllers use the "IDENT" function to attain aircraft identification information. They noted that future identification systems should include aircraft information; therefore, they believed this element is not necessary. FreeFlight commented that "IDENT" should be retained. The ARC recommended that the FAA clarify how the "IDENT" requirement will be used.

The "IDENT" function is used regularly in current ATC operations to help controllers quickly identify a specific aircraft. The "IDENT" feature also allows ATC to quickly identify aircraft that have entered incorrect flight identification or Mode 3/A codes. The FAA is adopting this message element in this rule.

12. Indication of the Emitter Category

The NPRM proposed requiring a message element for an aircraft's emitter category.

EUROCONTROL questioned the business case behind this requirement. UPS asked that the FAA better define the emitter categorizations in the final rule.

This message element is necessary for ATC separation services and wake turbulence separation requirements. TSO–C166b and TSO–C154c provide a list and description of the different emitter categories. Emitter category is set during installation of the ADS–B avionics in the aircraft and will not change over time.

13. Indication Whether an ADS–B In Capability Is Installed

The NPRM proposed this message element to indicate to ATC whether a cockpit display of traffic information (CDTI)[45] is installed and operational. Several commenters, including Boeing, EUROCONTROL, and SANDIA, commented that this message element was poorly defined, difficult and expensive to implement, and of little value to ADS–B In applications and ATC surveillance. UPS asked whether a message is required when a CDTI is installed but not operating. The ARC recommended that the FAA clarify the use of this data element.

RTCA updated the definition of this message element in DO–260B and DO–282B. The FAA adopted these updates in TSO–C166b and TSO–C154c. This message element now indicates which aircraft are capable of receiving ADS–B In services and therefore require TIS–B and ADS–R transmissions from the ground. Under the new definition, this message element now indicates whether an ADS–B In capability is installed in the aircraft, but does not require a report of operational status.

14. Indication of the Aircraft's Geometric Altitude

The NPRM proposed a message element indicating the aircraft's geometric altitude.

Several commenters, including Airbus, Boeing, Dassault, the European Business Aviation Association (EBAA), EUROCONTROL, Honeywell, and Rockwell-Collins, commented on the proposed requirement. Most of the commenters questioned this message element and stated that neither ATC surveillance nor ADS–B In require geometric altitude. Dassault, EBAA, EUROCONTROL, and Honeywell supported this message element. The ARC recommended that the FAA justify the need for this message element.

Geometric altitude is the height of the aircraft above the World Geodetic System 84 ellipsoid, which is a scientific approximation of the earth's surface. This message element will be used within the ADS–B ground system to confirm accuracy and identify discrepancies between geometric altitude and barometric altitude. Additionally, the FAA will integrate this comparison function into a continuing airworthiness monitoring function.

L. Ability To Turn Off ADS–B Out Transmissions

The NPRM proposed requiring a pilot to turn off ADS–B equipment if directed by ATC, for example, if the ADS–B unit was broadcasting erroneous information.

The ARC, Boeing, United Airlines, and UPS recommended eliminating the requirement to turn off ADS–B Out transmissions. A few commenters, including British Airways, were concerned that being able to turn off ADS–B Out, while keeping the transponder on, could require additional design changes and increase costs because most existing equipment is not capable of operating in this manner. Boeing stated that eliminating erroneous ADS–B transmissions could be accomplished by turning the transponder off or having a capability within the ground system to allow the controller to manually remove selected targets. Rockwell-Collins recommended that the FAA require the ADS–B equipment to detect failures and disable ADS–B Out transmissions of erroneous data.

The FAA modified the ground automation system to be able to exclude incorrect ADS–B data. With this enhancement to the automation, the aircraft does not need to have a capability for a pilot to disable ADS–B transmissions. Therefore, the final rule does not require the pilot to be able to turn off ADS–B Out transmissions.

M. Existing Equipment Requirements

1. Transponder Requirement

The NPRM specified that the proposal for ADS–B equipage would not alter existing transponder regulations.

Several organizations and individuals, including AOPA, opposed adding ADS–B Out performance requirements without removing the transponder requirement. ATA and Boeing requested that the FAA make a commitment to remove transponders. Several organizations and individuals further commented that the FAA should pursue an ADS–B based collision-avoidance system and reconsider the backup strategy, which is based on secondary surveillance systems. ALPA supported the FAA's plan to retain transponders.

The ARC made multiple recommendations associated with

[44] Mode A codes 7700, 7600, and 7500 currently are reserved for these emergencies. See Annex 10 to the Convention on International Civil Aviation Aeronautical Telecommunications, Volume 4, Surveillance and Collision Avoidance Systems, 4th Edition, July 2007.

[45] CDTI is a generic display that provides a flight crew with traffic surveillance information about other aircraft, surface vehicles, and obstacles, including their identification, position, and other message set parameters. CDTI information would commonly be displayed on a Multifunction Display (MFD).

transponder removal: (1) The ADS–B implementation strategy should include the removal of transponders from low-altitude aircraft without an ACAS; (2) the FAA should commit to a strategy for achieving transponder removal from low-altitude domestic aircraft; and (3) the FAA should study whether ACAS can be modified to use ADS–B as the primary surveillance data for collision avoidance, as well as what ACAS upgrades are required to support NextGen.

Removing the transponder requirement would involve substantial changes to the ADS–B backup strategy and TCAS II/ACAS, which are outside the scope of this rulemaking. Transponders will still be required when the backup surveillance strategy using SSR is necessary and to interact with TCAS- and ACAS-equipped aircraft. Separate from this rulemaking, the FAA may consider (in coordination with the appropriate surveillance and NextGen planning organizations), whether transponders could eventually be removed and, if so, what steps are necessary to accomplish this.

2. Emergency Locator Transmitter Requirement

The NPRM did not propose any changes to the emergency locator transmitter (ELT) [46] requirements.

Several commenters, including ATA and the National Business Aviation Association (NBAA), argued that ADS–B should be used instead of an ELT, and that ELT requirements could be included in this rule. AOPA also recommended a long-term strategy to include ELT removal, and stated that ADS–B could enhance current search-and-rescue procedures to increase the number of successful rescues.

The ARC recommended that the FAA explore whether an ADS–B tracking service also could be used for search and rescue to aid in crash locating. The ARC also recommended that the FAA conduct a study considering an ADS–B-based search-and-rescue solution that would enable removal of 121.5 MHz ELTs for certain domestic operations.

The FAA has determined that the ADS–B system currently cannot replace the ELT function. The ADS–B system is not required to be crashworthy and, thus, may not be operable or able to transmit following an aircraft accident. Additionally, current search-and-rescue technology is not compatible with ADS–B operations because ELTs broadcast on 121.5 or 406 MHz (not 1090 or 978 MHz). The FAA recognizes the value of a ground application that could allow for timely and accurate flight tracking of downed aircraft and is evaluating this capability separate from this rulemaking.

The FAA considered the ARC recommendation to evaluate the feasibility of replacing the ELT with the ADS–B system. However, the FAA has determined that ADS–B is not a feasible replacement for the ELT, as discussed above; therefore, the FAA does not plan to undertake such a study at this time.

N. Program Implementation

1. Timeline

The FAA proposed that all aircraft operating in the airspace areas specified in the rule meet the performance requirements by January 1, 2020.

The majority of commenters recommended various options for the implementation of ADS–B, including the discontinuation of secondary and/or primary radar systems once ADS–B is operational NAS-wide. Some commenters, including AIA and AOPA, requested that the FAA provide certain basic levels of ADS–B service for several years before the ADS–B compliance date.

Several commenters, including ALPA and the National Transportation Safety Board (NTSB), suggested that the compliance date or service provision of ADS–B occur sooner than 2020, to obtain benefits more quickly. United Airlines recommended a 2015 compliance date for operations above FL 240. The Cargo Airline Association (CAA) recommended lower performance requirements for a 2015 compliance date. Several commenters, including the Aircraft Electronics Association, FedEx, and the National Air Carriers Association, suggested extending or adding flexibility to the 2020 compliance date.

Numerous commenters, including ATA, Boeing, IATA, and Rockwell-Collins, suggested a two-phased implementation strategy. The first phase would use existing equipment, avionics standards, and capabilities, which would allow industry and the FAA to demonstrate, validate, and evaluate ADS–B applications. After operational experience in the first phase was sufficient to generate the appropriate standards, the second phase would establish a mandate for ADS–B Out performance standards. Some commenters suggested that the second phase be a combined ADS–B In and ADS–B Out rule.

The ARC endorsed the proposed 2020 compliance date, but recommended that the FAA allow operators to use existing equipage to accrue early benefits. Specifically, the ARC recommended that the FAA: (1) Take advantage of existing 1090 MHz ES-equipped aircraft and allow their operation in the Gulf of Mexico for non-radar airspace and (2) transition to a fully functional ADS–B Out capability enabled by DO–260B,[47] to allow access to the additional applications and services for ADS–B In. The ARC also recommended that the FAA adopt the European Aviation Safety Agency (EASA) Acceptable Means of Compliance 20–24 (permitting the use of early DO–260 avionics for separation) in non-radar airspace, with appropriate measures to ensure ADS–B integrity.

After reviewing all the comments, the FAA finds that a 2020 compliance date remains appropriate because NAS users need time to equip to the requirements of the rule. Most air carriers can use regularly scheduled maintenance to install or upgrade their equipment. The FAA also expects that this timeframe will provide sufficient operational experience to make ADS–B the primary source for surveillance in 2020.

FIS–B and TIS–B services are already available in several areas of the country for ADS–B In-equipped aircraft and will continue as an integral part of the implementation of the ADS–B ground infrastructure. NAS-wide ground infrastructure implementation is scheduled to be complete in 2013, which would provide operators with at least 7 years of operational experience with these services before the ADS–B compliance date of 2020.

The FAA examined whether it is operationally feasible and economically beneficial to use DO–260 avionics in radar and non-radar airspace before 2020. From an operational perspective, the FAA found that the existing DO–260 equipment does not meet the surveillance needs for ATC in the United States for various reasons: (1) DO–260 avionics do not independently report the accuracy and integrity metrics; (2) DO–260 avionics allow the integrity metric to be populated with accuracy information during integrity outages, which is unacceptable for aircraft separation services; (3) DO–260 avionics do not include a message element for Mode 3/A code, which is necessary for aircraft surveillance; and (4) the majority of existing DO–260 installations were accomplished on a noninterference basis under the transponder approval guidelines. (This certification verifies that the equipment

[46] An ELT is an electronic battery-operated transmitter developed as a means of locating downed aircraft.

[47] The ARC recommended DO–260A Change 3, which is DO–260B.

is safe onboard the aircraft, but does not issue any approval that would permit its use for ADS–B operations.)

Therefore, the FAA concluded that without upgrades to the equipment, the use of DO–260 avionics will not meet the surveillance needs in the NAS. Furthermore, without appropriate integrity monitoring, DO–260 avionics cannot be used for separation of aircraft. Its utility would be limited to potentially reducing separation in non-radar areas, or increasing efficiency in radar airspace through more timely updates of information.

Further analysis addressed whether existing DO–260 avionics could be beneficial to provide separation services in the Gulf of Mexico, or to provide efficiency benefits through improved performance of User Request Evaluation Tool (URET) [48] and Traffic Management Advisor (TMA).

To use DO–260 avionics in the Gulf of Mexico, the FAA estimated it would incur approximately $4 million in costs to upgrade the automation; would need to provide additional ground stations and receiver autonomous integrity monitoring (RAIM) predictions; would need to develop procedures; and would need to address aircraft certification issues.[49] Comparatively, the FAA concluded that benefits from this action would only recover approximately 70 percent of the costs.

The costs associated with using existing DO–260 avionics relative to improved performance of URET and TMA were estimated at $31 million and the estimated benefit in performance was $72 million. While this analysis indicated that the benefits of improved URET and TMA performance outweigh the costs of accommodating DO–260 equipped aircraft,[50] the FAA found that it raised some policy concerns.

First, the FAA does not expect to have the full NAS-wide ADS–B infrastructure completed for this effort until 2013. As the ADS–B rule would go into effect in 2020, any benefits accrued through the use of DO–260 avionics would only be available for approximately 7 years. Operators would be required to make a second investment in avionics to comply with the rule in 2020.

Second, a collection of broadcast samples indicated that there is a wide variety of equipage among current DO–260 users. Although approximately 7,500 aircraft in the United States transmit some ADS–B data that would conform to DO–260, only about 1,500 aircraft transmit enough data to be useful for 5 NM separation in the Gulf of Mexico and input into ATC decision support tools (URET and TMA).[51] Many DO–260 operators would require some upgrade costs to bring their existing systems into compliance with a unified standard; these would be in addition to the costs incurred for taking aircraft out of service for certification. Although the user costs were not thoroughly assessed by the ARC, the FAA estimated the costs at $15,000 per aircraft.[52]

Given the above, the FAA could not justify the proliferation of avionics for the short-term that would not be compliant with the final rule in 2020. Therefore, the agency concluded that the public interest was not best served by using DO–260 avionics for ADS–B applications in radar and non-radar airspace before 2020.

2. Financial and Operational Incentives

Numerous commenters, including AIA, the ARC, and NBAA, recommended a variety of financial and operational incentives to make ADS–B more cost-beneficial for the end user. Some commenters specifically recommended that the FAA offer additional incentives for operators who adopt early. NBAA recommended accelerated operational benefits to encourage early installation of ADS–B equipment. Several commenters stated that without operational incentives, aircraft operators with legacy equipment will delay upgrades until the mandated compliance date.

AOPA and the Helicopter Association International (HAI) recommended several operational improvements and safety enhancements for ADS–B, including: (1) Flight following and radar services at lower altitudes, (2) terminal ATC services at GA airports, (3) automatic instrument flight plan closure, (4) instrument flight rules (IFR) low altitude direct routing, (5) enhanced flight service information, and (6) improved real time weather. HAI also recommended that the FAA install ground stations near hospitals and trauma centers to maximize benefits for the emergency medical services community and encourage ADS–B equipage.

ATA, CAA, the National Air Transportation Association, NBAA, and UPS recommended specific operational incentives for early equipage, including: (1) Implementing ADS–B in under-used areas of the NAS, (2) providing preferential access to congested airspace, (3) deploying the necessary ADS–B infrastructure for traffic crossing the Gulf of Mexico, and (4) providing services for on-demand operators at small community airports.

Some commenters, including AOPA, HAI, and CAA, recommended financial incentives or tax credits for ADS–B equipage.

The following activities are scheduled to be complete by 2013:

- Ground infrastructure coverage needed for the mandated airspace,[53]
- ADS–B interface to automation systems,
- Guidelines for equipment certification,
- Operations Specifications approval,
- Approval to use ADS–B to meet established separation standards,
- ATC operational procedures for non-radar airspace that has ADS–B coverage, and
- FAA controller training and procedures.

The ADS–B program is currently funded and designed to provide services in parts of Alaska, the Gulf of Mexico, and areas in the NAS where radar coverage currently exists. Additionally, actual ADS–B coverage may exceed the defined radar coverage at lower altitudes in some areas. The FAA cannot assess, however, the extent of this coverage or its potential use for the ADS–B service until the ADS–B implementation is complete in 2013.

The FAA acknowledges that the ADS–B system could be improved by expanding the surveillance coverage of ADS–B to non-radar airspace. The improved accuracy and update rate afforded by ADS–B provides the ability to improve future NAS operations. As the number of projected flight operations continues to increase, efficiency improvements to the NAS are critical to addressing new demands. Therefore, the FAA will continue to explore opportunities to use the ADS–B infrastructure to provide additional coverage in non-radar areas. The FAA also notes that ADS–B implementation will not affect flight following services in effect today.

[48] URET is an air traffic control tool that assists controllers with timely detection and resolution of predicted air traffic problems.

[49] A copy of the DO–260 Business Case Analysis is available from the Web site *http://www.regulations.gov*. The docket number for this rulemaking is FAA–2007–29305.

[50] The analysis concluded that it was not cost-beneficial to use DO–260 avionics in the Gulf of Mexico prior to 2020.

[51] A copy of the Honeywell Technology Solutions Inc. DO–260 study is available from the Web site *http://www.regulations.gov*. The docket number for this rulemaking is FAA–2007–29305.

[52] The DO–260 Business Case Analysis assumed the cost of $15,000 to upgrade an aircraft equipped with DO–260 only. The cost does not include all costs to meet the rule. The cost was used for the DO–260 Business Case Analysis and not used in the Regulatory Impact Analysis.

[53] The planned ADS–B service coverage is explained in greater detail at *http://www.adsb.gov/*.

The FAA is actively pursuing agreements with airlines, avionics manufacturers, airports, and other NAS users to encourage early equipage of ADS–B. These agreements incorporate a variety of items, including: (1) The possibility of developing preferred routes and cost sharing for avionics in testing new applications, and (2) early equipage and experience with advanced ADS–B applications that are not available to non-equipped aircraft.

The FAA currently has several agreements with airlines and state entities specifying that the FAA may enable benefits in exchange for early ADS–B equipage. Additionally, the FAA, HAI, and oil platform owners have an agreement for the Gulf of Mexico by which the FAA is providing communication, navigation, and surveillance for ADS–B-equipped helicopter operators.

The FAA and UPS have an agreement for testing and developing merging and spacing, CDTI/Multi Function Display Assisted Visual Separation (CAVS), and surface situational awareness applications in an environment that provides measurable benefits. Additionally, the FAA is working with Honeywell and ACSS to accelerate ASSA, FAROA, and surface indication and alerting applications.

The FAA is working with US Airways to develop a work plan for implementing ADS–B/NextGen technologies and procedures in parts of the East Coast as a prelude to national implementation. In addition, the FAA has an agreement with United Airlines to expedite oceanic in-trail procedures development. The FAA is also working with NetJets on several NextGen initiatives for performance-based navigation, communication, and surveillance applications.

The FAA has established an ADS–B compatible Wide Area Multilateration system in the mountainous areas of Colorado pursuant to an agreement with the Colorado Department of Transportation. The FAA continues to examine different areas of the country to determine opportunities for surveillance service expansion and is continuing to work with various state aviation offices.

In addition, the FAA continues to examine opportunities to provide ADS–B services in areas that would benefit from increased surveillance. The FAA does not currently have a list of airports that are targets for ADS–B expansion. However, the FAA has started to identify areas that would benefit most from ADS–B services. The FAA encourages cities, states, airports, and private interests (such as hospitals and trauma centers) to help determine surveillance needs and opportunities.

ADS–B can provide surveillance at lower altitudes than radar. Moreover, ADS–B infrastructure is more easily deployed than most radar in remote and hard-to-reach areas. The flexibility associated with implementing ADS–B can facilitate service by helicopters to certain communities. Deployment of ADS–B systems on medical, police, or tourist helicopters could provide a level of asset tracking and search-and-rescue capability that would be difficult to replicate with existing surveillance systems. The FAA has already developed agreements with HAI to support operations in the Gulf of Mexico. The FAA is open to implementing similar agreements as opportunities for ADS–B service expansion present themselves.

While this rule does not mandate ADS–B equipage in all airspace classifications, the FAA is analyzing whether ADS–B services can be expanded to provide improved safety and capacity enhancements for low altitude flight operations and airports underlying non-mandated airspace. The FAA will work with users to identify new candidate airports for these services. This activity will continue throughout the initial implementation period and post 2013 when the nationwide ADS–B infrastructure is expected to be available NAS-wide.

The extent to which ADS–B can contribute to operations in special use airspace is still being studied; however, the FAA is committed to examining any proposals for the use of ADS–B outside of the scope of implementation described in this rule.

3. Decommissioning Traffic Information Service–Broadcast (TIS–B)

In the NPRM preamble, the FAA noted that once all aircraft are equipped with ADS–B Out, ADS–R will provide the complete traffic picture and the FAA will decommission TIS–B.

A few commenters, including the DOD, questioned the assumption that all aircraft would be equipped for ADS–B Out. Rockwell-Collins recommended retaining TIS–B after the ADS–B mandate takes effect, because it provides a critical support for ADS–B airborne applications.

The original purpose of TIS–B was to provide proximate traffic information to ADS–B In-equipped aircraft about targets that were not equipped with ADS–B. When this rule takes effect in 2020 aircraft operating in the airspace subject to this rule must be equipped with ADS–B, thus theoretically eliminating the need for the TIS–B service. However, the FAA realizes that TIS–B may still have value after 2020 as a backup traffic service for ADS–B In aircraft during GNSS outages or when an individual target's ADS–B system is inoperative. Thus, the FAA, outside of this rulemaking effort, will evaluate the benefits of continuing TIS–B past the 2020 rule compliance date.

O. Safety

Several commenters, including AOPA, the ARC, and Boeing, suggested that the FAA expand the ADS–B service volume and ensure that TIS–B, FIS–B, and ADS–R are included in the ADS–B expanded coverage area.

Some commenters believed that reducing primary radars would reduce safety. These commenters noted that primary radar is important to track aircraft without ADS–B. They also recommended that the FAA continue requiring transport category aircraft to equip with Mode S transponders and TCAS II as an independent collision avoidance system. Some commenters argued that the complexity of the ADS–B system poses a collision risk.

Other commenters noted that ADS–B In cockpit displays can be confusing and distracting, which may cause a pilot to lose situational awareness. They added that the FAA should evaluate the CDTI to understand the additional monitoring responsibility and workload placed on the flightcrew. One individual contended that ADS–B will increase a pilot's dependence on cockpit equipment and reduce the pilot's tendency to look outside the aircraft. Another individual commenter asked for data to prove that ADS–B will not be susceptible to own-ship ghosting or target duplication. ("Own-ship ghosting" is a term that is used to describe a traffic display showing one's own aircraft as an actual target. Ensuring targets that are transmitting ADS–B are not also transmitted as TIS–B targets helps reduce the chances of seeing one's own aircraft as a target on the display.)

The final rule does not eliminate the requirement for transponders, TCAS, or primary radars. The FAA notes that any aircraft required to have TCAS II or ACAS, or that voluntarily has TCAS II or ACAS installed, must also be equipped with a Mode S transponder. This generally includes all aircraft operated under 14 CFR parts 121, 125, and 129, and certain aircraft operated under 14 CFR part 135.

Mode S transponders transmit both aircraft altitude and aircraft identification information. Both Mode A/C transponders and Mode S transponders require interrogation to provide information. ADS–B In Conflict

Detection does not replace the functions of TCAS II or ACAS; however, future versions of hybrid surveillance systems may use passive ADS–B messages to reduce unnecessary interrogations and, thus, reduce 1090 MHz spectrum congestion.

As stated in the NPRM, the FAA is maintaining its current network of primary radars. However, the FAA expects to reduce a large percentage of its secondary radars as a result of this rule. Both primary surveillance radar and SSR will continue to be used for surveillance during the transition period of ADS–B avionics equipage.

The benefits of certain ADS–B In applications cannot be fully realized in areas where there is no ADS–B coverage; however, the lack of ADS–B surveillance or ADS–R does not present a safety risk. When an aircraft is outside of the ADS–B coverage area, the ADS–R/TIS–B system will inform the pilot that the traffic picture is not complete. In all areas, regardless of ADS–B coverage, pilots will use the same procedures they have today to maintain safe separation of aircraft. TIS–B and FIS–B services are advisory and cannot be used to maneuver an aircraft without ATC clearance. The FAA will investigate ADS–B service expansion as part of the ADS–B NAS-wide implementation.

With regard to the comment regarding own-ship ghosting, the ADS–B system minimizes the chance of target duplication because it will not transmit TIS–B data on a target that is broadcasting ADS–B. This is because ADS–R is designed to relay information about aircraft transmitting on a different broadcast link, and TIS–B is designed to relay information only about aircraft not broadcasting ADS–B messages.

This rulemaking only mandates ADS–B Out, which does not involve any requirements for a cockpit display. Before any mandate of ADS–B In, the FAA will conduct extensive safety analysis and training. The current ADS–B Out rule does not eliminate or reduce the requirement under § 91.113 for pilots to see and avoid other aircraft.

P. Efficiency

In the NPRM preamble, the FAA stated that ADS–B will enhance ATC surveillance, which will increase airspace efficiency and capacity to meet the predicted demand for ATC services.

Several commenters, including the Airports Council International—North America (ACI–NA), Boeing, and FedEx, commented on the anticipated efficiency improvements stated in the NPRM. Some commenters contended that the proposed rule did not prove that a decrease in en route separation of aircraft will decrease delays or increase airspace capacity. Two commenters argued that the FAA has not demonstrated that system choke points can handle the increased capacity if en route separation is reduced.

Other commenters, including the National Air Traffic Controllers Association, argued that reducing separation will not mitigate commercial traffic delays caused by an inadequate number of runways, weather, hub-and-spoke operations, or airline scheduling practices. Era Corporation recommended that the FAA improve the infrastructure at small airports to relieve congestion. Boeing stated that ADS–B alone will not lead to the advances required by NextGen.

The FAA has consistently stated that ADS–B will not produce a complete NextGen air traffic management solution, but rather will set the initial steps to achieving a NextGen solution. The airport infrastructure is a crucial component of the NAS. Efficiency and capacity of the NAS can be positively affected by improving the efficiency of individual flights and improving the quality of input to air traffic controllers. ADS–B can help maximize the use of existing airport infrastructure. The ability to transmit ADS–B Out messages can increase the efficiency of the NAS in radar airspace by providing accurate updates at a faster rate than many existing surveillance systems. This increased update rate permits ATC to merge and sequence aircraft more effectively into existing airport choke points, which should mitigate, rather than increase, congestion and delay. This rule's regulatory evaluation does not include any benefits that are dependent on, or attributable to, other NextGen systems outside the scope of this rulemaking.

The FAA expects that ADS–B Out will enable the establishment of more direct routes outside airspace subject to this rule, which would use less fuel, emit less carbon dioxide and nitrogen oxide, and increase NAS efficiency. The FAA is currently developing specific ADS–B routes for certain areas that have the potential for significant benefits (airspace off the shore of the east coast and over the Gulf of Mexico). The FAA expects that other opportunities for routes enabled by ADS–B will emerge as the ground infrastructure is implemented NAS-wide.

1. Improved Position Reporting

According to operational evaluations,[54] ADS–B provides improved accuracy over radar in most air traffic scenarios. While some terminal radars can provide increased accuracy the closer the aircraft is to the receiver, ADS–B provides consistent position accuracy regardless of the aircraft's range from a receiver. ADS–B also provides more timely information updates than conventional radar. Unlike radar, the accuracy and integrity of ADS–B Out is uniform and consistent throughout the service areas. Therefore, ATC's ability to accurately identify and locate aircraft that are further away from the air traffic control facilities will be better than radar.

ADS–B does not scan an environment in the same way as radar; therefore, ADS–B does not provide unnecessary returns based on weather or other obstructions, which can impede the effectiveness of primary radars.

ADS–B provides consistent, frequently updated position reporting and additional aircraft information for ATC decision-support tools, which increases ATC confidence in aircraft position. This will allow ATC to apply existing separation standards more exactly and without the need for ATC to correct for possible radar inaccuracies. The regulatory evaluation provides more discussion on the benefits of improved surveillance information.

2. Optimized Profile Descents (OPDs)

The FAA plans to use the information broadcast by ADS–B to better sequence aircraft approaching the terminal area with the development of a Merging and Spacing application. This ground-based system sends precise suggested speed instructions to en route aircraft. These exact-speed instructions should allow aircraft to arrive at extended terminal area merge points at times that are much more precise than currently feasible.

As part of the Merging and Spacing application, the FAA is developing both a ground tool and aircraft requirements that can be used to optimize aircraft spacing. In addition to other airspace efficiencies, this tool will enable a fuel-saving procedure called Optimized Profile Descent (OPD), previously referred to as Continuous Descent Arrivals (CDAs).

OPDs are a type of terminal arrival procedure, specifically designed to keep an aircraft at, or near idle power during

[54] Surveillance and Broadcast Services Systems Engineering Separation Standards Working Group, Final Report on Operational Evaluation of 5 NM ADS–B to Radar Separation Services in Alaska, November 30, 2006.

the entire arrival until the final approach fix.[55] These procedures increase flight efficiencies while reducing noise, fuel consumption, and emissions. OPDs eliminate step-down altitudes and the associated inefficient power adjustments. OPDs depend on minimal aircraft vectoring to maintain the arrival pattern. Therefore, aircraft must be accurately metered with ADS–B-enabled spacing and sequencing tools prior to and during descent and approach.

Below a certain level of demand, controllers can authorize OPDs using current onboard equipment and procedures. As the terminal demand increases, it becomes progressively more difficult for controllers to allow OPDs because of interference with other traffic flows in the airspace. As demand approaches capacity, the tradeoff between total airport throughput (and delays) and individual flight profile efficiency (that is, OPDs) would most likely prohibit OPDs for very high traffic density situations. This situation will be aggravated over time as air traffic resumes growth and terminal airspace constraints increase.

Many airports start to exhibit significant delays when demand reaches approximately 70 percent of capacity. The proposed FAA spacing tool, using more accurate ADS–B position information, would enable OPDs in medium-density terminal airspace when the demand approaches the point where delays would be encountered. The FAA believes that ADS–B Out can expand use of OPDs into medium levels of traffic density (40 percent to 70 percent), which may not be possible without ADS–B Out. Accomplishing OPDs at this level of traffic density would have important environmental and energy benefits with no increase in congestion or delay.

3. Reduced Aircraft Separation

In non-radar airspace, ADS–B Out allows ATC to apply radar-like separation standards in areas where ATC currently applies non-radar, procedural separation. In some cases, routes laterally separated without radar by as much as 90 NM are now separated with ADS–B at only 20 NM. Longitudinal separation of typically 10 minutes (80 NM) can be reduced to 5 NM.

Boeing commented that the accuracy and integrity values proposed in the NPRM will not support reduced en route separation standards. ADS–B position accuracy supports current surveillance standards. Experience with the mature system may allow reductions at a future time. The FAA plans to expand 3 NM separation to locations in the NAS that currently only permit 5 NM separation. Currently, the FAA is modeling several scenarios to determine if ADS–B can support 3 NM en route separation based on a target level of safety. The FAA will not move forward with reduced separation until all safety and operational analyses have been completed and ADS–B has been certified to perform this service.

4. Expanded Surveillance Coverage

In the future, there may also be an opportunity for ATC to use ADS–B Out data for surveillance in areas of the NAS below the floor or outside the lateral coverage of existing radar surveillance. The FAA does not yet know where in the NAS this extra coverage might be available. This information will likely not be available until ADS–B surveillance has already been implemented in a service area. As the FAA identifies areas with additional coverage, the FAA will investigate how this additional coverage could be used.

Q. ADS–B In

Many commenters, including ACSS, ALPA, CAA, Lockheed Martin, the NTSB, and UPS, commented that the majority of the ADS–B benefits will be derived from ADS–B In. Numerous commenters asserted that ADS–B Out alone would not be cost-beneficial or provide them with any added benefits compared to their operations today. Some commenters noted that ADS–B In, however, would provide necessary services to the cockpit. Many of these commenters asserted that ADS–B In should be mandated as well. However, AOPA specifically recommended that ADS–B In be voluntary because it is cost-prohibitive for most GA owners. British Airways also questioned the business case for ADS–B In.

Many commenters, including the DOD, ACI–NA, and AIA, pointed out that the capabilities and functions of ADS–B Out alone will not provide the full range of benefits available from ADS–B. To improve the overall system, they recommended developing standards for ADS–B Out in unison with standards for ADS–B In. GAMA and IATA recommended that the FAA work to define the requirements for ADS–B In to encourage ADS–B equipage. ATA specifically asked the FAA to define ADS–B In standards by 2010. IATA noted that many operators will delay upgrades until there is a single, defined ADS–B package with avionics and procedures to support NextGen and the Single European Sky Air Traffic Management (ATM) Research Program.

The ARC recommended that the FAA, in partnership with industry, define a strategy for ADS–B In by 2012 and ensure that the strategy is compatible with ADS–B Out avionics. The ARC also recommended that the FAA describe how to proceed with ADS–B In beyond the voluntary equipage concept discussed in the NPRM.

A few commenters, including NBAA, praised the benefits of ADS–B and recommended that the FAA resolve ADS–B In display requirements, including human factors. The NTSB stated that ADS–B would significantly improve situational awareness for pilots, especially during ground operations. GAMA recommended that the FAA not limit display options in the final rule.

The FAA fully recognizes that ADS–B In and other future air-to-air applications are functions that could provide substantial benefits to aircraft operators and the NAS. While additional benefits can be accrued using ADS–B In functions, requirements for an ADS–B In system are not sufficiently defined to implement them at this time.

ADS–B Out is necessary to establish an air transportation infrastructure that is consistent with the NextGen plan and will change the way the NAS operates. Further, the economic evaluation of the ADS–B Out proposal found the system to be cost-beneficial if ADS–B Out avionics costs are at the low end of the estimated cost range and if the benefits are at the high end of the estimated benefits range.

Given the value of ADS–B In services to individual operators and the benefits to future NAS operations, the requirements adopted for ADS–B Out also support certain ADS–B In applications.[56] The FAA has modified several aspects of the proposed rule to minimize the cost impact to operators of the requirements driven by ADS–B In. The requirements in this final rule also establish a stable infrastructure for current and future applications of ADS–B In.

The FAA concurs with the ARC's recommendation to define a strategy for ADS–B In equipage by 2012 and is working with industry to develop a strategy for future ADS–B In applications. By 2012, the requirements and benefits of ADS–B In applications should be well enough defined for the

[55] The final approach fix identifies the beginning of the final approach segment, and is the fix from which the final instrument flight rule (IFR) approach to an airport is executed.

[56] These applications include Enhanced visual acquisition, conflict detection, and enhanced visual approach.

FAA to specify a set of performance requirements that would be tied to a well-defined bundle of applications.

Furthermore, RTCA has completed the DO–317, Minimum Operational Performance Standards (MOPS) for Aircraft Surveillance Applications System (ASAS), [57] and the FAA is currently developing a TSO to utilize this RTCA standard.

R. ADS–B in Applications

Multiple commenters, including SANDIA, asked for more information about potential ADS–B In applications. This information is provided below.

1. Surface Situational Awareness With Indications and Alerting

This application is being designed to provide information regarding potential traffic conflicts on or near the airport surface to the flightcrew. The ADS–B In cockpit display would indicate the relevant runway occupancy status. Depending on the severity of the conflict, the system would alert the flight crew with visual and/or audible alerts.

2. In-Trail Procedures

This application is being designed to facilitate aircraft conducting oceanic in-trail flight level changes using a reduced separation standard. This application should improve the use of oceanic airspace, increase efficiency, reduce fuel consumption, and increase safety by helping flightcrews avoid turbulent flight levels. With this application, ATC will continue to provide procedural non-radar separation services. However, the FAA is exploring whether controllers would be able to allow flight level changes where aircraft are separated by only 15 NM during climb or descent, instead of 100 NM in use today.

3. Interval Management

This application is intended to improve current merging and spacing capabilities to ensure more consistent aircraft spacing, and potentially increase airspace capacity. With this application, controllers would issue a different set of instructions to pilots, for example, to maintain a given time or distance from the preceding aircraft. The flight crews will then use ADS–B In information to adjust their airspeeds or flight paths to maintain the instructed separation.

4. Airport Surface Situational Awareness and Final Approach Runway Occupancy Awareness

ASSA and FAROA increase situational awareness of potential airport ground conflicts at several of the nation's busiest airports. However, the reduced NAC_P requirement in this rule, while sufficient for ADS–B Out, is not sufficient for all aircraft to use in ASSA and FAROA.

S. International Harmonization

Several commenters stated that the ADS–B program technical standards and requirements in the NPRM may be exclusive of, and not harmonized with, ICAO and international efforts under way in Europe, Australia, and Canada. Several individual commenters and AOPA questioned the interoperability of UAT in international airspace, including Canada and Mexico. They also questioned the applicability of UAT through ICAO Standards and Recommended Practices (SARPs). The ARC recommended that the FAA advocate national policies that explicitly allow for the use of non-U.S. positioning sources (for example, Galileo) as part of the infrastructure to meet aviation performance requirements.

The FAA fully supports the need for international regulators to focus on a global interoperability of ADS–B through the continuing development of standards for equipment, applications, flight procedures, and operating rules. The RTCA standards for DO–260B and DO–282B (referenced in TSO–C166b and TSO–C154c) were developed with close international cooperation. The FAA supports the RTCA/European Organization for Civil Aviation Equipment (EUROCAE) Requirements Focus Group, which is internationally coordinating ADS–B In. Additionally, the FAA actively meets with EUROCONTROL, the Australian Civil Aviation Safety Authority, and Transport Canada to internationally coordinate ADS–B regulation.

The FAA has structured the ADS–B Out program on performance requirements and not a specific navigation or positioning source. The FAA is proposing harmonized requirements for aircraft separation to ICAO, with the support of Australia, Canada, and EUROCONTROL. The United States is working with other GNSS providers to ensure system interoperability, improve performance, and reduce costs for integrated receiver equipment. This rule does not prohibit the use of international GNSS; any navigation source that meets the requirements complies with this rule.

The performance standards for the UAT were developed by RTCA through international cooperation and coordination. The standards were published in DO–282B, (MOPS for UAT ADS–B). Additionally, DO–282B was developed in accordance with Annex 10 to the convention of international civil aviation. As such, individual states are allowed to invoke these standards as their own requirements.

T. Backup ATC Surveillance

In the NPRM, the FAA described an ADS–B backup strategy that included a reduced network of SSRs to support high-density terminal airspace, all en route airspace above 18,000 feet MSL, and medium-density terminal airspace above certain altitudes. In the proposal, the FAA noted that it intends to retain all primary surveillance radar as a means to mitigate single-aircraft avionics failures.

Several aviation associations, air carriers, pilots, and various other organizations commented on the proposed backup strategy. The commenters suggested several potential alternatives including Automatic Dependent Surveillance—Contract (ADS–C), long range navigation (LORAN), enhanced long range navigation (eLORAN), fusion, and multilateration.

Some commenters, including UPS and United Airlines, recommended that the FAA develop a backup system that not only backs up surveillance, but also works in a fusion process to increase the accuracy, integrity, and availability of the primary surveillance system. Boeing recommended that during RAIM outages, ADS–B could broadcast position data derived from a flight management system or an inertial navigation system. Other commenters questioned whether there was a robust and fully independent airborne- or ground-based backup timing system in the event of GPS timing signal loss. The DOD contended that the backup must be able to support planned GPS electronic testing and solar flare activity.

Several commenters opposed having one interdependent service for both navigation and surveillance. They believed that this combination of navigation and surveillance could be detrimental when a pilot experiences a GPS outage while operating in instrument meteorological conditions. The ARC recommended that the FAA, in coordination with other Government agencies, develop an integrated communication navigation and

[57] ASAS provides the platform for the processing and display of ADS–B In applications.

surveillance (CNS) strategy to address GNSS interference and outages.

Various entities also questioned the procedures that would be in place for aircraft operating with a NAC_P value of less than 9. One individual asked how the system will accommodate aircraft without ADS–B, if an entire broadcast link is inoperable.

The FAA will provide ATC separation services for aircraft meeting the minimum ADS–B-required performance parameters (NAC_P, NAC_V, NIC, SDA, and SIL) for airspace subject to this rule. If, during flight, an individual aircraft does not meet the minimum ADS–B-required performance parameters, then ATC may provide separation services using the backup (for example, radar where available and procedural separation elsewhere). This transition will be seamless because secondary surveillance data will be one of several surveillance sources fused into the display used by ATC.

The ADS–B ground automation combines or "fuses" all available surveillance information from ADS–B with primary surveillance radar and SSR. This provides a complete or "fused" picture of all the traffic operating in a given area. Multi-sensor fusion allows the automation to combine data from various sensors, and use the most accurate measurements. In most cases, a Kalman Filter Tracker optimizes the accuracy of track estimates from multiple sensors. In addition to improved aircraft position accuracy, data fusion uses all the updates from multiple sensors, which increases the overall update rate. The FAA currently uses practical trackers for data fusion with the Common-Automated Radar Terminal System and the Standard Terminal Automation Replacement System.

If the ADS–B ground infrastructure or a particular broadcast link is out of service, or a sufficient number of aircraft cannot meet the minimum required performance for a given airspace and controller workload is adversely impacted, ATC will use the backup system to provide ATC separation services for all aircraft in that airspace. Transition to the backup strategy will not impact the ability of ATC to provide separation services to the operator.

The FAA completed the Surveillance/Positioning Backup Strategy Alternatives Analysis [58] on January 8, 2007. This study included a comprehensive analysis of various strategies for mitigating the impact of the loss of GPS on ADS–B surveillance. The analysis identified a reduced network of SSRs as the recommended backup for ADS–B. This strategy retains all existing en route SSRs (150) and approximately 50 percent of SSRs in high-density terminal areas (40).

The FAA assessed numerous technologies as part of this analysis, including: Multilateration; eLORAN; distance measuring equipment (DME); DME/inertial reference units; satellite-based augmentation systems; ground-based augmentation systems; and various combinations and implementations of these technologies. The FAA determined the backup strategy based on the most effective tradeoff between performance, schedule, and cost factors among airborne and ground segments of the NAS architecture.

This backup strategy will support continued use of the separation standards in effect today. However, for select areas experiencing degraded surveillance coverage during an outage, ATC may increase aircraft separation as operationally required.[59] The FAA concludes that these operational capabilities are sufficient, given that loss of required position information is expected to be a rare event.

In meeting the performance standards adopted by this rule, an aircraft's navigation and surveillance functions may be dependent on the same position source. Using GNSS technology for ADS–B provides for improved performance (i.e., increased update rate, increased accuracy at long range, and cleaner surveillance picture to ATC) over other surveillance systems and allows for a more flexible ground infrastructure.

The risks posed by this dependency have been accepted because the navigation and surveillance functions have independent backup systems. In evaluating the options, the FAA specifically considered the scenario in which the satellite positioning source failed. As a result, the FAA determined that an effective backup system could not also be satellite-based. The FAA further determined that these backup capabilities ensure sufficient navigation and surveillance capabilities during a positioning source outage and maintain appropriate levels of safety.

U. Privacy

The NPRM proposed requiring a message element to transmit the aircraft's assigned 24-bit ICAO address.

Many commenters, including AOPA and Rockwell-Collins, strongly argued against ADS–B Out broadcasts of identifiable data, including aircraft tail number and operator name. These commenters argued that the information could be used to continuously watch all aircraft and ultimately could be used by the FAA for enforcement or assessing user fees. Certain commenters argued in favor of retaining the anonymous mode for VFR operations because aircraft identification is only required for ATC purposes.

Commenters suggested several alternatives: (1) Use UAT's privacy message function (which allows the pilot to select "VFR" mode) to have the UAT system randomly select a 24-bit ICAO address; (2) require manufacturers to design ADS–B systems that archive data onboard, and advise pilots to archive the data so there is an independent data source that corroborates government data; and (3) design a system host configuration protocol to assign transponder codes through a unique address when the UAT or 1090 MHz ES is turned on. They contended that this would allow a network to eliminate system duplicity and guarantee anonymity to the pilot of the aircraft (therefore, the 24-bit Mode S identifiers would no longer be needed).

The ARC made three recommendations regarding privacy: (1) The FAA should treat the 24-bit ICAO code assignments as information covered under privacy laws, so they are available only to authorized personnel or released by the holder; (2) the FAA should use the anonymity feature of UAT and develop an equivalent anonymity feature for 1090 MHz ES that would apply to VFR operations not using ATC services; and (3) the FAA should accommodate assignment of the 24-bit ICAO codes so that they do not easily correlate to an aircraft tail number and they permit aircraft call signs to be something other than the aircraft registration number when receiving ATC services.

The FAA reviewed all the comments regarding privacy and notes that most of the commenters specifically addressed VFR operations. The FAA notes that there is no right to privacy when operating in the NAS. The FAA specifically designates airspace for which the identification of aircraft is necessary, so that the agency can effectively separate aircraft. The transponder rule specifies that an

[58] It is important to recognize that this is a performance-based rule and does not require GNSS. For the purpose of the backup strategy evaluation the FAA assumed that users would equip with a GNSS as their position source.

[59] The standard for reverting to backup surveillance is also discussed in H.2, System Availability.

aircraft operating in airspace designated in § 91.215 must have ATC transponder equipment installed that meets the performance requirements of TSO–C74b, TSO–C74c, or TSO–C112.

Many GA aircraft are equipped with Mode C, which has the capability to squawk 1200 and meets the requirements of § 91.215, without specifically identifying the aircraft. Most of these commenters are seeking similar treatment under ADS–B so that ATC can track the aircraft without specifically identifying the aircraft.

TSO–C154c includes a feature to temporarily and randomly assign a 24-bit address for UAT-equipped aircraft. This rule does not prohibit the use of this feature. UAT-equipped aircraft conducting VFR operations that have not filed a flight plan and are not requesting ATC services may use this feature. Although the FAA does not prohibit the anonymity feature, operators using the anonymity feature will not be eligible to receive ATC services and will not be able to benefit from enhanced ADS–B search and rescue capabilities. TSO–C166b does not include a feature to accommodate anonymous 24-bit addresses. Should safety or efficiency of the NAS so require, the FAA could initiate rulemaking to prohibit an operator from using the anonymity feature. Additionally, if the FAA, in coordination with the Department of Homeland Security (DHS), determines that the anonymity feature is an unacceptable risk to security, the FAA could initiate rulemaking to prohibit an operator from using the anonymity feature.

This rule does not implement any type of user fee. Subsequent agency rulemaking would be necessary to establish such fees. Furthermore, this rule does not affect the process for the FAA assigning the 24-bit ICAO codes.

The FAA has not determined that archiving data onboard the aircraft is necessary for ATC surveillance. However, this rule does not preclude manufacturers from designing equipment with this function.

V. Security

Various commenters, including the DOD, commented on the security aspects of the ADS–B system. They contended that, as ADS–B will broadcast the location and identity of users, malicious parties could monitor transmissions from the aircraft and ATC to obtain information to target and harm the aircraft. Another commenter stated that the ADS–B information could be used by an unmanned aircraft to target passenger aircraft. Some commenters alleged that security safeguards are needed for ADS–B to protect aircraft from terrorist attacks.

Other commenters argued that an aircraft's ADS–B transmissions or GPS position/timing signals could be subject to inadvertent or intentional interruption or loss of the GPS timing signal. Several commenters recommended a planned oversight feature (for example, requiring ADS–B ground receivers to be licensed) to ensure that only authorized personnel access the data collected, and that the data is only accessed for authorized purposes. The DOD recommended that the FAA work with DHS and the DOD to determine ADS–B risks and appropriate countermeasures.

The FAA conducted several analyses on the security aspects of ADS–B. These analyses include the information system for collecting data, transmitting and storing data, as well as risk assessments on the vulnerability of ADS–B broadcast messages. All FAA information, including ADS–B transmissions received by the FAA, that is collected, processed, transmitted, stored, or disseminated in its general support systems and applications is subject to certification and accreditation, under National Institutes of Standards and Technology (NIST) information technology standards. It is a continuing process that protects the confidentiality, integrity, and availability of the information.

The FAA's Security Certification and Accreditation Procedures (SCAP) were developed in accordance with Federal law, including: (1) The Federal Information Security Management Act of 2002, (2) OMB Circular A–130 (Management of Federal Information Resources), (3) Federal Information Processing Standards 199, and (4) NIST Special Publications (SP) 800–37 (Guide for the Security Certification and Accreditation of Federal Information Systems), NIST SP 800–53 (Recommended Security Controls for Federal Information Systems), and NIST SP 800–53A (Guide for Assessing the Security Controls in Federal Information Systems).

The FAA completed the SCAP for the ADS–B system originally in September 2008. The FAA completed a new SCAP in October 2009 as a result of changes made to the ADS–B system. This process ensures that ADS–B does not introduce new security weaknesses. It also ensures that the hardware and software composing the ADS–B system meets rigid and well-documented standards for infrastructure security. ADS–B meets all qualifications and mandates of this process. As part of the SCAP, the system is tested annually for security compliance, and every 3 years the system goes through an entirely new SCAP. In addition, the FAA specifically assessed the vulnerability risk of ADS–B broadcast messages being used to target air carrier aircraft. This assessment contains Sensitive Security Information that is controlled under 49 CFR parts 1 and 1520, and its content is otherwise protected from public disclosure. While the agency cannot comment on the data in this study, it can confirm, for the purpose of responding to the comments in this rulemaking proceeding, that using ADS–B data does not subject an aircraft to any increased risk compared to the risk that is experienced today. As part of this process, the FAA forwarded the assessment to its interagency partners, including the DOD, the Transportation Security Administration, the Federal Bureau of Investigation, the United States Secret Service, and other appropriate agencies for review. These entities evaluated the modeling approach, analysis, and risk outcome. They did not identify any reason to invalidate the analysis which determined that ADS–B data does not increase an aircraft's vulnerability. The FAA commits to annual updates of this assessment to monitor any changes in the underlying assumptions in the risk analysis, and to monitor new threat information that becomes available.

The FAA concludes that ADS–B transmissions would be no more susceptible to spoofing (that is, intentionally broadcasting a false target) or intentional jamming than that experienced with SSR transmissions (Mode A, C, and S) today. Spoofing of false targets and intentional jamming very rarely occur with the surveillance systems in place today.

The ADS–B transmission signals from aircraft will be fused with surveillance data from both primary and secondary radars before it is displayed for ATC. The controllers, therefore, are receiving and viewing a composite of aircraft data from multiple surveillance systems. The FAA does not expect spoofing and jamming to occur during the transition to using this fused data for surveillance. This is because the automation will reveal the discrepancy between a spoofed or jammed ADS–B target and the target reported by radar and SSR position reports. Fusion also provides for a smooth transition to backup surveillance if an ADS–B system is experiencing interference. Furthermore, encryption of any ADS–B data would unnecessarily limit its use internationally.

The FAA also concludes that additional certification and accreditation of ground equipment will not be necessary because of the strict SCAP provision certifying that crucial information and equipment are not available to unauthorized individuals.

The FAA finds no basis at this point that ADS–B Out provides any greater security risks to air navigation systems to the United States. The FAA continues to meet regularly with DOD and DHS representatives regarding the use of ADS–B information and national security issues.

W. Alternatives To ADS–B

The NPRM compared: (1) Radar as it exists today, (2) multilateration, and (3) ADS–B. In the NPRM, the FAA's alternatives analysis found radar to be the most cost-effective solution; however, radar would neither be effective in supporting air traffic growth over time nor provide the necessary technical capabilities to support the NextGen concept of operations.

Several commenters indicated that the existing radar system is sufficient for operations. Some commenters suggested expanding the radar infrastructure or implementing an alternative reporting system using commercial off-the-shelf technologies that have a means to encode and transmit GPS position data.

Other commenters believed that multilateration could provide similar benefits to ADS–B at a potentially lower cost. Boeing requested that the FAA provide an analysis explaining its conclusion that multilateration would not provide the same level of benefits as ADS–B. ATA specifically stated that they do not believe multilateration is a viable alternative; however, it can provide highly accurate position reports for surface ADS–B In applications. Several commenters objected to the prohibitive cost of upgrading the avionics with ADS–B because there are commercial products currently available that provide real time weather and traffic information.

The agency has determined that the improved accuracy and update rate afforded by ADS–B is a critical segment of the NextGen infrastructure and capabilities that offer the opportunity to make the system more efficient. Specifically, enhanced surveillance data via ADS–B will improve the performance of ATC decision-support tools (URET and TMA) which rely on surveillance data to make predictions. The end result will be fewer, more efficient reroutes to avoid potential conflicts, as well as improved metering into the terminal area. This will allow increased and more efficient use of OPDs, which have lower energy and emissions profiles. Unlike radar and multilateration, ADS–B provides more detailed flight information (for example, update rate, velocity, and heading) that supports ground-based merging and spacing tools. These tools use this information to determine optimal tracks for ATC arrival planning.

FIS–B and TIS–B provide the uplink of weather and traffic information to the cockpit. Equipping with the necessary ADS–B In avionics (receiver and display components) is voluntary for operators and is not required by the ADS–B rule. The FAA analyzed alternative sources for weather and traffic information. Individually, these alternative sources may be less costly than the ADS–B solution. However, the FAA's analysis showed that the bundling of surveillance, weather, and traffic information is cost-effective for users who have not already invested in alternative capabilities. The FAA compared the costs and benefits of ADS–B, multilateration, and radar, as well as the cost savings for bundling services. A report ("Exhibit 300, Attachment 2, Business Case Analysis Report for Future Surveillance, JRC Phase 2a") is available in the docket for this rulemaking.

In sum, none of the alternatives offers the range of capabilities nor supports the NextGen concept of operations as well as ADS–B.

X. ADS–B Equipment Scheduled Maintenance

The NPRM did not propose any additional continuing airworthiness requirements associated with the installation of ADS–B avionics equipment. A few commenters questioned the FAA's plan for continued airworthiness inspections for ADS–B equipment.

This final rule does not add any continuing airworthiness inspection requirements. Transponder-based ADS–B systems will still be required to meet the requirements of § 91.413. However, ADS–B systems, without a transponder, do not have any new inspection requirements. The FAA will use the ground automation system to continuously monitor ADS–B functionality, which accomplishes the purposes of a recurrent inspection.

Y. Specific Design Parameters

In the NPRM, the FAA proposed performance standards for ADS–B Out, but did not specify any specific design parameters.

Several commenters, including the EAA, and the United States Parachute Association, recommended specific design parameters for ADS–B avionics, including size, weight, and power consumption.

The FAA again notes that this is a performance-based rule and does not mandate a particular system or design specifications (including size, weight, or power consumption). A performance-based rule provides industry with the opportunity to use innovative approaches in designing ADS–B avionics to meet the needs of their customers.

Z. Economic Issues

The FAA updated the cost and benefit estimates in the final regulatory impact analysis for this rule. For a summary of the final regulatory impact analysis, see Section III. The full final regulatory impact analysis may be found in the docket for this rulemaking. The following section discusses comments the FAA received on the proposal's regulatory evaluation. Where appropriate, the discussion includes information on the updated costs and benefits for this final rule.

1. ADS–B Out Equipage Cost

The FAA estimated that costs for the proposed rule would be between $2.3 billion and $8.5 billion. The FAA also considered that industry would start to incur equipage costs in 2012, ranging from $1.27 billion to $7.46 billion. In the final rule, the FAA estimates total costs to range from $3.3 billion to $7.0 billion, and industry equipage costs to range from $2.5 billion to $6.2 billion.

Several commenters, including ATA, Boeing, British Airways, Delta Airlines, EAA, Honeywell, NBAA, and the Regional Airline Association (RAA), questioned specific cost estimates in the proposal's economic analysis or asked for more information about the cost and benefit estimates. Most of the commenters believed that equipage costs for ADS–B Out would exceed the estimates provided in the proposal.

Several commenters, including AOPA, EAA, Embraer, and the United States Parachute Association, stated that the cost to equip with ADS–B Out was too high. Commenters pointed out that, given the value of most GA aircraft, the cost of equipage could represent a significant percentage of, or possibly exceed, the current value of the aircraft. Some commenters noted that costs of this magnitude could make recreational or business flying cost-prohibitive. Some commenters, including FedEx, noted that equipage costs will be significantly higher for aircraft not currently equipped with a certified GPS/WAAS position source.

For the proposed rule, the FAA contacted manufacturers, industry associations, and ADS–B Out suppliers to estimate ADS–B equipage and maintenance costs by aircraft model. The proposal included industry estimates for the cost of installation, maintenance, additional weight, and the addition of ADS–B Out equipment to meet the performance mandate. The proposal's regulatory impact analysis also assumed that all active airframes in service would be retrofitted by 2020.

The FAA expects that the increased demand for the ADS–B Out equipment required by this performance-based rule will result in a more competitive market, such that the prices may decrease in the coming years for certain aircraft groups. The FAA also anticipates that any investment in ADS–B Out equipage will increase the residual value of that aircraft and will allow easier access to the regulated airspace.

The FAA agrees that equipping aircraft with ADS–B Out will cost more for those aircraft that are not equipped with a position source capable of providing the necessary accuracy and integrity. To capture this cost in the proposal, the FAA requested that industry categorize large category turbojet airplanes by classic, neo-classic, modern, and new production classes, as well as the existing level of airplane equipage for each class. However, due to the confidentiality of cost data, the regulatory evaluation does not present ADS–B-supplier level data details. The FAA fully acknowledges that the general aviation community will incur significant costs from this rule. However, this must be balanced against the foundation this capability provides in moving toward the NextGen infrastructure and benefits from its overall usage.

2. FAA Cost Savings With ADS–B Out Compared to Radar

The FAA considered the following three systems for future NAS surveillance: (1) Radar, (2) multilateration, and (3) ADS–B. The FAA explained in the proposal that radar was the lowest cost option. Based on forecasts at the time of the NPRM, the FAA did not expect that radar could accommodate the projected increase in traffic.

Several commenters, including EAA and RAA, stated that the ADS–B program would result in a cost savings to the FAA because it would have less radar to maintain, operate, and replace. Most of the commenters claimed that the ADS–B program would shift costs from the FAA to aircraft operators.

The ADS–B program is not expected to result in a cost savings to the FAA from 2009 through 2035. As ADS–B becomes operational, the FAA plans to decommission some SSR. While this will reduce the operational costs of maintaining radar, the FAA will incur additional costs for ADS–B ground stations. This results in a net increase in cost for the FAA.

3. Business Case for ADS–B Out and In

In the NPRM, the FAA estimated that the total costs of ADS–B Out and In (excluding avionics for ADS–B In), relative to the radar baseline, would range from $2.8 billion to $9.0 billion. The FAA further estimated that ADS–B Out and In would yield $13.8 billion in total benefits.

The FAA concluded that ADS–B Out and In would be cost beneficial at a present value of 7 percent, if: The avionics costs for ADS–B Out are low ($670 million at a 7 percent present value) and the avionics costs for ADS–B In do not exceed $1.85 billion at a 7 percent present value.

As stated in the NPRM, ADS–B Out and In would be cost beneficial at a 3 percent present value if: (1) The avionics costs for ADS–B Out are low ($950 million at a 3 percent present value) and the avionics costs for ADS–B In do not exceed $5.3 billion at a 3 percent present value or (2) the avionics costs for ADS–B Out are high ($5.35 billion at a 3 percent present value) and the avionics costs for ADS–B In do not exceed $870 million.

Boeing asked for further clarification of scenarios in which ADS–B may not be cost beneficial. Specifically, Boeing referred to the 3 percent present value estimate in the NPRM with high avionics costs. Boeing noted that it does not believe ADS–B In avionics costs will be less than ADS–B Out avionics costs. Boeing also asked for the cost beneficial values of ADS–B Out and In at a 7 percent present value if avionics costs are high.

Boeing suggested that the FAA conduct a thorough cost-benefit analysis for the ADS–B program, including accurate cost estimates for ADS–B In. Boeing further recommended that if the FAA cannot determine the costs associated with ADS–B In, the FAA should not include these costs and benefits in the economic analysis.

Boeing also questioned why the FAA estimated the benefits for ADS–B Out and In at $13.9 billion in the proposal, while the FAA estimated the ADS–B Out and In benefits at $18.5 billion in the "Surveillance and Broadcast Services Benefits Basis of Estimates"[60] (SBS BOE) report.

The FAA agrees with Boeing that if the costs of ADS–B Out avionics are at the high end of our estimates and if ADS–B In avionics are more expensive than ADS–B Out avionics, then the costs estimated for ADS–B Out and In will exceed the quantified benefits, given the assumptions in the economic evaluation. The FAA also notes that at a 7 percent present value with the assumptions in the economic evaluation (i.e., if industry costs for ADS–B Out avionics are at the high end of the range), then ADS–B Out and In will not be cost-beneficial. The FAA does not agree that the estimates in the regulatory impact analysis need to be consistent with the estimates in the SBS BOE report. The economic analysis quantifies the potential benefits that the FAA expects to result from adoption of the rule. The economic analysis does not include benefits that could be realized without the rule.

Specifically, the regulatory impact analysis did not include benefits from ADS–B in Alaska or for low altitude operations in the Gulf of Mexico because these benefits would occur without the rule. The regulatory evaluation also did not include benefits related to controlled flight into terrain because terrain avoidance warning systems currently provide these benefits. Other benefits that the FAA did not consider in the proposal, but are in the SBS BOE, include: An estimate of the reduction in FAA subscription charges because of value added services and a reduction in costs to obtain weather information.

In addition, the regulatory impact analysis did not specifically include a benefit for radar system replacement cost avoidance. Rather, the FAA compared the total cost of continuing full radar surveillance (the baseline) to the cost of providing surveillance with ADS–B. This included the costs of gradually discontinuing some radar and continuing some radar as a backup. The lower costs of radar (what is referred to as "surveillance cost avoidance" in the SBS BOE) were captured in the cost comparison of radar under the baseline and radar under the ADS–B Out scenario (the rule).

The draft regulatory impact analysis released with the NPRM included a cost-benefit analysis of ADS–B Out alone, as well as for the scenarios for ADS–B Out and In. For the final rule,

[60] This report was published in August 2007. A copy of this report is available from the Web site *http://www.regulations.gov*. To find the report, enter FAA–2007–29305–0013.1 in the search box.

the FAA also queried industry for equipage costs for ADS–B Out and In. Although the FAA initially attempted to capture the benefits for ADS–B In, upon further consideration the agency has determined that the performance requirements are not sufficiently developed to conduct a meaningful analysis. The FAA has not included ADS–B In costs and benefits in the final regulatory impact analysis.

4. Improved En Route Conflict Probe Benefit Performance

In the NPRM, the FAA estimated the benefit for en route conflict probe at $3.3 billion.[61] To calculate this savings, the FAA estimated the reduction in ATC vectors resulting from improved en route conflict probe. Then, the FAA attributed this time savings to direct aircraft operating costs and the passenger value of time.

Several commenters questioned the improved en route conflict probe benefit estimates. The commenters noted that the amount of time saved per passenger was low, compared to other delays in the overall travel environment (for example, late arrivals at the airport and waiting for baggage). They recommended that the FAA delete the passenger value of time from its benefit estimate.

The FAA does not agree that the passenger value of time should be removed from its benefit estimate and therefore includes it in the final regulatory impact analysis. There has been significant discussion about whether small increments of time should be valued at lower rates than larger increments. The present state of theoretical and empirical knowledge does not appear to support valuing small increments of time less than larger ones.[62]

5. Capacity Enhancements, Airspace Efficiency, and Fuel Saving Benefits

In the NPRM, the FAA estimated that between 2017 and 2035, ADS–B would allow for more efficient handling of potential en route conflicts. In the NPRM, the FAA estimated this would save 410 million gallons of fuel and eliminate 4 million metric tons of carbon dioxide emissions. The FAA also noted in the initial regulatory impact analysis that, during this same time period, continuous descent approaches (now referred to as OPDs), would allow for a 10 billion pound fuel savings and a 14 million ton reduction in carbon dioxide emissions. Furthermore, the FAA noted that optimal routing over the Gulf of Mexico would eliminate 300,000 metric tons of carbon dioxide emissions between 2012 and 2035. In the final regulatory impact analysis, the FAA estimated a net reduction in carbon dioxide emissions attributable to the rule and calculated a monetary value to this net reduction. See the full regulatory impact analysis for details.

A few commenters, including RAA, questioned the cost savings associated with more efficient flights using ADS–B. Some of these commenters also asked the FAA to remove the discussion on reduced carbon dioxide emissions because the efficiency and fuel saving claims have not been validated.

RAA noted that the FAA has considerable experience justifying rules that enhance safety, but suggested that the FAA is not experienced in justifying rules based on increased airspace capacity and fuel savings. RAA asked the FAA to validate whether the reduced vertical separation minimum (RVSM) program reduced fuel consumption, as estimated in the RVSM regulatory evaluation. RAA also noted that the benefit analysis should quantify the benefits that ADS–B would provide over current descent procedures enabled without ADS–B.

GAMA and an individual commenter noted the environmental impact of airspace modernization. GAMA encouraged the FAA to provide additional details and quantify the benefit from fuel savings that the FAA expects ADS–B surveillance will provide.

In the proposal's benefit analysis, the FAA quantified the benefits that ADS–B alone will provide over current, recognized OPD procedures. The agency agrees that the efficiency benefits are, in part, conceptual, and with new technologies, conceptual efficiency benefits analysis is the only option. While outside the scope of this rulemaking, as noted by a commenter, the RVSM program offers an example of how airspace redesign and new technological capabilities can result in significant efficiency and operational (fuel savings) gains.

6. Deriving Benefits From Capstone Implementation in Alaska

In the NPRM, the FAA explained that ADS–B has been demonstrated and used in Alaska for terrain and traffic awareness, and that it had a noticeable effect on safety. Several commenters argued that Capstone is an insufficient basis to assume benefits from ADS–B equipage. The commenters noted that Capstone is a strong component of the justification for the system; they added that a major component of Capstone is the addition of terrain information and warnings. Commenters also noted that the flight environment in southeast Alaska is unlike any in the lower 48 states.

The FAA understands that the conditions in Alaska do not translate to the continental United States. While the regulatory impact analysis does not include any benefits from Capstone, the rulemaking action does highlight the potential benefits derived from more accurate and timely positioning information from ADS–B.

7. Regional Airline Benefits

In the NPRM, the FAA quantified the benefits as shown in Table 4.

TABLE 4—ESTIMATED BENEFITS INCLUDED IN THE NPRM REGULATORY EVALUATION

Benefit area	Benefit 2007 M$	Discounted at 3%	Discounted at 7%
Total Benefits	$9,948.5	$5,484.3	$2,657.7
Gulf of Mexico:			
High Altitude Operations	2,067.2	1,104.4	509.9
More Efficient En Route Separation Delay Savings	1,810.6	946.1	421.3
Additional Flights Accommodated Optimal and More Direct Routing	256.6	158.4	88.6
Improved En Route Conflict Probe Performance	3,258.1	1,774.0	840.1
More Efficient Metering Based on Improved TMA Accuracy	1,746.6	944.9	441.1
Increased Ability to Perform Continuous Descent Approaches	2,876.7	1,661.0	866.6

[61] This translates to $840 million at a 7 percent present value or $1.8 billion at a 3 percent present value.

[62] Economic Values For FAA Investment and Regulatory Decisions, A Guide, Final Report Revised Oct. 3, 2007, GRA Incorporated.

RAA expressed concern that regional operators do not have equal access to large airports; therefore, they will not achieve the same benefits as larger air carriers. RAA specifically noted that the FAA has not committed to a measurable reduction in aircraft-to-aircraft separation standards. They believed that without reduced separation standards, the benefits would be localized and would not apply to regional airlines. RAA also noted that regional aircraft typically do not carry life rafts and, therefore, they cannot conduct extended over-water operations. As a result, they will not benefit from more efficient aircraft separation over the Gulf of Mexico.

The FAA agrees that regional operators who cannot operate over the Gulf of Mexico will not attain this separation benefit. However, the FAA did not estimate benefits specifically for regional carriers. The agency expects regional airlines to benefit from ADS–B Out even without reduced aircraft-to-aircraft separation standards. This is because other benefits, including improved en route conflict probe performance, apply to all aircraft in Class A airspace, including regional airlines.

8. General Aviation: High Equipage Costs With Little Benefit

In the proposal, the FAA estimated that the total cost to equip GA aircraft from 2012 through 2035 would range from $1.2 billion to about $4.5 billion with a mid-point average of nearly $2.9 billion.[63] Although the FAA did not specifically estimate GA benefits in the NPRM, the agency now estimates that GA could receive up to $200 million in ADS–B Out benefits.

Numerous commenters, including AOPA and EAA, expressed concern that the proposed rule would require GA operators to add costly equipment to their aircraft, while providing these operators with few benefits. GAMA noted that many of the benefits for GA operators exist with ADS–B In. Several of the commenters noted that GA aircraft do not substantially contribute to delays or congestion in the NAS. They further stated that if ADS–B lessens traffic delays, it will benefit the airlines rather than the GA community. AOPA recommended that the FAA work with key stakeholders to identify a strategy that either removes low-altitude airspace users from the proposal or greatly improves the benefits for them.

The FAA considered three options to resolve the GA cost benefit comments. First, the FAA considered modifying performance requirements to reduce equipage costs. Second, the FAA evaluated options to provide additional benefits to GA operators. Third, the FAA explored tailoring the rule such that fewer GA operators would be affected.

For the first option, the FAA determined that opportunities do exist for reducing the equipage costs for GA operators. In the rule, the FAA bases the performance requirements solely on ATC separation services; whereas in the proposal, the performance requirements were based on ATC separation services and five initial ADS–B In applications. This change eliminated the need for ADS–B antenna diversity because the ATC separation services can operate effectively without it and the ADS–B Out benefits can be achieved. Multiple commenters and the ARC felt that removing antenna diversity would help make the rule cheaper to implement for light general aviation operators.

For the second option, using comments received by the GA community, the FAA has identified opportunities to provide additional benefits to GA operators by expanding ADS–B services throughout the NAS to areas not currently serviced. Thus, outside of this rulemaking effort, the FAA intends to explore the costs and benefits for the following ADS–B enabled service expansions:

(a) Expanding low altitude surveillance coverage, both in areas receiving increased collateral coverage from the initial ADS–B ground station infrastructure and in areas that could benefit from additional ground station coverage.

(b) Providing radar-like terminal ATC services at airports not currently served.

(c) Providing an automated mechanism for the closure of IFR flight plans based on the new technologies ability to detect an aircraft's arrival at its destination airport.

(d) Making enhancements to current search and rescue technology and procedures that will assist rescue personnel in determining the last known location of aircraft that are reported missing.

(e) Providing Flight Service Stations (FSSs) with ADS–B positional display information and assisting in the development of automation systems that will allow for more tailored in flight service functions.

For the third option, the FAA looked at tailoring the ADS–B airspace such that the number of general aviation aircraft needing to equip would be minimized. Specifically the FAA considered limiting the rule to only Class A and B airspace. Although ADS–B surveillance is not as critical to the NexGen goals in lower density airspace, such as Class E airspace above 10,000 feet and Class C airspace, ADS–B equipage for all aircraft in these areas is essential to gaining the overall stated ADS–B benefits, realizing savings associated with radar decommissioning,[64] the expansion of potential future benefits discussed above, and moving towards the NextGen concept of operations. Thus, the airspace subject to this rule remains unchanged.

AA. Revisions To Other Regulations

Several commenters, including ACI–NA, ACSS, ATA, United Airlines, and UPS, recommended changes to other regulations. Specifically, they recommended that the FAA update subpart F of 14 CFR part 25 to include ADS–B requirements. ACI–NA recommended that the FAA amend 14 CFR part 139 to require airport surface vehicles to equip with ADS–B to prevent runway incursions. Airbus recommended that the FAA update advisory circular (AC) 120–86, Aircraft Surveillance Systems and Applications.

This rule only amends the operating regulations in part 91. At this point, the FAA has not identified any ADS–B Out requirements for parts 23, 25, 27, and 29. The FAA will issue the appropriate aircraft installation and operational guidance material consistent with the requirements of this rule upon issuance or shortly thereafter. The FAA is discussing with airports and the Federal Communications Commission whether ADS–B would benefit airport ground vehicles.

III. Regulatory Notices and Analyses

A. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new (or amended) information collection requirement(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB assigned the number 2120–0728 in advance, but has not yet approved the collection. Affected parties do not have to comply with the information collection requirements until the FAA publishes in the **Federal Register** notice of the approval of the control number

[63] The FAA also calculated this midpoint to be $2.1 billion at a 3 percent present value or $1.5 billion at a 7 percent present value.

[64] The costs of radar will be about $1 billion less with ADS–B Out, although the total ground costs of ADS–B Out with the cost to sustain and decommission select radar will exceed the cost of continuing radar without implementing ADS–B.

assigned by OMB for these information requirements. Approval of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

The FAA received comments on the proposed performance requirements for ADS–B Out aircraft equipment. Those comments are discussed in section II, Discussion of the Final Rule, elsewhere in this preamble. However, the agency received no comments specifically on the burden associated with collecting aircraft transmissions from the ADS–B Out equipment required by this rule.

A description of the annual burden is shown below.

Use: This final rule will support the information needs of the FAA by requiring avionics equipment that continuously transmits aircraft information to be received by the FAA, via automation, for use in providing air traffic surveillance services.

Respondents: The average number of aircraft that will be equipped annually for the first 3 years—577. The number of aircraft (general aviation, regional, and majors) that will be equipped by 2035: 247,317.

Frequency: ADS–B equipment will continuously transmit aircraft information in "real time" to FAA ground receivers. The information is collected electronically, without input by a human operator. Old information is overwritten on a continuous basis.

Annual Burden Estimate: Base-case start-up cost for an ADS–B Out-compliant transponder: $4,371.09 million (in 2009 dollars).

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

B. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO SARPs to the maximum extent practicable. ATA, British Airways, and EUROCONTROL recommended that the FAA harmonize this rule with the appropriate ICAO SARPs. Considering that the long-term global capabilities of ADS–B are not yet fully defined, ICAO SARPs will continue to evolve to reflect developing ADS–B applications. In addition, current ICAO SARPs for the 1090 MHz ES and UAT ADS–B links will be updated to reflect harmonized changes to both RTCA and EUROCAE minimum performance standards, as appropriate, for ADS–B Out operations. The FAA has reviewed the existing ICAO requirements [65] as related to ADS–B Out operations and has identified no differences with these regulations. The FAA also will continue to work with the international community to ensure harmonization.

C. Regulatory Impact Analysis, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with a base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. The FAA suggests that readers seeking greater detail read the full regulatory impact analysis, a copy of which has been placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs; (2) is an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will impose an unfunded mandate on the private sector but not on state, local, or tribal governments. These analyses are summarized below.

Regulatory Impact Analysis

The FAA reviewed the following three alternatives for surveillance and found Alternative 2 (the rule) to be the preferred alternative:

1. *Baseline radar*—Maintain the current radar based surveillance system and replace radar facilities when they wear out;
2. *ADS–B*—Aircraft operators equip to meet performance requirements required by the rule and the FAA provides surveillance services based on downlinked aircraft information.
3. *Multilateration*—The FAA provides surveillance using multilateration.

Key Assumptions

- All costs and benefits are denominated in 2009 dollars.
- The final rule will be published in 2010 and have a compliance date of 2020.
- Present value rates are 3% and 7%.
- Period of analysis: 2009–2035.

Benefits of the Final Rule

The benefits of the final rule include the dollar value of savings in fuel, time, net reduction in CO_2 emissions, and the consumer surplus associated with the additional flights accommodated because of the rule. The estimated quantified benefits of the rule range from $6.8 billion ($2.1 billion at 7% present value) to $8.5 billion ($2.7 billion at 7% present value).

Costs of the Final Rule

The estimated incremental costs of the final rule range from a low of $3.3 billion ($2.2 billion at 7% present value) to a high of $7.0 billion ($4.1 billion at 7% present value). These include costs to the government, as well as to the aviation industry and other users of the NAS, to deploy ADS–B, and are incremental to maintaining surveillance via current technology (radar). The aviation industry would begin incurring costs for avionics equipage in 2012 and would incur total costs ranging from $2.5 billion ($1.4 billion at 7% present value) to $6.2 billion ($3.3 billion at 7% present value) with an estimated

[65] ICAO references: Procedures for Air Navigation Services—Air Traffic Management, Doc 4444, Amendment 4, (24/11/05) Procedures for Air Navigation Services—Air Traffic Management; Doc 9694, ICAO Manual of Air Traffic Services Data Link Applications; Annex 2, Rules of the Air; Annex 4, Aeronautical Charts; Annex 6 Part II, Operation of Aircraft; Annex 11, Air Traffic Services; Annex 15, Aeronautical Information Services; Doc 9689, Manual for Determination of Separation Minima; Circular 311, SASP Circular—ADS–B Comparative Assessment; Circular 278, National Plan for CNS/ATM Systems Guidance Material; Annex 10 Vol. IV, Amendment 82, Aeronautical Telecommunications; Doc 9871, Technical Provisions for Mode S Services and Extended Squitter.

midpoint of $4.4 billion ($2.3 billion at 7% present value) from 2012 to 2035.

Regulatory Flexibility Determination and Analysis

Introduction and Purpose of this Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA. Section 603 of the RFA requires agencies to prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. As the FAA Administrator, I certify that this rule will have a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying this FAA determination.

Section 603(b) of the RFA specifies the content of a FRFA.

Each FRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the final rule;
- A description and an estimate of the number of small entities to which the rule will apply;
- A description of the projected reporting, record keeping and other compliance requirements of the final rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the final rule;
- A description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the final rule on small entities.
- A summary of significant issues raised by public comments in response to the initial regulatory flexibility analysis and how the agency resolved those comments.

Reasons Why the Final Rule is Being Promulgated

Public Law 108–176, referred to as "The Century of Aviation Reauthorization Act," was enacted December 12, 2003 (Pub. L. 108–176). This law set forth requirements and objectives for transforming the air transportation system to progress further into the 21st century. Section 709 of this statute required the Secretary of Transportation to establish in the FAA a Joint Planning and Development Office (JPDO) to manage work related to NextGen. Among its statutorily defined responsibilities, the JPDO coordinates the development and use of new technologies to ensure that, when available, they may be used to the fullest potential in aircraft and in the air traffic control system.

The FAA, the National Aeronautics and Space Administration (NASA), and the Departments of Commerce, Defense, and Homeland Security have launched an effort to align their resources to develop and further NextGen. The goals of NextGen, as stated in section 709, that are addressed by this final rule include: (1) Improving the level of safety, security, efficiency, quality, and affordability of the NAS and aviation services; (2) Taking advantage of data from emerging ground- and space-based communications, navigation, and surveillance technologies; (3) Being scalable to accommodate and encourage substantial growth in domestic and international transportation and anticipate and accommodate continuing technology upgrades and advances; and (4) Accommodating a wide range of aircraft operations, including airlines, air taxis, helicopters, GA, and unmanned aerial vehicles.

The JPDO was also charged to create and carry out an integrated plan for NextGen. The NextGen Integrated Plan, transmitted to Congress on December 12, 2004, ensures that the NextGen system meets the air transportation safety, security, mobility, efficiency and capacity needs beyond those currently included in the FAA's Operational Evolution Plan (OEP).

As described in the NextGen Integrated Plan, the current approach to air transportation (*i.e.,* ground based radars tracking congested flyways and passing information among the control centers for the duration of flights) is becoming operationally obsolete. The current system is increasingly inefficient, and despite decreases in air traffic, still subject to significant delays. Resumption of growth will only aggravate congestion and delays, given the capabilities of the present system. The current method of handling air traffic flow will not be able to adapt to the volumes, density, and approach to managing air traffic in the future. The need for significant improvements towards operational efficiency and reduced environmental impacts, as well as resumed growth, will create significant challenges. Moreover, the diversity of aircraft is forecast to grow as the use of unmanned aircraft systems and very light jets are developed for special operations.

The FAA believes that ADS–B technology is a key component in achieving many of the goals set forth in the NextGen Integrated Plan. This final rule is a major step toward strategically "establishing an agile air traffic system that accommodates future requirements and readily responds to shifts in demand from all users," by embracing a new approach to surveillance that can lead to greater and more efficient airspace use. ADS–B technology not only assists in the transition to a system with less dependence on ground infrastructure and facilities, but also creates capabilities for precision and accuracy, which in turn will make the system more operationally and environmentally efficient.

Statement of the Legal Basis and Objectives

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and Use of Airspace, and Subpart III, Section 44701, General Requirements. Under section 40103, the FAA is charged with prescribing regulations on: (1) The flight of aircraft, including regulations on safe altitudes; (2) the navigation, protection, and identification of aircraft; and (3) the safe and efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of

civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This final rule is within the scope of sections 40103 and 44701 because it promulgates aircraft performance requirements to meet advanced surveillance needs that will accommodate projected increases in operations within the NAS. As more aircraft operate within the U.S. airspace, improved surveillance performance is necessary to continue balancing air transportation growth with the agency's mandate for a safe and efficient air transportation system.

Projected Reporting, Record Keeping and Other Requirements

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this final rule to the Office of Management and Budget for its review. See discussion in Section III elsewhere in this preamble.

Overlapping, Duplicative, or Conflicting Federal Rules

The FAA is not aware that the final rule will overlap, duplicate or conflict with existing Federal rules.

Significant Issues Raised by Public Comments to the Initial Regulatory Flexibility Analysis

In the NPRM, the FAA addressed the impact of the proposed rule on small-business part 91, 121, and 135 operators with less than 1,500 employees. The proposal noted that a substantial number of small entities would be significantly affected by the proposed rule.

One individual commented and challenged the assumption that only small businesses directly involved in aviation would be affected. The commenter explained that many businesses use aircraft indirectly in their operations and that higher aircraft equipage costs will affect overall business costs. The commenter believed that one half of all non-turbine GA aircraft are involved in small business activity.

Publicly available data regarding internal company financial statistics for GA operators is limited. Therefore, the FAA estimated the financial impact by obtaining a sample population of GA operators from (1) the U.S. DOT Form 41 filings, (2) World Aviation Directory, and (3) ReferenceUSA. The FAA applied this sample to U.S. Census Bureau data on the Small Business Administration Web site. This was done to develop an estimate of the total number of small businesses affected by the proposed rule.

The FAA agrees that GA operators use airplanes for indirect business use and has determined that this final rule will have a significant impact on a substantial number of small businesses.

Estimated Number of Small Firms Potentially Impacted

Under the RFA, the FAA must determine whether a rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry.

Using the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, the FAA defined companies as small entities if they have fewer than 1,500 employees.

The FAA considered the economic impact on small-business part 91, 121, and 135 operators. Many of the GA aircraft that are operating under part 91 are not for hire or flown for profit, so the FAA does not include these operators in its small business impact analysis.

This final rule will become effective in 2020. Although the FAA forecasts traffic and air carrier fleets to 2040, our forecasts are of a generic nature and do not forecast the number of small entities. These forecasts also do not estimate whether an operator will still be in business or will be a small business entity. Therefore the FAA uses current U.S. operator's revenues and applies the industry-provided costs to determine if this final rule will have a significant impact on a substantial number of small entity operators.

The FAA obtained a list of part 91, 121 and 135 U.S. operators from the FAA Flight Standards Service. Using information provided by the U.S. DOT Form 41 filings, World Aviation Directory, and ReferenceUSA, the FAA eliminated operators that are subsidiary businesses of larger businesses and businesses with more than 1,500 employees from the list of small entities. In many cases, the employment and annual revenue data are not public, so the FAA did not include these companies in its analysis. For the remaining businesses, the FAA obtained company revenue and employment from the above three sources.

The methodology discussed above resulted in a list of 34 U.S. part 91, 121 and 135 operators, with less than 1,500 employees, who operate 341 airplanes. Due to the sparse amount of publicly available data on internal company financial statistics for small entities, it was not feasible to estimate the total population of small entities affected by this final rule. The total population of U.S. part 91, 121 and 135 operators, with less than 1,500 employees, has the potential to be large. We used this sample set of small business operators to develop percentage estimates to apply to the U.S. Census Bureau data to estimate the population.

These 34 U.S. small entity operators are a representative sample. The sample was used to assess the cost impact on the total population of small businesses who operate aircraft affected by this final rulemaking. This representative sample was then applied to the U.S. Census Bureau data on the Small Business Administration's Web site to develop an estimate of the total number of affected small business entities.

The U.S. Census Bureau data lists small entities in the air transportation industry that employ less than 500 employees. Other small businesses may own aircraft and may not be included in the U.S. Census Bureau air transportation industry category. Therefore our estimate of the number of small entities affected by this final rule will likely be understated. The estimate of the total number of affected small entities is developed below.

Cost and Affordability for Small Entities

To assess the cost impact to small business part 91, 121 and 135 operators, the FAA contacted manufacturers, industry associations, and ADS–B equipage providers to estimate ADS–B equipage costs. The FAA requested estimates of airborne installation costs, by aircraft model, for the output parameters listed in the "Equipment Specifications" section of the Regulatory Impact Analysis.

To satisfy the manufacturers' request to keep individual aircraft pricing confidential, the FAA calculated low, baseline, and high range of costs by equipment class. The baseline estimate equals the average of the low and high industry cost estimates. The dollar value ranges consist of a wide variety of avionics within each aircraft group. The aircraft architecture within each equipment group can vary, causing different carriage, labor, and wiring requirements for the installation of ADS–B. Volume discounting, versus single line purchasing, also affects the dollar value ranges. On the low end, the dollar value may represent a software upgrade or original equipment manufacturer (OEM) option change. On the high end, the dollar value may represent a new installation of upgraded

avionic systems necessary to assure accuracy, reliability and safety. The FAA used the estimated baseline dollar value cost by equipment class in determining the impact to small business entities.

The FAA estimated each operator's total compliance cost as follows: Multiplying the baseline dollar value cost (by equipment class) by the number of aircraft each small business operator currently has in its fleet. The FAA summed these costs by equipment class and group. The FAA then measured the economic impact on small entities by dividing the estimated baseline dollar value compliance cost for their fleet by the small entity's annual revenue.

Each equipment group operated by a small entity may have to comply with different requirements in the final rule, depending on the state of the aircraft's avionics. In the "ADS–B Out Equipage Cost Estimate" section of the Regulatory Impact Analysis, the FAA details its methodology to estimate operators' total compliance cost by equipment group.

For small entity operators in the sample population of 34 small aviation entities, the ADS–B cost is estimated to be: (1) Greater than 2% of annual revenues for about 35% of the operators; and (2) greater than 1% of annual revenues for about 54% of the operators. Applying these percentages to the air transportation industry category of the 2006 U.S. Census Bureau data, the ADS–B cost is estimated to be: (1) Greater than 2% of annual revenues for at least 1,015 small entities; and (2) greater than 1% of annual revenues for at least 1,562 small entity operators.

As a result of the above analysis, the FAA has determined that a substantial number of small entities will be significantly affected by the rule. Every small entity that operates an aircraft in the airspace defined by this final rule will be required to install ADS–B out equipage and therefore will be affected by this rulemaking.

Business Closure Analysis

For commercial operators, the ratio of costs to annual revenue shows that 7 of 34 small business air operator firms would have ratios in excess of 5%. Since many of the other commercial small business air operator firms do not make their annual revenue publicly available, it is difficult to assess the financial impact of this final rule on their business. To fully assess whether this final rule could force a small entity into bankruptcy requires more financial information than is publicly available.

In the NPRM, the FAA requested comment and supporting justification, from small entities, to assist the FAA in determining the degree of hardship the final rule will have on these entities. Comments were also requested on feasible alternative methods of compliance. The FAA did not receive any comments specific to this request.

Competitive Analysis

The aviation industry is an extremely competitive industry with slim profit margins. The number of operators who entered the industry and have stopped operations because of mergers, acquisitions, or bankruptcy litters the history of the aviation industry.

The FAA analyzed five years of operating profits for the affected small-entity operators listed above, and was able to determine the operating profit for 18 of the 34 small business entities. The FAA discovered that the average operating profit for 33% of these 18 affected operators was negative. Only four of the 18 affected operators had average annual operating profits that exceeded $10,000,000.

In this competitive industry, cost increases imposed by this regulation will be hard to recover by raising prices, especially by those operators showing an average five-year negative operating profit. Further, large operators may be able to negotiate better pricing from outside firms for inspections and repairs, so small operators may need to raise their prices more than large operators. These factors make it difficult for small operators to recover their compliance costs by raising prices. If small operators cannot recover all the additional costs imposed by this regulation, market shares could shift to the large operators.

Small operators successfully compete in the aviation industry by providing unique services and controlling costs. The extent to which affected small entities operate in niche markets will affect their ability to pass on costs. Currently small operators are much more profitable than established major scheduled carriers. This final rule will offset some of the advantages of lower capital costs of older aircraft.

Overall, in terms of competition, this rulemaking reduces small operators' ability to compete.

Disproportionality Analysis

The disproportionately higher impact of the final rule on the fleets of small operators results in disproportionately higher costs to small operators. Due to the potential of fleet discounts, large operators may be able to negotiate better pricing from outside sources for inspections, installation, and ADS–B hardware purchases.

Based on the percent of potentially affected current airplanes over the analysis period, small U.S. business operators may bear a disproportionate impact from the final rule.

Analysis of Alternatives

Alternative One

The status quo alternative has compliance costs to continue the operation and commissioning of radar sites. The FAA rejected this status quo alternative because it is becoming operationally obsolete to use ground-based radars to track congested airways and pass information among control centers for the duration of flights. The current system is not able to upgrade to the NextGen capabilities, nor accommodate the estimated increases in air traffic, which would result in mounting delays or limitations in service for many areas.

Alternative Two

Alternative Two would employ a technology called multilateration. Multilateration is a separate type of secondary surveillance system that is not radar-based and has limited deployment in the U.S. At a minimum, multilateration requires at least four ground stations to deliver the same volume of coverage and integrity of information as ADS–B, because of the need to "triangulate" the aircraft's position.

Multilateration is a process that determines aircraft position by using the difference in time of arrival of a signal from an aircraft at a series of receivers on the ground. Multilateration meets the need for accurate surveillance and is less costly than ADS–B (however, more costly than radar), but cannot achieve the same level of benefits as ADS–B, such as system capacity and environmental improvements. Multilateration would provide the same benefits as radar, but the FAA estimates that the cost of providing multilateration (including the cost to sustain radar until multilateration is operational), would exceed the cost to continue full radar surveillance.

Alternative Three

Alternative Three would provide relief by having the FAA provide an exemption to small air carriers from all requirements of this rule. This alternative would mean that small air carriers would rely on the status quo ground-based radars to track their flights and pass information among control centers for the duration of the flights.

As discussed previously, ADS–B Out cannot be used effectively as the

primary surveillance system if certain categories of airspace users are subject to separate surveillance systems. The small air carriers operate in the same airspace as the larger carriers and general aviation. Such an exemption would require two primary surveillance systems, which adds the cost of an additional surveillance system without improving the existing benefits. Thus, this alternative is not considered to be acceptable.

Alternative Four

Alternative Four exempts small-piston engine GA operators from the requirements of this final rule. This final rule provides minimal benefits to small-piston engine GA operators, while adding significant costs by mandating these operators to retrofit and equip about 150,000 small piston engine GA airplanes with ADS–B Out. Even though the FAA determined that the percentage of small piston engine GA airplanes operating at the top Operational Evolution Plan 35 airports is less than 5%, the number of GA operations within a 30-nautical-mile radius of these airports is significant. This alternative was not considered acceptable because ADS–B equipage for all aircraft operating in the airspace subject to this rule is essential to gaining the overall stated ADS–B benefits, realizing savings associated with radar decommissioning, and the expansion of potential future benefits.

Alternative Five

This alternative is the final ADS–B rule. ADS–B does not employ different classes of receiving equipment or provide different information based on its location. Therefore, controllers will not have to account for transitions between surveillance solutions as an aircraft moves closer to or farther away from an airport. To address congestion and delay, fuel consumption, emissions, and future demand for air travel without significant delays or denial of service, the FAA found ADS–B to be the most cost-effective solution to maintain a viable air transportation system. ADS–B provides a wider range of services to aircraft users and could enable applications that are not available with multilateration or radar.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same unit costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This rule is not expected to impose significant costs on small governmental jurisdictions such as State, local, or tribal governments. However, the rule will result in an unfunded mandate on the private sector because it will result in expenditures in excess of the $136.1 million annual threshold. The FAA considered two alternatives to the rule, as described above, and four alternatives in the regulatory flexibility analysis described above.

VI. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

VII. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. The FAA did not receive any comments on whether the proposed rule should apply differently to intrastate aviation in Alaska. The FAA has determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

VIII. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a "significant regulatory action" under Executive Order 13211. This is because, while it is a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In fact, adoption of this final rule offers the potential to produce reductions in energy use in the NAS.

X. Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal at *http://www.regulations.gov;*
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the amendment number or docket number of this rulemaking.

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) or you may visit *http://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Incorporation by Reference, Reporting, and recordkeeping requirements.

The Amendment

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

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 2. Amend § 91.1 by revising paragraph (b) to read as follows:

§ 91.1 Applicability.

* * * * *

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States must comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221, § 91.225; §§ 91.303 through 91.319; §§ 91.323 through 91.327; § 91.605; § 91.609; §§ 91.703 through 91.715; and § 91.903.

* * * * *

■ 3. Amend § 91.130 by revising paragraph (d) to read as follows:

§ 91.130 Operations in Class C airspace.

* * * * *

(d) *Equipment requirements.* Unless otherwise authorized by the ATC having jurisdiction over the Class C airspace area, no person may operate an aircraft within a Class C airspace area designated for an airport unless that aircraft is equipped with the applicable equipment specified in § 91.215, and after January 1, 2020, § 91.225.

* * * * *

■ 4. Amend § 91.131 by revising paragraph (d) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(d) *Other equipment requirements.* No person may operate an aircraft in a Class B airspace area unless the aircraft is equipped with—

(1) The applicable operating transponder and automatic altitude reporting equipment specified in § 91.215 (a), except as provided in § 91.215 (e), and

(2) After January 1, 2020, the applicable Automatic Dependent Surveillance-Broadcast Out equipment specified in § 91.225.

■ 5. Amend § 91.135 by revising paragraph (c) to read as follows:

§ 91.135 Operations in Class A airspace.

* * * * *

(c) *Equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within Class A airspace unless that aircraft is equipped with the applicable equipment specified in § 91.215, and after January 1, 2020, § 91.225.

* * * * *

■ 6. Amend § 91.217 by redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (a)(3), redesignating the introductory text as paragraph (a) introductory text, and by adding paragraph (b) to read as follows:

§ 91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.

* * * * *

(b) No person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder or with ADS–B Out equipment unless the pressure altitude reported for ADS–B Out and Mode C/S is derived from the same source for aircraft equipped with both a transponder and ADS–B Out.

■ 7. Add § 91.225 to read as follows:

§ 91.225 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment and use.

(a) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft in Class A airspace unless the aircraft has equipment installed that—

(1) Meets the requirements in TSO–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz); and

(2) Meets the requirements of § 91.227.

(b) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft below 18,000 feet MSL and in airspace described in paragraph (d) of this section unless the aircraft has equipment installed that—

(1) Meets the requirements in—

(i) TSO–C166b; or

(ii) TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz;

(2) Meets the requirements of § 91.227.

(c) Operators with equipment installed with an approved deviation under § 21.618 of this chapter also are in compliance with this section.

(d) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft in the following airspace unless the aircraft has equipment installed that meets the requirements in paragraph (b) of this section:

(1) Class B and Class C airspace areas;

(2) Except as provided for in paragraph (e) of this section, within 30 nautical miles of an airport listed in appendix D, section 1 to this part from the surface upward to 10,000 feet MSL;

(3) Above the ceiling and within the lateral boundaries of a Class B or Class C airspace area designated for an airport upward to 10,000 feet MSL;

(4) Except as provided in paragraph (e) of this section, Class E airspace within the 48 contiguous states and the District of Columbia at and above 10,000 feet MSL, excluding the airspace at and below 2,500 feet above the surface; and

(5) Class E airspace at and above 3,000 feet MSL over the Gulf of Mexico from the coastline of the United States out to 12 nautical miles.

(e) The requirements of paragraph (b) of this section do not apply to any

aircraft that was not originally certificated with an electrical system, or that has not subsequently been certified with such a system installed, including balloons and gliders. These aircraft may conduct operations without ADS–B Out in the airspace specified in paragraphs (d)(2) and (d)(4) of this section. Operations authorized by this section must be conducted—

(1) Outside any Class B or Class C airspace area; and

(2) Below the altitude of the ceiling of a Class B or Class C airspace area designated for an airport, or 10,000 feet MSL, whichever is lower.

(f) Each person operating an aircraft equipped with ADS–B Out must operate this equipment in the transmit mode at all times.

(g) Requests for ATC authorized deviations from the requirements of this section must be made to the ATC facility having jurisdiction over the concerned airspace within the time periods specified as follows:

(1) For operation of an aircraft with an inoperative ADS–B Out, to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made or both, the request may be made at any time.

(2) For operation of an aircraft that is not equipped with ADS–B Out, the request must be made at least 1 hour before the proposed operation.

(h) The standards required in this section are incorporated by reference with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved materials are available for inspection at the FAA's Office of Rulemaking (ARM–1), 800 Independence Avenue, SW., Washington, DC 20590 (telephone 202–267–9677), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* This material is also available from the sources indicated in paragraphs (h)(1) and (h)(2) of this section.

(1) Copies of Technical Standard Order (TSO)–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz) (December 2, 2009) and TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz (December 2, 2009) may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; telephone (301) 322–5377. Copies of TSO –C166B and TSO–C154c are also available on the FAA's Web site, at *http://www.faa.gov/aircraft/air_cert/design_approvals/tso/.* Select the link "Search Technical Standard Orders."

(2) Copies of Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–260B, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), December 2, 2009 (referenced in TSO–C166b) and Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–282B, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), December 2, 2009 (referenced in TSO C–154c) may be obtained from RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133, telephone 202–833–9339. Copies of RTCA DO–260B and RTCA DO–282B are also available on RTCA Inc.'s Web site, at *http://www.rtca.org/onlinecart/allproducts.cfm.*

■ 8. Add § 91.227 to read as follows:

§ 91.227 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment performance requirements.

(a) *Definitions.* For the purposes of this section:

ADS–B Out is a function of an aircraft's onboard avionics that periodically broadcasts the aircraft's state vector (3-dimensional position and 3-dimensional velocity) and other required information as described in this section.

Navigation Accuracy Category for Position (NAC_P) specifies the accuracy of a reported aircraft's position, as defined in TSO–C166b and TSO–C154c.

Navigation Accuracy Category for Velocity (NAC_V) specifies the accuracy of a reported aircraft's velocity, as defined in TSO–C166b and TSO–C154c.

Navigation Integrity Category (NIC) specifies an integrity containment radius around an aircraft's reported position, as defined in TSO–C166b and TSO–C154c.

Position Source refers to the equipment installed onboard an aircraft used to process and provide aircraft position (for example, latitude, longitude, and velocity) information.

Source Integrity Level (SIL) indicates the probability of the reported horizontal position exceeding the containment radius defined by the NIC on a per sample or per hour basis, as defined in TSO–C166b and TSO–C154c.

System Design Assurance (SDA) indicates the probability of an aircraft malfunction causing false or misleading information to be transmitted, as defined in TSO–C166b and TSO–C154c.

Total latency is the total time between when the position is measured and when the position is transmitted by the aircraft.

Uncompensated latency is the time for which the aircraft does not compensate for latency.

(b) *1090 MHz ES and UAT Broadcast Links and Power Requirements*—

(1) Aircraft operating in Class A airspace must have equipment installed that meets the antenna and power output requirements of Class A1, A1S, A2, A3, B1S, or B1 equipment as defined in TSO–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz).

(2) Aircraft operating in airspace designated for ADS–B Out, but outside of Class A airspace, must have equipment installed that meets the antenna and output power requirements of either:

(i) Class A1, A1S, A2, A3, B1S, or B1 as defined in TSO–C166b; or

(ii) Class A1H, A1S, A2, A3, B1S, or B1 equipment as defined in TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance–Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz.

(c) *ADS–B Out Performance Requirements for NAC $_P$, NAC$_V$, NIC, SDA, and SIL*—

(1) For aircraft broadcasting ADS–B Out as required under § 91.225 (a) and (b)—

(i) The aircraft's NAC_P must be less than 0.05 nautical miles;

(ii) The aircraft's NAC_V must be less than 10 meters per second;

(iii) The aircraft's NIC must be less than 0.2 nautical miles;

(iv) The aircraft's SDA must be 2; and

(v) The aircraft's SIL must be 3.

(2) Changes in NAC_P, NAC_V, SDA, and SIL must be broadcast within 10 seconds.

(3) Changes in NIC must be broadcast within 12 seconds.

(d) *Minimum Broadcast Message Element Set for ADS–B Out.* Each aircraft must broadcast the following

information, as defined in TSO–C166b or TSO–C154c. The pilot must enter information for message elements listed in paragraphs (d)(7) through (d)(10) of this section during the appropriate phase of flight.

(1) The length and width of the aircraft;

(2) An indication of the aircraft's latitude and longitude;

(3) An indication of the aircraft's barometric pressure altitude;

(4) An indication of the aircraft's velocity;

(5) An indication if TCAS II or ACAS is installed and operating in a mode that can generate resolution advisory alerts;

(6) If an operable TCAS II or ACAS is installed, an indication if a resolution advisory is in effect;

(7) An indication of the Mode 3/A transponder code specified by ATC;

(8) An indication of the aircraft's call sign that is submitted on the flight plan, or the aircraft's registration number, except when the pilot has not filed a flight plan, has not requested ATC services, and is using a TSO–C154c self-assigned temporary 24-bit address;

(9) An indication if the flightcrew has identified an emergency, radio communication failure, or unlawful interference;

(10) An indication of the aircraft's "IDENT" to ATC;

(11) An indication of the aircraft assigned ICAO 24-bit address, except when the pilot has not filed a flight plan, has not requested ATC services, and is using a TSO–C154c self-assigned temporary 24-bit address;

(12) An indication of the aircraft's emitter category;

(13) An indication of whether an ADS–B In capability is installed;

(14) An indication of the aircraft's geometric altitude;

(15) An indication of the Navigation Accuracy Category for Position (NAC_P);

(16) An indication of the Navigation Accuracy Category for Velocity (NAC_V);

(17) An indication of the Navigation Integrity Category (NIC);

(18) An indication of the System Design Assurance (SDA); and

(19) An indication of the Source Integrity Level (SIL).

(e) *ADS–B Latency Requirements*—

(1) The aircraft must transmit its geometric position no later than 2.0 seconds from the time of measurement of the position to the time of transmission.

(2) Within the 2.0 total latency allocation, a maximum of 0.6 seconds can be uncompensated latency. The aircraft must compensate for any latency above 0.6 seconds up to the maximum 2.0 seconds total by extrapolating the geometric position to the time of message transmission.

(3) The aircraft must transmit its position and velocity at least once per second while airborne or while moving on the airport surface.

(4) The aircraft must transmit its position at least once every 5 seconds while stationary on the airport surface.

(f) *Equipment with an approved deviation.* Operators with equipment installed with an approved deviation under § 21.618 of this chapter also are in compliance with this section.

(g) *Incorporation by Reference.* The standards required in this section are incorporated by reference with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved materials are available for inspection at the FAA's Office of Rulemaking (ARM–1), 800 Independence Avenue, SW., Washington, DC 20590 (telephone 202–267–9677), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* This material is also available from the sources indicated in paragraphs (g)(1) and (g)(2) of this section.

(1) Copies of Technical Standard Order (TSO)–C166b, Extended Squitter Automatic Dependent Surveillance–Broadcast (ADS–B) and Traffic Information Service–Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz) (December 2, 2009) and TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance–Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz (December 2, 2009) may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; telephone (301) 322–5377. Copies of TSO –C166B and TSO–C154c are also available on the FAA's Web site, at *http://www.faa.gov/aircraft/air_cert/design_approvals/tso/.* Select the link "Search Technical Standard Orders."

(2) Copies of Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–260B, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), December 2, 2009 (referenced in TSO–C166b) and Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–282B, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), December 2, 2009 (referenced in TSO C–154c) may be obtained from RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133, telephone 202–833–9339. Copies of RTCA DO–260B and RTCA DO–282B are also available on RTCA Inc.'s Web site, at *http://www.rtca.org/onlinecart/allproducts.cfm.*

9. Amend appendix D to part 91 by revising section 1 introductory text to read as follows:

APPENDIX D TO PART 91—AIRPORTS/LOCATIONS: SPECIAL OPERATING RESTRICTIONS

Section 1. Locations at which the requirements of § 91.215(b)(2) and § 91.225(d)(2) apply. The requirements of §§ 91.215(b)(2) and 91.225(d)(2) apply below 10,000 feet above the surface within a 30-nautical-mile radius of each location in the following list.

* * * * *

Issued in Washington, DC, on May 21, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–12645 Filed 5–27–10; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
May 28, 2010

Part IV

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of Navy (DON), Office of Naval Research (ONR); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of Navy (DON), Office of Naval Research (ONR)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), (DoD)

ACTION: Notice of proposal to adopt a demonstration project plan and additional flexibilities.

SUMMARY: The Office of Naval Research (ONR) proposes to adopt the Naval Research Laboratory (NRL) Personnel Management Demonstration Project with modifications and one flexibility from the U.S. Army Aviation and Missile Research, Development and Engineering Center (AMRDEC). The majority of flexibilities and administrative procedures are expected to be adopted without changes. However, modifications are made when necessary to address ONR's specific organizational, workforce, and approval needs; technical modifications to conform to changes in the law and governing Office of Personnel Management (OPM) regulations, which are not being waived, that were effected after the publication of the NRL personnel demonstration project plan; and changes in response to comments received during the 30-day comment period.

DATES: ONR's adoption proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before June 28, 2010.

ADDRESSES: Send comments on or before the comment due date by mail to Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144; by fax to (703) 696–5462; or by e-mail to *Betty.Duffield@cpms.osd.mil.*

FOR FURTHER INFORMATION CONTACT: Office of Naval Research: Ms. Margaret J. Mitchell, Director, Human Resources Office, Office of Naval Research, 875 North Randolph Street, Code 01HR, Arlington, VA 22203; *Margaret.J.Mitchell@navy.mil.*

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law 103–337, as amended (10 U.S.C. 2358 note) by section 1109 of NDAA FY 2000, Public Law 106–65, and section 1114 of NDAA FY 2001, Public Law 106–398, authorizes the Secretary of Defense (SECDEF) to conduct personnel management demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). Section 1107 of NDAA FY 2008, Public Law 110–181, as amended by section 1109 of NDAA FY 2009, Public Law 110–417, requires the SECDEF to execute a process and plan to employ the personnel management demonstration project authorities granted to the Office of Personnel Management under title 5 United States Code (U.S.C.) section 4703 at the STRLs previously enumerated in 5 U.S.C. 9902(c)(2), and now redesignated in section 1105 of NDAA FY 2010, Public Law 111–84, 123 Stat. 2486, and 73 FR 73248, to enhance the performance of the missions of the laboratories. Section 1107 of Public Law 110–181 further authorizes in subsection 1107(c) that any flexibility available to any demonstration laboratory shall be available for use at any other laboratory as previously enumerated in title 5 U.S.C. 9902(c)(2). The Office of Naval Research (ONR) is listed as one of the previously designated 5 U.S.C. 9902(c)(2) STRLs.

1. Background

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in the civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory department heads and/or directors.

This demonstration project involves: (1) Streamlined delegated examining; (2) noncitizen hiring; (3) expanded detail authority; (4) extended probationary period for newly hired employees; (5) expanded temporary promotion; (6) voluntary emeritus program; (7) paybanding; (8) contribution-based compensation system; (9) performance-based reduction-in-pay or removal actions; and (10) reduction-in-force (RIF) procedures.

2. Overview

DoD published notice in 73 FR 73248, December 2, 2008, that pursuant to subsection 1107(c) of Public Law 110–181, the three STRLs listed in 73 FR 73248 not having personnel demonstration projects at that time may adopt the flexibilities of the other laboratories previously listed in subsection 9902(c)(2) and now redesignated in section 1105 of Public Law 111–84. ONR is one of the three STRLs specified in this provision.

Accordingly, ONR intends to build its demonstration project using flexibilities adopted from existing STRL demonstration projects (specifically NRL and AMRDEC). Final plans for the NRL and AMRDEC personnel management demonstration projects were published in the **Federal Register** as follows:

- *Department of the Navy:* NRL—64 FR 33970, June 24, 1999. No amendments have been published; and
- *Department of the Army:* AMRDEC—62 FR 34876 and 62 FR 34906, June 27, 1997; and amendments and/or corrections to final plans published—64 FR 11074, March 8, 1999; 64 FR 12216, March 11, 1999; 65 FR 53142, August 31, 2000; and 67 FR 5716, February 6, 2002.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** notice shall be available for use by the STRLs previously enumerated in 5 U.S.C. 9902(c)(2), now redesignated in section 1105 of Public Law 111–84, if they wish to adopt them in accordance with DoD Instruction 1400.37; 73 FR 73248 to 73252; and after the fulfilling of any collective bargaining obligations.

Dated: May 21, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

This project adopts with some modifications the STRL personnel management demonstration project designed by NRL and an additional flexibility from the AMRDEC personnel management demonstration project. The modified design of the demonstration project described herein was developed by ONR with the participation of and review by the DON, the DoD, and incorporation of the knowledge and design of other STRL demonstration projects.

The ONR coordinates, executes, and promotes the science and technology programs of the United States Navy and Marine Corps. ONR's directorates balance a robust science and technology portfolio, allocating funds to meet the warfighter's requirements, focusing efforts on all three major phases of development funding: basic research, applied research, and advanced technology development. ONR's six science and technology departments coordinate and execute research in the areas of:

1. Expeditionary Maneuver Warfare and Combating Terrorism

2. Command, Control, Communications, Intelligence, Surveillance, and Reconnaissance
3. Ocean Battlespace Sensing
4. Sea Warfare and Weapons
5. Warfighter Performance
6. Naval Air Warfare and Weapons

In order to sustain these unique capabilities, ONR must be able to hire, retain, and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by accomplished business management and administrative professionals as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the ONR workforce through improvements in the efficiency and effectiveness of the human resource system. The project flexibilities will strive to achieve the best workforce for the ONR mission, adjust the workforce for change, and improve organizational efficiency. The results of the project will be evaluated within five years of implementation

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the ODUSD(CPP). The provisions of DoDI 1400.37, are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Current System

The current Civil Service GS system has existed in essentially the same form since the 1920's. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work or to changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation, and geographic location.

The need to change the current hiring system is essential as ONR must be able to recruit and retain scientific, engineering, acquisition support and other professionals, and skilled technicians. ONR must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees.

Finally, current limitations on training, retraining, and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

C. Waivers Required

ONR proposes changes in the following broad areas to address its problems in human resources management: Accessions and internal placements, sustainment, and separations. Appendix B lists the laws, rules, and regulations requiring waivers to enable ONR to implement the proposed systems. All personnel laws, rules, and regulations not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained.

D. Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy "China Lake" and the National Institute of Standards and Technology (NIST) demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the ONR workforce will facilitate:

(1) Sustainment of ONR's quality scientific and business management workforces in today's competitive environment;

(2) Improved employee satisfaction with pay setting and adjustment, recognition, and career advancement opportunities;

(3) Human Resources (HR) flexibilities needed to staff and shape a quality workforce of the next 10–20 years;

(4) Increased retention of high-level contributors; and

(5) Simpler and more cost effective HR management processes.

An evaluation model was developed for the Director, Defense, Research and Engineering (DDR&E) in conjunction with STRL service representatives and the OPM. The model will measure the effectiveness of this demonstration project, as modified in this plan, and will be used to measure the results of specific personnel system changes.

E. Participating Organizations and Employees

ONR is comprised of the ONR Headquarters in Arlington, Virginia, and ONR employees geographically dispersed at the locations shown in Figure 1. It should be noted that some sites currently have fewer than ten people and that the sites may change should ONR reorganize or realign. Successor organizations will continue coverage in the demonstration project.

The demonstration project will cover approximately 450 ONR civilian employees under title 5, U.S.C. in the occupations listed in Appendix D. The project plan does not cover members of the Senior Executive Service (SES), Senior Level (SL), Scientific and Professional (ST), expert and consultant employees (EH), or Administratively Determined (AD) pay plans. However, SES, SL, and ST employees, after leaving Federal government service, may participate in the Voluntary Emeritus Program. There are no labor unions representing ONR employees.

Figure 1. Location of Covered Employees (as of January 2010)

Location	Number of Employees
Arlington, VA	381
Atlanta, GA	15
Boston, MA	14
Chicago, IL	12
San Diego, CA	13
Seattle, WA	12
Lexington Park, MD	1
Durham, NC	1
Los Alamos, NM	1
Niskayuna, NY	1
Bristol, RI	1
Tokyo, Japan	8
London, United Kingdom	6
Santiago, Chile	0

F. Project Design

In response to the initial authority granted by Congress to develop a demonstration project, ONR chartered a design team to develop the project plan. The team was led by a senior ONR manager from outside the Human Resources Office (HRO) and was responsible for developing project proposals. The team was composed of 20 employees of different grade levels and in different occupations. There was a mix of managers, supervisors, and non-supervisors from offices throughout ONR. The team had the assistance of HR personnel from ONR and from NRL. It also received information and advice from OPM, the Office of the DUSD (CPP), and a number of organizations with on-going demonstration projects. Information and suggestions were solicited from ONR employees and managers through interviews, briefings, small-group meetings, and a suggestion program established specifically for the design effort. This plan was submitted to DUSD (CPP) in 2001. Work on this plan was postponed pending the outcome of several Departmental HR initiatives addressing new personnel systems.

Following enactment of Public Law 110–181, ONR undertook an effort to review and resubmit the demonstration project plan. Upon extensive review and discussion with internal and external stakeholders, ONR leadership decided to adopt existing flexibilities according to subsection 1107(c) of Public Law 110–181, 73 FR 73248, and DoDI 1400.37. Specifically, ONR proposes to adopt the NRL demonstration project plus an additional flexibility from the AMRDEC demonstration project. Appendix A summarizes the modifications proposed for each of the adopted project flexibilities and administrative procedures. Modifications to existing flexibilities are made when necessary to address ONR's specific organizational, workforce, and approval needs and technical modifications to conform to changes in the law and governing OPM regulations, which are not being waived, that were effected after the publication of the NRL personnel demonstration project plan. Further changes to the project plan may be made in response to comments received during the 30-day comment period following publication of this notice.

III. Accessions and Internal Placements

A. Hiring Authority

1. Background

Private industry and academia are the principal recruiting sources for scientists and engineers at ONR. It is extremely difficult to make timely offers of employment to hard-to-find scientists and engineers. Even when a candidate is identified, he or she often finds another job opportunity before the lengthy recruitment process can be completed.

2. Delegated Examining

a. Competitive service positions within the ONR Demonstration Project will be filled through Merit Staffing or under Delegated Examining.

b. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and nonpreference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method using the application control number will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

B. Legal Authority

For actions taken under the auspices of the ONR Demonstration Project, the legal authority, Public Law 103–337, will be used. For all other actions, ONR will continue to use the nature of action codes and legal authority codes prescribed by OPM, DoD, or DON.

C. Determining Employee and Applicant Qualifications

Figure 2 displays the minimum General Schedule (GS) qualifications requirements for each career path and pay band level. Special DON or DoD requirements not covered by the OPM Qualification Standards Operating Manual for GS Positions, such as

Defense Acquisition Workforce Improvement Act (DAWIA) qualification requirements for acquisition positions, physical performance requirements for sea duty, work on board aircraft, etc., must be met.

Minimum Qualifications Requirements

Level	Minimum Qualifications Requirement Equivalent
S&E Professional	
I	GS-1
II	GS-5
III	GS-11
IV	GS-14
V	Appropriate Experience
Administrative Specialist and Professional	
I	GS-1
II	GS-5
III	GS-11
IV	GS-13
V	GS-14
Administrative Support	
I	GS-1
II	GS-5
III	GS-8

Figure 2. Minimum Qualifications Requirements

D. Noncitizen Hiring

Where Executive Orders or other regulations limit hiring noncitizens, ONR will have the authority to approve the hiring of noncitizens into competitive service positions when qualified U.S. citizens are not available. Under the demonstration project, as with the current system, a noncitizen may be appointed only if it has been determined there are no qualified U.S. citizens. In order to make this determination, the position will be advertised extensively throughout the nation using paid advertisements in major newspapers or scientific journals, etc., as well as the "normal" recruiting methods. If a noncitizen is the only qualified candidate for the position, the candidate may be appointed. The selection is subject to approval by the Department Head or Director of the hiring organization. The demonstration project constitutes a delegated examining agreement from OPM for the purposes of 5 CFR 213.3102(bb).

E. Expanded Detail Authority

Under the demonstration project, ONR's approving manager would have the authority:

(1) To effect details up to one year to demonstration project positions without the current 120-day renewal requirement; and

(2) To effect details to a higher level position in the demonstration project up to one year within a 24-month period without competition.

Details beyond the one-year require the approval of the Chief of Naval Research or designee and are not subject to the 120-day renewal requirement.

F. Extended Probationary Period

All current laws and regulations for the current probationary period are retained except that nonstatus candidates hired under the demonstration project in occupations where the nature of the work requires the manager to have more than one year to assess the employee's job performance will serve a three-year probationary period. Employees with veterans' preference will maintain their rights under current law and regulation.

G. Definitions

1. Basic Pay

The total amount of pay received at the rate fixed through CCS adjustment for the position held by an employee including any merit increase but before any deductions and exclusive of additional pay of any other kind.

2. Maintained Pay

An employee may be entitled to maintain his or her rate of basic pay if that rate exceeds the maximum rate of basic pay for his or her pay band as a result of certain personnel actions (as described in this plan). An employee's initial maintained pay rate is equal to the lesser of (1) the basic pay held by the employee at the time an action is taken which entitles the employee to maintain his or her pay or (2) 150 percent of the maximum rate of basic pay of the pay band to which assigned. The employee is entitled to maintained pay for 2 years or until the employee's basic pay is equal to or more than the employee's maintained pay, whichever occurs first. Exceptions to the 2-year limit include employees on grade and pay retention "grandfathered" in upon initial conversion into the demonstration project, former special rate employees receiving maintained pay as a result of conversion into the project, and employees placed through

the priority placement programs. Employees will receive half of the across-the-board GS percentage increase in basic pay and the full locality pay increase while on maintained pay. Upon termination of maintained pay, the employee's basic pay will be adjusted according to the CCS appraisal process. If the employee's basic pay exceeds the maximum basic pay of his or her pay band upon expiration of the 2-year period, the employee's pay will not be reduced; the employee will be in the overcompensated range of basic pay category for CCS pay increase purposes, *see* Figure 9.

Maintained pay shall cease to apply to an employee who: (1) Has a break in service of 1 workday or more; or (2) is demoted for personal cause or at the employee's request. The employee's maintained rate of pay is basic pay for purposes of locality pay (locality pay is basic pay for purposes of retirement, life insurance, premium pay, severance pay, advances in pay, workers' compensation, and lump-sum payments for annual leave but not for computing promotion increases). Employees promoted while on maintained pay may have their basic pay (excluding locality pay) set up to 20 percent greater than the maximum basic pay for their current pay band or retain their "maintained pay," whichever is greater.

3. Promotion

The movement of an employee to a higher pay band within the same career track or to a different career track and pay band in which the new pay band has a higher maximum basic salary rate than the pay band from which the employee is leaving.

4. Reassignment

The movement of an employee from one position to another position within the same pay band in the same career track or to a position in another career track and pay band in which the new pay band has the same maximum basic salary rate as the pay band from which the employee is leaving.

5. Change to Lower Pay Band

The movement of an employee to a lower pay band within the same career track or to a different career track and pay band in which the new pay band has a lower maximum basic salary range than the pay band from which the employee is leaving.

6. Pay Adjustment

Any increase or decrease in an employee's rate of basic pay where there is no change in the employee's position. Termination of maintained pay is also a pay adjustment.

7. Detail

The temporary assignment of an employee to a different demonstration project position for a specified period when the employee is expected to return to his or her regular duties at the end of the assignment. (An employee who is on detail is considered for pay and strength purposes to be permanently occupying his or her regular position.)

8. Highest Previous Rate

ONR will establish maximum payable rate rules that parallel the rules in 5 CFR 531.202 and 531.203(c) and (d).

9. Approving Manager

Managers at the directorate, division head, division superintendent, or directorate-level staff offices who have budget allocation/execution; position management; position classification; recruitment; and staffing authorities for their organization.

H. Pay Setting Determinations Outside the CCS

1. External New Hires

a. This includes reinstatements. Initial basic pay for new appointees into the demonstration project may be set at any point within the basic pay range for the career track, occupation, and pay band to which appointed that is consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be consideration of education, training, experience, scarcity of qualified applicants, labor market considerations, programmatic urgency, or any combination thereof which is pertinent to the position to which appointed. Highest previous rate may be used to set the pay of new appointees into the demonstration project. (The approving manager authorizes the basic pay.)

b. Transfers from within DoD and other Federal agencies will have their pay set using pay setting policy for internal actions based on the type of pay action.

c. A recruitment or relocation bonus may be paid using the same provisions available for GS employees under 5 U.S.C. 5753. Employees placed through the DoD Priority Placement Program (PPP), the DON Reemployment Priority List (RPL), or the Federal Interagency Career Transition Assistance Plan are entitled to the last earned rate if they have been separated.

2. Internal Actions

These actions cover employees within the demonstration project, including demonstration project employees who apply and are selected for a position within the project.

a. Promotion.

When an employee is promoted, the basic pay after promotion may be up to 20 percent greater than the employee's current basic pay. However, if the minimum rate of the new pay band is more than 20 percent greater than the employee's current basic pay, then the minimum rate of the new pay band is the new basic pay. The employee's basic pay may not exceed the basic pay range of the new pay band. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.) **Note:** Most target pay band promotions will be accomplished through the CCS appraisal and pay adjustment process (see section IV.C.8).

b. Pay Adjustment (Voluntary Change to Lower Pay) or Change to Lower Pay Band (except RIF).

When an employee accepts a voluntary change to lower pay or lower pay band, basic pay may be set at any point within the pay band to which appointed, except that the new basic pay will not exceed the employee's current basic pay or the maximum basic pay of the pay band to which assigned, whichever is lower. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay.)

(1) Examples of Voluntary Change to a Lower Pay Band. An employee in an Administrative Specialist and Professional Career Track, Pay Band III, position may decide he or she would prefer a Pay Band II position in the Administrative Support Career Track because it offers a different work schedule or duty station. An employee in Level IV of the Administrative Specialist and Professional Career Track who has a family member with a serious medical problem and wants to be relieved of supervisory responsibilities may request a change to Pay Band III.

(2) Example of Pay Adjustment (Voluntary Change to Lower Pay) or change to a Lower Pay Band. An employee may accept a change to lower pay or to a lower pay band through a settlement agreement. A Research Physicist, who is in Level III and is being paid near the top of Level III, is rated unacceptable in the critical element Research and Development (R&D) Business Management. In settlement of a proposal to remove this employee for unacceptable performance, an agreement is reached which reduces

the employee's pay to a rate near the beginning of Level III.

c. Pay Adjustment (Involuntary Change to Lower Pay) or Change to Lower Pay Band Due to Adverse or Performance-based Action.

When an employee is changed to a lower pay band, or receives a change to lower pay due to an adverse or performance-based action, the employee's basic pay will be reduced by at least 6 percent, but will be set at a rate within the rate range for the pay band to which assigned. (The approving manager authorizes the basic pay.) Such employees will be afforded appeal rights as provided by 5 U.S.C. 4303 or 7512, as appropriate.

d. Involuntary Change to Lower Pay Band or Reassignment to a Career Track with a Lower Salary Range, Other than Adverse or Performance-based.

If the change is not a result of an adverse or performance-based action, the basic pay will be preserved to the extent possible within the basic pay range of the new pay band. If the pay cannot be set within the rate range of the new pay band, it will be set at the maximum rate of the new pay band and the employee's pay will be reduced. If the change is a result of a position reclassification resulting in the employee being assigned to a lower pay band or reassigned to a different career track with a lower maximum basic salary range, the employee is entitled to maintained pay if the employee's current salary exceeds the maximum rate for the new band.

e. RIF Action (including employees who are offered and accept a vacancy at a lower pay band or in a different career track).

The employee is entitled to maintained pay, if the employee's current salary exceeds the maximum rate for the new band.

f. Upward Mobility or Other Formal Training Program Selection.

The employee is entitled to maintained pay, if the employee's current salary exceeds the maximum rate for the new band.

g. Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Pay Band or to a Career Track with Lower Basic Pay Potential than Held Prior to the Injury.

The employee is entitled indefinitely to the basic pay held prior to the injury and will receive full general and locality pay increases. If upon reemployment, an employee was not given the higher basic pay (basic pay received at the time of the injury), any retirement annuity or severance pay computation would be based on his or her lower basic pay (salary based on placement in a lower pay band). Even though the Department of Labor (DOL) would make up the difference between the lower basic pay and the higher basic pay earned at the time of injury, the DOL portion is not considered in the retirement or severance pay computation.

h. Restoration to Duty.

Employees returning from the uniformed services following an absence of more than 30 days must be restored as soon as possible after making application, but not later than 30 days after receipt of application. If the employee's uniformed service was for less than 91 days the employee will be placed in the position that he or she would have attained if continuously employed. If not qualified for this position, employee will be placed in the position he or she left. For service of 91 days or more, the employee may also be placed in a position of like seniority, status, and pay. In the case of an employee with a disability incurred in or aggravated during uniformed service, and after reasonable efforts to accommodate the disability is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation.

i. Reassignment.

The basic pay normally remains the same. Highest previous rate may be applied, if appropriate. (The approving manager authorizes the basic pay).

j. Student Educational Employment Program.

The Student Educational Employment Program consists of two components: The Student Temporary Employment Program and the Student Career Experience Program. Initial basic pay for students in either of these programs may be set at any point within the basic pay range for the career track, occupation, and pay band to which appointed. Basic pay may be increased upon return to duty (RTD) or conversion to temporary appointment, in consideration of the student's additional education and experience at the time of the action. Students who work under a parallel work study program may have their basic pay increased in consideration of additional education and/or experience. Basic pay for students may be increased based on their CCS appraisal. (The approving manager authorizes the basic pay).

k. Hazard Pay or Pay for Duty Involving Physical Hardship.

Employees under the demonstration project will be paid hazardous duty pay under the provisions of 5 CFR part 550, subpart I.

I. Priority Placement Program (PPP)

Current PPP procedures apply to new hires and internal actions.

J. Expanded Temporary Promotion

Current regulations require that temporary promotions for more than 120 days to a higher level position than previously held must be made competitively. Under the demonstration project, ONR would be able to effect temporary promotions of not more than one year within a 24-month period without competition to positions within the demonstration project.

K. Voluntary Emeritus Program

The ONR Voluntary Emeritus Program is similar to the Voluntary Emeritus Program presented in the AMRDEC demonstration project FRN, section III.D.5., page 34890. Under the ONR program, the CNR will have the authority to offer retired or separated individuals voluntary assignments at ONR. This authority will include individuals who have retired or separated from Federal service. Voluntary Emeritus Program assignments are not considered "employment" by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Voluntary Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Voluntary service will not be used to replace any employee or interfere with career opportunities of employees.

To be accepted into the emeritus program, a volunteer must be recommended by ONR managers to the CNR or designee. Everyone who applies is not entitled to a voluntary assignment. The approving official must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or

civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the CNR or designee, and the HRO Director. The agreement will be reviewed by the local Legal Office for ethics determinations under the Joint Ethics Regulation. *The agreement must be finalized before the assumption of duties and shall include:*

(1) A statement that the voluntary assignment does not constitute an appointment in the civil service, is without compensation, and any and all claims against the Government (because of the voluntary assignment) are waived by the volunteer;

(2) a statement that the volunteer will be considered a Federal employee for the purpose of injury compensation;

(3) volunteer's work schedule;

(4) length of agreement (defined by length of project or time defined by weeks, months, or years);

(5) support provided by the ONR (travel, administrative, office space, supplies);

(6) a one-page Statement of Duties and Experience;

(7) a provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program;

(8) a provision allowing either party to void the agreement with 10 working days written notice; and

(9) the level of security access required (any security clearance required by the assignment will be managed by the ONR while the volunteer is a member of the Voluntary Emeritus Program).

IV. Sustainment

A. Position Classification

The position classification changes are intended to streamline and simplify the process of identifying and categorizing the work done at ONR. ONR will establish an Integrated Pay Schedule (IPS) for all demonstration project positions in covered occupations. The IPS will replace the current GS and extend the pay schedule equivalent to the basic pay range of the Government's Senior Level Pay System to accommodate positions classified above the GS–15 level under a proposed new STRL demonstration project initiative being developed by DoD.

1. Career Tracks and Pay Bands

Within the IPS, occupations with similar characteristics will be grouped together into four career tracks. Each career track consists of a number of pay bands, representing the phases of career progression that are typical for the respective career track. The pay bands within each career track are shown in Figure 3, along with their GS equivalents. The equivalents are based on the levels of responsibility as defined in 5 U.S.C. 5104 and not on current basic pay schedules. Appendix C provides definitions for each of the career tracks and the pay bands within them. The career tracks and pay bands were developed based upon administrative, organizational, and position management considerations at ONR. They are designed to enhance pay equity and enable a more seamless career progression to the target pay band for an individual position or category of positions. This combination of career tracks and pay bands allows for competitive recruitment of quality candidates at differing rates of compensation within the appropriate career track, occupation, and pay band. It will also facilitate movement and placement based upon contribution, in conjunction with the CCS described in paragraph IV.C. Other benefits of this arrangement include a dual career track for S&E employees and greater competitiveness with academia and private industry for recruitment. Appendix D identifies the occupational series currently within each of the three career tracks.

S&E Professional	Band I				Band II						Band III*			Band IV		Band V
GS Equivalent	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	>15
Administrative Specialist and Professional	Band I				Band II						Band III		Band IV	Band V		
GS Equivalent	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Administrative Support	Band I				Band II			Band III								
GS Equivalent	1	2	3	4	5	6	7	8	9	10						

Figure 3. Career Tracks and Career Levels with Equivalents

a. Target Pay Band.

Each position will have a designated target pay band under the demonstration project. This target pay band will be identified as the pay band to which an incumbent may be advanced without further competition within a career track. These target pay bands will be based upon present full performance levels. Target pay bands may vary based upon occupation or career track. Employees' basic pay will be capped at the target pay band until other appropriate conditions (*e.g.,* competition, position management approval, increase in or acquisition of higher level duties, and approval of an accretion of duties promotion) have been met, and the employee has been promoted into the next higher level.

b. Occupational Series and Position Titling.

Presently, ONR positions are identified by occupational groups and series of classes in accordance with OPM position classification standards. Under the demonstration project, ONR will continue to use occupational series designators consistent with those currently authorized by OPM to identify positions. This will facilitate related personnel management requirements, such as movement into and out of the

demonstration project. Other occupational series may be added or deleted as needed to support the demonstration project. Interdisciplinary positions will be accommodated within the system based upon the qualifications of the individual hired.

Titling practices consistent with those established by OPM classification standards will be used to determine the official title. Such practice will facilitate other personnel management requirements, such as the following: Movement into and out of the demonstration project, reduction in force, external reporting requirements, and recruitment. CCS pay band descriptors and Requirements Document (RD) (see paragraph IV.A.2) information will be used for specific career track, pay band, and titling determinations.

c. Classification Standards.

Under the proposed demonstration project, the number of classification standards would be reduced to three (*see* Figure 3). Each standard would align with one of the three career tracks and would cover all positions within that career track. Each career track has two or three elements that are considered in both classifying a position and in judging an individual's contributions for pay setting purposes. Each element has generic descriptors for every pay band. These descriptors explain the type of work, degree of responsibility, and scope of contributions that need to be ultimately accomplished to reach the highest basic pay potential within each pay band. (*See* Appendix E.) To classify a position, a manager would select the pay band which is most indicative overall of the type of duties to be performed and the contributions needed. For example: A supervisor needs a secretarial position for a branch. In reading the elements and descriptors for the Administrative Support Career Track, the supervisor determines that the Level II descriptors illustrate the type of work and contributions needed. Therefore, the position would be classified as a Secretary, Level II.

d. Fair Labor Standards Act (FLSA).

Demonstration project positions will be covered under the FLSA and 5 CFR part 551. Determination of their status (exempt or nonexempt) will be made based on the criteria contained in 5 CFR part 551. The status of each new position under the demonstration project will be determined using computer assisted analysis as part of an automated process for preparing the RD. Those positions for which the computer is unable to make the final FLSA determination will be "flagged" for referral to a human resources specialist for determination.

(1) Guidelines for FLSA Determinations.

i. Supervisory Information: Provided through an automated system in a checklist format; results of this checklist have an impact on FLSA determination.

ii. FLSA Information: Provided through an automated system in a checklist format; results of this checklist in conjunction with the supervisory information provide a basis for the FLSA determination.

iii. If required, the section entitled "Purpose of Position" will be used to assist in FLSA determination.

iv. RD's requiring additional review before being finalized will be forwarded to a human resources specialist to review the FLSA determination.

(2) Nonsupervisory and Leader Positions.

Figure 4 shows the exempt or nonexempt status applicable to nonsupervisory and leader positions in the indicated career track and pay band. In those cases where "Review" is indicated, the FLSA status must be determined based on the specific duties and responsibilities of the subject position.

FLSA Status of Nonsupervisory and Leader Positions*

	Pay Band I	Pay Band II	Pay Band III	Pay Band IV	Pay Band V
S&E Professional	FLSA-covered	Review	Exempt	Exempt	Exempt
Administrative Specialist and Professional	FLSA-covered	Review	Exempt	Exempt	Exempt
Administrative Support	FLSA-covered	FLSA-covered			

*FLSA exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the executive, administrative, or professional criteria for exemption. As a general rule, the FLSA status can generally be matched to the occupational families and pay bands found in Table 3. Exceptions to these guidelines include supervisors/managers who meet the definition outlined in the OPM OS Supervisory Guide. The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case-by-case basis by comparing the duties and responsibilities assigned and the classification standards for each pay band, under 5 CFR part 551 criteria.

Figure 4. FLSA Status of Nonsupervisory and Leader Positions

(3) Supervisory Positions.

FLSA determination for supervisory positions must be made based on the duties and responsibilities of the particular position involved. As a rule, if a position requires supervision of employees who are exempt under FLSA, the supervisory position is likely to be exempt also.

2. Requirements Document (RD)

An RD will replace the Optional Form 8 and position description used under the current classification system. The RD will be prepared by managers using a menu-driven, automated system. The automated system will enable managers to classify and establish many positions without intervention by a human resources specialist. The abbreviated RD will combine the position information, staffing requirements, and contribution expectations into a 1- or 2-page document.

3. Delegation of Classification Authority

Classification authority will be delegated to managers as a means of increasing managerial effectiveness and expediting the classification function. This will be accomplished as follows:

a. Delegated Authority.

i. The CNR will delegate classification authority to the Human Resources Office (HRO) Director. The HRO Director may further delegate authority to Department Heads and Directors of

the immediate organization of the position being classified.

ii. The classification approval must be at least one level above the first-level supervisor of the position.

iii. First-line supervisors at any level will provide classification recommendations.

iv. HRO support will be available for guidance and recommendations concerning the classification process. (Any dispute over the proper classification between a manager and the HRO will be resolved by the CNR or designee.

b. Position Classification Accountability.

Those to whom authority is delegated are accountable to the CNR. The CNR is accountable to the DON. Those with delegated authority are expected to comply with demonstration project guidelines on classification and position management, observe the principle of equal pay for equal work, and ensure that RD's are current. First-line supervisors will develop positions using the automated system. All positions must be approved through the proper chain of command.

B. Integrated Pay Schedule

Under the demonstration project, an IPS will be established which will cover all demonstration project positions at ONR. This IPS, which does not include locality pay, will initially extend from the basic pay for GS–1, step 1 to the basic pay for GS–15, step 10. The adjusted basic pay cap, which does include locality pay, is Executive Level IV, currently $155,500. The salary range for the S&E pay band V pay band is expected to be established under the new STRL demonstration project initiative being developed for positions classified above GS–15.

1. Annual Pay Action

ONR will eliminate separate pay actions for within-grade increases, general and locality pay increases, performance awards, quality step increases, and most career promotions and replace them with a single annual pay action (including either permanent or bonus pay or both) linked to the CCS. This will eliminate the paperwork and processing associated with multiple pay actions which average three per employee per year.

2. Overtime Pay

Overtime will be paid in accordance with 5 CFR part 550, subpart A. All nonexempt employees will be paid overtime based upon their "hourly regular rate of pay," as defined in existing regulation (5 CFR part 551).

3. Classification Appeals

An employee may appeal the occupational series, title, career track, or pay band of his or her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may then appeal to the OPM only after DoD has rendered a decision under the provisions of this demonstration project. Since OPM does not accept classification appeals on positions which exceed the equivalent of a GS–15 level, appeal decisions involving Pay Band V for science and engineering positions classified about the GS–15 level will be rendered by DoD and will be final. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under 5 CFR subpart F, sections 511.603, 511.604, and 511.605 apply.

An employee may not appeal the accuracy of the RD, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a basic pay schedule; the assignment of occupational series to the occupational family; or matters grievable under an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the HRO and will include copies of appropriate demonstration project criteria.

4. Above GS–15 Positions

The pay banding plan for the Scientific and Engineering occupational family includes a pay band V to provide the ability to accommodate positions with duties and responsibilities that exceed the General Schedule GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific and Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The degree to which ONR plans to participate in this concept and develop classification, compensation, and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation.

5. Distinguished Contributions Allowance (DCA)

The DCA is a temporary monetary allowance up to 25 percent of basic pay (which, when added to an employee's rate of basic pay, may not exceed the rate of basic pay for Executive Level IV) paid on either a bi-weekly basis (concurrent with normal pay days) or as a lump sum following completion of a designated contribution period(s), or combination of these, at the discretion of ONR. It is not basic pay for any purpose, *i.e.,* retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of basic pay. The DCA will be available to certain employees at the top of their target pay bands, whose present contributions are worthy of scores found at a higher pay band, whose level of contribution is expected to continue at the higher pay band for at least 1 year, and current market conditions require additional compensation.

Assignment of the DCA rather than a change to a higher pay band will generally be appropriate for such employees under the following circumstances: Employees have reached the top of their target pay bands and (1) when it is not certain that the higher level contributions will continue indefinitely (*e.g.,* a special project expected to be of one- up to five-year

duration); (2) when no further promotion or compensation opportunities are available; (3) in either situation (1) or (2), current market conditions compensate similar contributions at a greater rate in like positions in private industry and academia; and (4) there is a history of significant recruitment and retention difficulties associated with such positions.

a. Eligibility.

(1) Employees in Levels III and IV of the S&E Professional Career Track and those in Levels III, IV, and V of the Administrative Specialist and Professional Career Track are eligible for the DCA if they have reached the top CCS score for their target pay band with recommendations for a higher Overall Contribution Score (OCS) for their contributions; they have reached the maximum rate of basic pay available for their target pay band; there are externally imposed limits to higher pay bands or the higher level contributions are not expected to last indefinitely; and market conditions require greater compensation for these contributions.

(2) Employees may receive a DCA for up to three years. The DCA authorization will be reviewed and reauthorized as necessary, but at least annually at the time of the CCS appraisal through nomination by the pay pool manager and approval by the CNR. Employees in the S&E Professional Career Track may receive an extension of up to two additional years (for a total of five years). The DCA extension authorization will be reviewed and reauthorized as necessary, but at least on an annual basis at the time of the CCS appraisal through nomination by the pay pool manager and approval by the CNR.

(3) Monetary payment may be up to 25 percent of basic pay.

(4) Nominees would be required to sign a memorandum of understanding or a statement indicating they understand that the DCA is a temporary allowance; it is not a part of basic pay for any purpose; it would be subject to review at any time, but at least on an annual basis; and the reduction or termination of the DCA is not appealable or grievable.

b. Nomination.

In connection with the annual CCS appraisal process, pay pool managers may nominate eligible employees who meet the criteria for the DCA. Packages containing the recommended amount and method of payment of the DCA and a justification for the allowance will be forwarded through the supervisory chain to the CNR. Details regarding this process will be addressed in standard operating procedures. These details will include time frames for nomination and consideration, payout scheme, justification content and format, budget authority, guidelines for selecting employees for the allowance and for determining the appropriate amount, and documentation required by the employee acknowledging he or she understands the criteria and temporary nature of the DCA.

c. Reduction or Termination of a DCA.

(1) A DCA may be reduced or terminated at any time the ONR deems appropriate (*e.g.,* when the special project upon which the DCA was based ends; if performance or contributions decrease significantly; or if labor market conditions change, etc.). The reduction or termination of a DCA is not appealable or grievable.

(2) If an employee voluntarily separates from ONR before the expiration of the DCA, an employee may be denied DCA payment. Authority to establish conditions and/or penalties will be spelled out in the written authorization of an individual's DCA.

d. Lump-Sum DCA Payments.

(1) When ONR chooses to pay part or all of an employee's DCA as a lump sum payable at the end of a designated period, the employee will accrue entitlement to a growing lump-sum balance each pay period. The percentage rate established for the lump-sum DCA will be multiplied by the employee's biweekly amount of basic pay to determine the lump sum accrual for any pay period. This lump-sum percentage rate is included in applying the 25 percent limitation.

(2) If an employee covered under a lump-sum DCA authorization separates, or the DCA is terminated (*see* paragraph c), before the end of that designated period, the employee may be entitled to payment of the accrued and unpaid balance under the conditions established by ONR. ONR may establish conditions governing lump-sum payments (including penalties in cases such as voluntary separation or separation for personal cause) in general plan policies or in the individual employee's DCA authorization.

e. DCA Budget Allocation.

The CNR may establish a total DCA budget allocation that is never greater than 10 percent of the basic salaries of the employees currently at the cap in the S&E Professional Career Track, Pay Bands III and IV, and the Administrative Specialist and Professional Career Track, Pay Bands III, IV, and V.

f. Concurrent Monetary Payments.

Employees eligible for a DCA may be authorized to receive a DCA and a retention allowance at the same time, up to a combined total of 25 percent of basic pay. A merit increase which raises an employee's pay to the top rate for his or her target pay band (thus making the employee eligible for the DCA) may be granted concurrent with the DCA. Receipt of the DCA does not preclude an employee from being granted any award (including a contribution award) for which he or she is otherwise eligible.

C. Contribution-Based Compensation System (CCS)

1. General

The purpose of the CCS is to provide an effective means for evaluating and compensating the ONR workforce. It provides management, at the lowest practical level, the authority, control, and flexibility needed to develop a highly competent, motivated, and productive workforce. CCS will promote increased fairness and consistency in the appraisal process, facilitate natural career progression for employees, and provide an understandable basis for career progression by linking contribution to basic pay determinations.

CCS combines performance appraisal and job classification into one annual process. At the end of each CCS appraisal period, basic pay adjustment decisions are made based on each employee's actual contribution to the organization's mission during the period. A separate function of the process includes comparison of performance in critical elements to acceptable standards to identify unacceptable performance that may warrant corrective action in accordance with 5 CFR part 432. Supervisory officials determine scores to reflect each employee's contribution, considering both how well and at what level the employee is performing. Often the two considerations are inseparable. For example, an employee whose written documents need to be returned for rework more often than those of his or her peers also likely requires a closer level of oversight, an important factor when considering level of pay.

The performance planning and rating portions of the demonstration project's appraisal process constitute a performance appraisal program which complies with 5 CFR part 430 and the DoD Performance Management System, except where waivers have been approved. Performance-related actions initiated prior to implementation of the demonstration project (under DON performance management regulations) shall continue to be processed in accordance with the provisions of the appropriate system.

2. CCS Process

CCS measures employee contributions by breaking down the jobs in each career track using a common set of "elements." The elements for each career track shown in Figure 5 and described in detail in Appendix E have been initially identified for evaluating the contributions of ONR personnel covered by this initiative. They are designed to capture the highest level of the primary content of the jobs in each pay band of each career track. Within specific parameters, elements may be weighted or even determined to be not applicable for certain categories of positions. All elements applicable to the position are critical as defined by 5 CFR part 430.

CCS ELEMENTS

S&E Professional

Scientific and Technical Leadership

Program Execution and Liaison

Cooperation and Supervision

Administrative Specialist and Professional

Problem Solving and Leadership

Cooperation and Customer Relations

Supervision and Resources Management

Administrative Support

Problem Solving

Cooperation/Customer Relations/Supervision

Figure 5. CCS Elements

For each element, "Discriminators" and "Descriptors" are provided to assist in distinguishing low to high contributions. The discriminators (two to four for each element) break down aspects of work to be measured within the element. The descriptors (one for each pay band for each discriminator) define the expected level of contribution at the top of the related pay band for that element.

Scores currently range between 0 and 92; specific relationships between scores and pay bands are different for each career track. (*See* Figure 6.) Basic pay adjustments are based on a comparison of the employee's level of contribution to the normal pay range for that contribution and the employee's present rate of basic pay.

CCS Career Level Scores and Basic Pay Ranges*

LEVEL	SCORE	CCS $K
S&E Professional		
I	0–21	17,803–32,585
II	18–47	27,123–59,858
III	44–66	49,823–93,351
IV	66–80	83,349–129,517
V	81–92	118,377–155,500**
Administrative Specialist and Professional		
I	0–21	17,803–32,585
II	18–47	27,123–59,858
III	44–59	49,823–79,253
IV	59–66	70,762–93,351
V	66–80	83,349–129,517
Administrative Support		
I	0–21	17,803–32,585
II	18–35	27,123–45,210
III	31–47	36,761–59,858

* Basic pay based on 2010 GS with no locality adjustment

** Proposed basic pay range minimum is the equivalent of 120 percent of the minimum base pay of GS-15; basic pay range maximum is Level IV of the Executive Schedule; and maximum adjusted base pay is Level III of the Executive Schedule.

Figure 6. CCS Career Level Scores and Basic Pay Ranges

Supervisors and pay pool panels determine an employee's contribution level for each element considering the discriminators as appropriate to the position. A contribution score, available to that level, is assigned accordingly. For example, a scientist whose contribution in the Technical Problem Solving element for S&E Professionals is determined to be at Level II may be assigned a score of 18 to 47. Eighteen reflects the lowest level of responsibility, exercise of independent judgment, and scope of contribution; and 47 reflects the highest. For Level III contributions, a value of 44 to 66 may be assigned. Each higher pay band equates to a higher range of values with the total points available to S&E Professionals to be determined based on the salary range for pay band V under the proposed DoD above GS–15 position initiative. Each element is judged separately and level of work may vary for different elements. The scores for each element are then averaged to determine the Overall Contribution Score (OCS).

The CCS process will be carried out within pay pools made up of combined ONR organizations. The organizations in each pay pool will be combined based on criteria such as similarity of work and chain of command. To facilitate equity and consistency, element weights and applicability and CCS score adjustments are determined by a pay pool panel, rather than by individual supervisors. Basic pay adjustments, contribution awards, and DCA's may be recommended by the pay pool panel or by individual supervisors. Pay pool panels will consist of Department Heads and Directors, or other individuals who are familiar with the organization's work and the contributions of its employees. The Executive Director or designee will function as pay pool manager, with final authority to decide weights, scores, basic pay adjustments, and awards.

3. Pay Pool Annual Planning

Prior to the beginning of each annual appraisal period, the pay pool manager and panel will review pay pool-wide expectations in the areas described below.

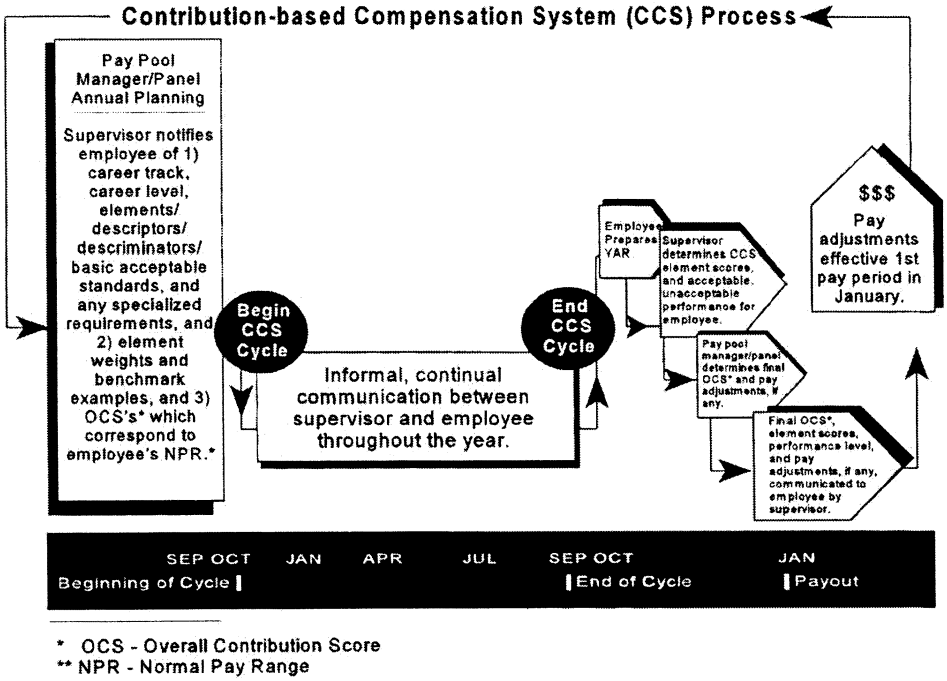
a. Element Weights and Applicability.

As written, all elements are weighted equally. If pay pool panels and managers decide that some elements are more important than others or that some do not apply at all to the effective accomplishment of the organization's mission, they may establish element weights including a weight of zero which renders the element not applicable. Element weights are not intended for application to individual employees. Instead, they may be established only for subcategories of positions, not to exceed a maximum of five subcategories in each career track. Subcategories for S&E Professionals might be: Supervisor, Program Manager, and Support S&E. Subcategories should include a minimum of five positions, when possible. Weights must be consistent within the subcategory.

b. Supplemental Criteria.

The CCS level descriptors are designed to be general so that they may be applied to all employees in the career track. Supervisors and pay pool panels may establish supplemental criteria to further inform employees of expected contributions. This may include (but is not limited to) examples of contributions which reflect work at each level for each element, taskings, objectives, and/or standards.

4. Annual CCS Appraisal Process (*See* Figure 7)



* OCS - Overall Contribution Score
** NPR - Normal Pay Range

Figure 7. Annual CCS Appraisal Process

The ONR appraisal period will normally be one year, with a minimum appraisal period of 90 days. At the beginning of the appraisal period, or upon an employee's arrival at ONR or into a new position, the following information will be communicated to employees so that they are informed of the basis on which their performance and contributions will be assessed: Their career track and pay band; applicable elements, descriptors, and discriminators; element weights; any established supplemental criteria; OCS's which correspond to each employee's NPR (see section IV.C.6); and basic acceptable performance standards. The CCS Summary (Appendix E) will be used to facilitate and document this communication. All employees will be provided this information; however, employees in some situations may not receive CCS scores. These situations are described in section IV.C.5, Exceptions. The communication of information described by this paragraph constitutes performance planning as required by 5 CFR 430.206(b).

Supervisor and employee discussion of organizational objectives, specific work assignments, and individual performance expectations (as needed), should be conducted on an ongoing basis. Either the supervisor or the employee may request a formal review during the appraisal period; otherwise, a documented review is required only at the end of the appraisal period.

At the end of the appraisal period, employees will provide input describing their contributions by preparing a Yearly Accomplishment Report (YAR). Pay pool managers may exempt groups of positions from the requirement to submit YARs; in cases where YARs are not required, employees may submit them at their own discretion. Standard operating procedures will provide guidance for pay pools and employees on the content and format of YARs, and on other types of information about employee contributions which should be developed and considered by supervisors. This will include procedures for capturing contribution information regarding employees who serve on details, who change positions during the appraisal period, who are new to ONR, and other such circumstances.

Supervisors will review the employee's YAR and other available information about the employee's contributions during the appraisal period and determine an initial CCS score for each element considering the discriminators as appropriate to the position. In addition, supervisors will determine whether the employee's performance was acceptable or unacceptable in each element when compared against the basic acceptable performance standards. The rating of the elements (all that are applicable are designated critical as defined by 5 CFR part 430) will serve as the basis for assignment of a summary level of Acceptable or Unacceptable. If any element is rated unacceptable, the summary level will be Unacceptable; otherwise the summary level will be Acceptable. Unacceptable ratings must be reviewed and approved by a higher level than the first-level supervisor.

If an employee changes positions during the last 90 days of the appraisal period, the losing supervisor will conduct a performance rating (*i.e.,* rate each element Acceptable or Unacceptable and determine the summary level) at the time the employee moves to the new position. This will serve as the employee's rating of record. For employees who report to ONR during the last 90 days of the appraisal period, any close-out rating of Acceptable (or its equivalent) or better from another Government agency will serve as the employee's rating of record (the employee will be rated Acceptable). The determination of CCS scores and application of related pay adjustments for such employees is set forth in section IV.C.5, "Exceptions."

The pay pool panel will meet to compare scores, make appropriate adjustments, and determine the final OCS for each employee. Final approval of CCS scores and element and summary ratings will rest with the pay pool manager (unless higher level approval is requested or deemed necessary). Supervisors will communicate the element scores, ratings, summary level, and OCS to each employee, and discuss the results and plans for continuing growth. Employees rated Unacceptable will be provided assistance to improve their performance (*see* paragraph V.A).

The CCS process will be facilitated by an automated system, the Contribution-based Compensation System Data System (CCSDS). During the appraisal process, all scores and supervisory comments will be entered into the CCSDS. The CCSDS will provide supervisors, pay pool panel members, and pay pool managers with background information (*e.g.,* YARS, employees' prior year scores and current basic pay) and spreadsheets to assist them in comparing contributions and determining scores. Records of employee appraisals will be maintained in the CCSDS, and the system will be able to produce a hard copy document for each employee which reflects his or her final approved score.

5. Exceptions

All employees who have worked 90 days or more by the end of the appraisal period will receive a performance rating of record. However, in certain situations ONR does not consider the actual determination of CCS scores to be necessary. In other situations, it may not be feasible to determine a meaningful CCS score. Therefore, the determination of CCS scores will not be required for the following types of employees: (a) Employees on intermittent work schedules; (b) those on temporary appointments of one year or less; (c) those who work less than six months in an appraisal period (*e.g.,* on extended absence due to illness); (d) those on long-term training for all or much of the appraisal period; (e) employees who have reported to ONR or to a new position during the 90 days prior to the end of the appraisal period; and (f) Student Educational Employment Program employees.

If supervisors believe that the nature of such an employee's contributions provide a meaningful basis to determine a CCS score, they may appraise employees in the categories listed above, provided that the employee has worked at least 90 days in an ONR position during the appraisal period.

Those employees mentioned above who are not appraised under CCS will not be eligible for merit increases or contribution awards. (This will affect the calculation of service credit for RIF (*see* section V.C.)). All employees listed above will be given full general and locality increases (as described in sections IV.C.7.a, "General Increases," and IV.C.7.c, "Locality Increases"). All employees are eligible for awards under ONR's Incentive Awards Program, such as "On-the-Spot" and Special Act Awards, as appropriate.

6. Normal Pay Range (NPR)—Basic Pay Versus Contribution

The CCS assumes a relationship between the assessed contribution of the employee and a normal range of pay. For all possible contribution scores available to employees, the NPR spans a basic pay range of 12 percent. Employees who are compensated below the NPR for their assessed score are considered "undercompensated," while employees compensated above the NPR are considered "overcompensated."

The lower boundary of the NPR is initially established by fixing the basic pay equivalent to GS–1, step 1 (without locality pay), with a CCS score of zero. The upper boundary is fixed at the basic pay equivalent to GS–15, step 10 (without locality pay), with a CCS score of 80. The distance between these upper and lower boundaries for a given overall contribution score is 12 percent of basic pay for all available CCS scores. Using these constraints, the interval between scores is approximately 2.37 percent through the entire range of pay. The lines will be extended using the same interval so that the upper boundary of the normal range of basic pay accommodates the basic pay needed for the S&E Professional career track pay band V. (The actual end point will vary depending on any pay adjustment factors, *e.g.,* general increase.) The formula used to derive the NPR may be adjusted in future years of the demonstration project. See Appendix F for further details regarding the formulation of the NPR.

Each year the boundaries for the NPR plus the minimum and maximum rate of basic pay for each pay band will be adjusted by the amount of the across-the-board GS percentage increase granted to the Federal workforce. At the end of each annual appraisal period, employees' contribution scores will be determined by the CCS process described above, and then their overall contribution scores and current rates of basic pay will be plotted as a point on a graph along with the NPR. The position of the point relative to the NPR gives a relative measure of the degree of over- or undercompensation of the employee, as shown in Figure 8. Points which fall below the NPR indicate undercompensation; points which fall above the NPR indicate overcompensation.

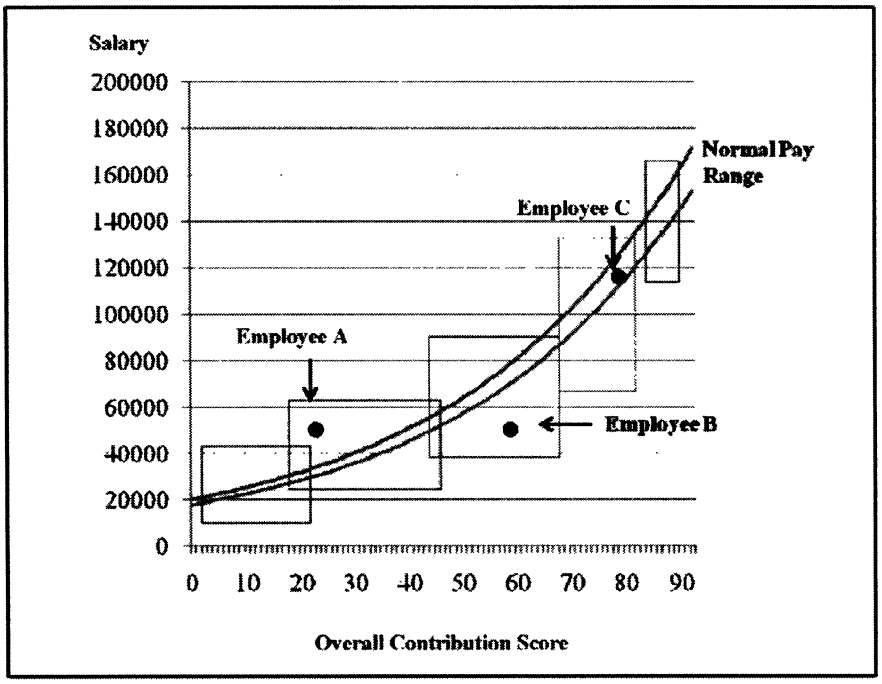


Figure 8. Notional Plotting of OCS and Basic Pay on the NPR for S&E Professionals

7. Compensation

Presently, employee pay is established, adjusted, and/or augmented in a variety of ways, including general pay increases, locality pay increases, special rate adjustments, within-grade increases (WGI's), quality step increases (QSI's), performance awards, and promotions. Multiple pay changes in any given year (averaging three per employee) are costly to process and do not consider comprehensively the employee's contributions to the organization. Under the demonstration project, ONR will distribute the budget authority from the sources listed above into four pay categories: (1) General increase, (2) locality increase, (3) merit increase, and (4) contribution awards. From these pay categories, single annual pay actions would be authorized based primarily on employees' contributions. Competitive promotions will still be processed under a separate pay action; most career promotions will be processed under the CCS.

In general, the goal of CCS is to pay in a manner consistent with employees' contributions or, in other words, migrate employees' basic pay closer to the NPR. One result may be a wider distribution of pay among employees for a given level of duties.

After the CCS appraisal process has been completed and the employees' standing relative to the NPR has been determined, the pay pool manager, in consultation with the pay pool panel or other pay pool supervisory and staff officials, will determine the appropriate basic pay change and contribution award, if appropriate, for each employee. Standard operating procedures will provide guidance, including market salary reference data, to assist pay pool managers in making pay determinations. In most cases, the pay pool manager will approve basic pay changes and awards. In some cases, however, approval of a higher level official will be required. Figure 9 summarizes the eligibility criteria and applicable limits for each pay category.

Eligibility Chart for Pay Increases

Range of Basic Pay	General Increase	Merit Increase	Contribution Award	Locality Pay
Over-compensated	Could be reduced or denied	No	No(f)	Yes-Full(d)
Normal Range	Yes-Full	Yes(f)-Up to 6%	Yes(a)	Yes-Full(d)
Under-Compensated	Yes-Full	Yes(b,c)	Yes(a)	Yes-Full(d)

(a) Up to $10K. Over $10K requires CNR approval
(b) Over 20% requires CNR approval
(c) May not exceed upper rail of normal pay range for employee's OCS score or maximum rate of the employee's career level
(d) Employees will be entitled to the full locality pay approved for their area subject to applicable limitations
(e) May not exceed 6% above lower rail of normal pay range or maximum rate of the employees career level
(f) Employees on maintained pay are eligible for a contribution award (a)

Figure 9. Eligibility Chart for Pay Increases

The CCSDS will calculate each employee's OCS and his or her standing in relation to the NPR. The system will provide a framework to assist pay pool officials in selecting and implementing a payout scheme. It will alert

management to certain formal limits in granting pay increases; *e.g.,* an employee may not receive a permanent increase above the maximum rate of basic pay for his or her pay band until a corresponding level change has been effected. Once basic pay and award decisions have been finalized and approved, the CCSDS will prepare the data file for processing the pay actions and maintain a consolidated record of CCS pay actions for all ONR demonstration project employees.

a. General Increases.

General increase budget authority will be available to pay pools as a straight percentage of employee salaries, as derived under 5 U.S.C. 5303 or similar authority. Pay pool panels or managers may reduce or deny general pay increases for employees whose contributions are in the overcompensated category. (*See* Figure 9.) Such reduction or denial may not place an employee in the undercompensated category. An employee receiving maintained pay (except one receiving maintained pay for an occupational injury who receives a full general pay increase) will receive half of the across-the-board GS percentage increase in basic pay until the employee's basic pay is within the basic pay range assigned for their current position or for two years, whichever is less. ONR employees on pay retention at the time of demonstration project implementation or as a result of placement through the DON RPL, DoD PPP or the Federal Interagency Career Transition Assistance Plan will receive half of the across-the-board GS percentage increase until the employee's maintained pay is exceeded by the maximum rate for the employee's pay band or the maintained pay is ended due to a promotion. General increase authority not expended is available to either the merit increase or contribution award pay categories or both.

b. Merit Increases.

Merit increases will be calculated after the determination of employees' general increases. Merit increases may be granted to employees whose contribution places them in the "normal" or "undercompensated" categories. (*See* Figure 9.) In general, the higher the range in which the employee is contributing compared to his or her basic pay, the higher the merit increase should be. However, the following limitations apply: A merit increase may not place any employee's basic pay (1) in the "overcompensated" category (as established by the NPR for the upcoming year, which has been adjusted by the amount of the new general increase); (2) in excess of established basic pay caps; (3) in excess of the maximum rate of basic pay for the individual's pay band (unless the employee is being concurrently advanced to the higher pay band); or (4) above any outside-imposed dollar limit. Merit increases for employees in the NPR will be limited to six percent of basic pay, not to exceed the upper limit of the NPR for the employee's score. In addition, merit increases for employees in the undercompensated range may not exceed six percent above the lower rail of the NPR, or 20 percent of basic pay without CNR or designee approval.

The size of ONR's continuing pay fund is based on appropriate factors, including the following: (1) Historical spending for within-grade increases, quality step increases, and in-level career promotions (with dynamic adjustments to account for changes in law or in staffing factors, *e.g.,* average starting salaries and the distribution of employees among job categories and band levels); (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the organization; and (3) the fiscal condition of the organization. ONR will periodically review or will review every two to three years its continuing pay fund to determine if any adjustments are necessary.

The amount of budget authority available to each pay pool will be determined annually by the CNR. Factors to be considered by the CNR in determining annual budget authority may include market salaries, mission priorities, and organizational growth. Because statistical variations will occur in year-to-year personnel growth, any unexpended merit increase authorities may be transferred to the Contribution Awards category.

c. Locality Increases.

All employees will be entitled to the locality pay increase authorized by law and regulation for their official duty station and/or position.

d. Contribution Awards.

Authority to pay contribution awards (lump-sum payments recognizing significant contributions) will be initially available to pay pools as a straight 1.5 percent of employees' basic pay (similar to the amount currently available for performance awards). The percentage rate may be adjusted in future years of the demonstration project. In addition, unexpended general increase and merit increase budget authorities may be used to augment the award category. Contribution awards may be granted to those employees whose contributions place them in the "normal" or "undercompensated" category and to employees in the "overcompensated" category who are on maintained pay. Standard operating procedures will provide guidance to pay pool managers in establishing and applying criteria to determine significant contributions which warrant awards. An award exceeding $10,000 requires CNR approval. (*See* Figure 9.) Pay pools may also grant time-off as a contribution award, in lieu of or in addition to cash.

8. Career Movement Based on CCS

Movement through the pay bands will be determined by contribution and basic pay at the time of the annual CCS appraisal process.

The ONR demonstration project is an integrated system that links level of work to be accomplished (as defined by a career track and pay band) with individual achievement of that work (as defined by an OCS) to establish the rate of appropriate compensation (as defined by the career track pay schedule) and to determine progression through the career track. This section addresses only changes in level which relate directly to the CCS determination.

When an employee's OCS falls within three scores of the top score available to his or her current pay band, supervisors should consider whether it is appropriate to advance the employee to the next higher level (refer to IV.A.1.a for other criteria). If progression to the next higher level is deemed warranted, supporting documentation would be included with the CCS appraisal and forwarded through the appropriate channels for approval. If advancement is not considered appropriate at this time, the employee would remain in his or her current pay band. Future basic pay raises would be capped by the top of the employee's current pay band unless the employee progresses to the next higher pay band through a CCS-related promotion, an accretion of duties promotion, or a competitive promotion.

a. Advancements in Level Which May be Approved by the Pay Pool Manager.

Advancements to all levels except Level V of the S&E Professional Career Track may be approved by the pay pool manager.

b. Advancements in Level Which Must be Approved by the CNR.

Advancement to (1) levels outside target pay bands or established position management criteria; (2) Levels IV and V of the S&E Professional Career Track; and (3) Levels IV and V of the Administrative Specialist and Professional Career Track require approval by the CNR or his or her designee. Details regarding the process for nomination and consideration,

format, selection criteria, and other aspects of this process will be addressed in the standard operating procedures.

c. Advancement to Level V of the Science and Engineering (S&E) Professional Career Track.

Vacancies in this pay band will be filled in accordance with guidance issued by DoD.

d. Regression to Lower Level. (*See* Figure 8, "Employee A.")

If an employee is contributing less than expected for the level at which he or she is being paid, the individual may regress into a lower pay band through reduction or denial of general increases and ineligibility for merit increases. (This is possible because the NPR plus the minimum and maximum pay rates for each pay band will be adjusted upwards each year by the across-the-board GS percentage increase in basic pay.) If the employee's basic pay regresses to a point below the pay overlap area between his or her level and the next lower level, it will no longer be appropriate to designate him or her as being in the higher level. Therefore, the employee will be formally changed to the lower level. The employee will be informed of this change in writing, but procedural and appeal rights provided by 5 U.S.C. 4303 and 7512 (and related OPM regulations) will not apply (except in the case of employees who have veterans' preference). ONR is providing for waivers of the statute and regulations for such actions. Further, because a change to lower level under such circumstances is not discretionary, the change may not be grieved under ONR's administrative grievance procedures.

9. CCS Grievance Procedures

An employee may grieve the appraisal received under CCS using procedures specifically designed for CCS appraisals. Under these procedures, the employee's grievance will first be considered by the pay pool panel, who will recommend a decision to the pay pool manager. If the employee is not satisfied with the pay pool manager's decision, he or she may file a second-step grievance with the next higher level ONR management official. This official will render a final ONR decision on the grievance.

The following are not grievable: pay actions resulting from CCS (receipt, non-receipt or amount of general increase, merit increase, DCA or contribution award); reductions in level without reduction in pay due to regression (*see* section IV.C.8.d); any action for which another appeal or complaint process exists.

V. Separations

A. Performance-Based Reduction-in-Pay or Removal Actions

This section applies to reduction in pay or removal of demonstration project employees based solely on unacceptable performance. Adverse action procedures under 5 CFR part 752 remain unchanged.

When a supervisor determines during or at the end of the appraisal period that the employee is not completing work assignments satisfactorily, the supervisor must make a determination as to whether the employee is performing unacceptably in one or more of the critical elements. All CCS elements applicable to the employee's position are critical as defined by 5 CFR part 430.

Unacceptable performance determinations must be made by comparing the employee's performance to the acceptable performance standards established for elements.

At any time during or at the end of the appraisal period that an employee's performance is determined to be unacceptable in one or more critical elements, the employee will be provided assistance in improving his or her performance. This will normally include clarifying (or further clarifying) the meaning of terms used in the acceptable performance standards (*e.g.,* "timely" "thorough research," and "overall high quality") as they relate to the employee's specific responsibilities and assignments. An employee whose performance is unacceptable after he or she has been given a reasonable opportunity to improve may be removed or reduced in grade or level, in accordance with the provisions of 5 U.S.C. 4303 and related OPM regulations. Employees may also be removed or reduced in grade or level based on unacceptable performance under the provisions of 5 U.S.C. 7512. All procedural and appeal rights set forth in the applicable statute and related OPM regulations will be afforded to demonstration project employees removed or reduced in grade or level for unacceptable performance.

B. Reduction-in-Force (RIF) Procedures

1. RIF Authority

Under the demonstration project, ONR would be delegated authority to approve RIF as defined in Secretary of the Navy Instruction 12351.5F or its successor and the use of separation pay incentives.

2. RIF Definitions

a. Competition in RIF.

When positions are abolished, employees are released from their retention levels in inverse order of their retention standing, beginning with the employee having the lowest standing. If an employee is reached for release from a retention level, he/she could have a right to be assigned to another position within their same career track and pay band or they could have a right to retreat to a position previously held.

b. Competitive Area.

A separate competitive area will be established by geographic location for all personnel included in the ONR demonstration project.

c. Competitive Level.

Positions in the same occupational pay band, which are similar enough in duties and qualifications that employees can perform the duties and responsibilities including the selective placement factor, if any, of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

d. Service Computation Date (SCD).

The employee's basic Federal SCD would be adjusted for CCS results credit.

(1) Federal SCD.

An employee's basic Federal SCD may be credited with up to 20 years credit based on the results of the CCS process. The CCS RIF Assessment Category would be used to determine the number of RIF years credited. The CCS RIF Assessment Category is the combination of the employee's standing under the CCS relative to the NPR and any merit increase, DCA, contribution award or promotion. Figure 10 shows the RIF years available for each CCS RIF Assessment Category [proposed revisions to the RIF Assessment Category are depicted].

FIGURE 10—CS RIF ASSESSMENT CATEGORIES

Assessment category	RIF years available
0 = Employees within the overcompensated range without any portion of a general increase	0
1 = Employees receiving maintained pay or any portion of a general increase but no merit increase or contribution (cash/time off)	12

FIGURE 10—CS RIF ASSESSMENT CATEGORIES—Continued

Assessment category	RIF years available
2 = Employees (without a capped salary** or career promotion) receiving a total compensation increase* of 6% or less or with a capped salary receiving a total compensation increase of 3% or less	16
3 = Employees receiving (1) a total compensation increase* greater than 6%; (2) a career promotion; or (3) with a capped salary** receiving a total compensation increase greater than 3%	20
Final RIF Credit: Average of the three most recent CCS Process Results received during the 4-year period prior to the cutoff date.	

*Total compensation includes merit increase, contribution award (cash/time off), and distinguished contributions allowance.
**Capped means the employee has the maximum salary for the assigned pay band.

(2) CCS Process Results.

If an employee has fewer than three CCS process results, the value (RIF years available) of the actual number of process results on record will be divided by the number of actual process results on record. In cases where an employee has no actual CCS process results, the employee will be given the additional RIF CCS process results credit for the most common, or "modal" ONR demonstration project CCS RIF Assessment Category for the most recent CCS appraisal period.

(3) Credit from Other Rating Systems.

Employees who have been rated under different patterns of summary rating levels will receive RIF appraisal credit as follows:

—If there are any ratings to be credited for the RIF given under a rating system which includes one or more levels above fully successful (Level 3), employees will receive credit as follows: 12 years for Level 3, 16 years for Level 4, or 20 years for Level 5; or

—If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal CCS RIF assessment category.

(4). RIF Cutoff Date.

To provide adequate time to properly determine employee retention standing, the cutoff date for use of new CCS process results is set at 30 days prior to the date of issuance of RIF notices.

3. Displacement Rights

a. Displacement Process.

Once the position to be abolished has been identified, the incumbent of that position may displace another employee within the incumbent's current career track and pay band when the incumbent has a higher retention standing and is fully qualified for the position occupied by an employee with a lower standing. If there are no displacement rights within the incumbent's current career track and pay band, the incumbent may exercise his or her displacement rights to any position previously held in the next lower pay band, regardless of career track, when the position is held by an employee with a lower retention standing. In the case of all preference eligibles, they may displace up to the equivalent of three grades or intervals below the highest equivalent grade of their current pay band in the same or a different career track regardless of whether they previously held the position provided they are fully qualified for the position and the position is occupied by an employee with a lower retention standing. Preference eligibles with a compensable service connected disability of 30 percent or more may displace an additional two GS grades or intervals (total of five grades) below the highest equivalent grade of their current pay band provided they have previously held the position and the position is occupied by an employee in the same subgroup with a later RIF service computation date.

b. Retention Standing.

Retention is based on tenure, veterans' preference, length of service, and CCS process results. Competing employees are listed on a retention register in the following order: Tenure I (career employees), Tenure II (career-conditional employees), and Tenure III (contingent employees). Each tenure group has three subgroups (30% or higher compensable veterans, other veterans, and non-veterans) and employees appear on the retention register in that order. Within each subgroup, employees are in order of years of service adjusted to include CCS process results.

c. Vacant Positions.

Assignment may be made to any available vacant position including those with promotion potential in the competitive area.

d. Ineligible for Displacement Rights.

Employees who have been notified in writing that their performance is considered to be unacceptable are ineligible for displacement rights.

e. Change to Lower Level Due to an Adverse or Performance-based Action.

An employee who has received a written decision to change him or her to a lower level due to an adverse or performance-based action will compete from the position to which he or she will be or has been demoted.

4. Notice Period

The notice period and procedures in 5 CFR subpart H, section 351.801 will be followed.

5. RIF Appeals

Under the demonstration project, employees affected by a RIF action, other than a reassignment, maintain their right to appeal to the Merit Systems Protection Board if they feel the reason for the RIF is not valid or if they think the process or procedures were not properly applied.

6. Separation Incentives

ONR will have delegated authority to approve separation incentives and will use the current calculation methodology of a lump sum payment equal to an employee's severance pay calculation or $25,000, whichever is less.

7. Severance Pay

Employees will be covered by the severance pay rules in 5 CFR part 550, subpart G, except that ONR will establish rules for determining a "reasonable offer" according to the provisions of 5 CFR 536.104.

8. Outplacement Assistance

All outplacement assistance currently available would be continued under the demonstration project.

VI. Demonstration Project Transition

A. Initial Conversion or Movement to the Demonstration Project

1. Placement Into Career Tracks and Pay Bands

Conversion or movement of GS employees into the demonstration project will be into the career track and pay band which corresponds to the employee's current GS grade and basic pay. If conversion into the demonstration project is accompanied by a simultaneous change in the geographic location of the employee's

duty station, the employee's overall GS pay entitlements (including locality rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. Employees will be assured of placement within the new system without loss in total pay. Once under the demonstration project, employee progression through the career tracks and pay bands up to their target pay band is dependent upon contribution score, not upon previous methods (*e.g.,* WGI's, QSI's, or career promotions as previously defined).

ONR proposes the addition of language to clarify procedures for non-competitive placements into the demonstration project. Specifically, employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be subject to the same pay conversion rules.

2. Conversion of Retained Grade and Pay Employees

ONR's workforce will be grouped into career tracks and associated pay levels with designated pay ranges rather than the traditional grade and step. Therefore, grade and pay retention will be eliminated. ONR will grant "maintained pay" (as defined in section III.G.2, "Maintained Pay"), which is related to the current meaning of "retained pay" but does not provide for indefinite retention of pay except in certain situations. Employees' currently on grade or pay retention will be immediately placed on maintained pay at their current rate of basic pay if this rate exceeds the maximum rate for their pay band and "grandfathered" in the appropriate pay band. Employees on grade retention will be placed in the pay band encompassing the grade of their current position. Employees will receive half of the across-the-board GS percentage increase in basic pay and the full locality pay increase until their basic pay is within the appropriate basic pay range for their current position without time limitation.

3. WGI Buy-In

The participation of all covered ONR employees in the demonstration project is mandatory. However, acceptance of the system by ONR employees is essential to the success of the demonstration project. Therefore, on the date that employees are converted to the project pay plans, they will be given a permanent increase in pay equal to the earned (time spent in step) portion of their next WGI based on the value of the WGI at the time of conversion so that they will not feel they are losing a pay entitlement accrued under the GS system. Employees will not be eligible for this basic pay increase if their current rating of record is unacceptable at the time of conversion. There will be no prorated payment for employees who are at step 10 or receiving a retained rate at the time of conversion into the demonstration project.

4. Career Promotion Eligibility

ONR proposes to adopt MRMC's provisions for compensating employees who would have become eligible for career promotions during the first 12 months of the demonstration project but for conversion to the demonstration project pay bands. Employees who qualify under this provision will receive pay increases for noncompetitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion, and the promotion would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a WGI Buy-In equivalent as defined above.

5. Conversion of Special Salary Rate Employees

Employees who are in positions covered by a special salary rate prior to entering the demonstration project will no longer be considered special salary rate employees under the demonstration project. These employees will, therefore, be eligible for full locality pay. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic rate of pay computed by dividing their basic adjusted pay (higher of special salary rate or locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action will not apply to the conversion process as there will be no change in total salary. However, if an employee's new basic pay rate after conversion to the demonstration project pay schedule exceeds the maximum basic pay authorized for the pay band, the employee will be granted maintained pay under paragraph III.G.2 until the employee's salary is within the range of the pay band. For example, an Electronics Engineer, GS–855–9, step 5, is paid $59,568 per annum in accordance with special GS salary rates as of January 2010 per Table Number: 0422. The employee is located in the locality area of Washington-Baltimore, DC-MD-VA-WV. Under the demonstration project, the computation of the engineer's new basic rate of pay with a full locality adjustment and WGI buy-in is computed as follows:

a. Basic adjusted pay divided by locality pay factor = new basic rate of pay.

b. New basic rate of pay multiplied by the full locality adjustment for current area = full locality adjustment amount for special rate employees.

c. New basic rate of pay + WGI buy-in amount × locality pay factor = demonstration special rate for conversion.

6. Conversion of Employees on Temporary Promotions

Employees who are on temporary promotions at the time of conversion will be returned to their grade and step of record prior to conversion. These employees will be converted to a pay band following the procedures described in Section IV.A.1. After conversion, the temporary promotion may be reinstated for the remainder of the original 120-day timeframe. If the grade of the temporary position is associated with a higher pay band, the employee will be temporarily placed in the appropriate higher band while on the temporary promotion, following the procedures described in Section II.A.5.b.i. After the temporary promotion has ended, the employee will be returned to the salary and pay band established upon conversion, following the procedures described in Section II.A.5.b.iv.

7. Non-Competitive Movement Into the Demonstration Project

Employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be subject to the same pay conversion rules and will, therefore, be eligible for full locality pay. Specifically, adjustments to the employee's basic pay for a step increase or a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of full weeks an employee has completed toward the next higher step or grade at the time the employee moves into the project.

B. CCS Start-Up

ONR expects to place employees on CCS elements, descriptors, discriminators, and standards around October 2010 with conversion to demonstration project pay plans before the end of April 2011. The CCS process will be used to appraise ONR employees at the end of the 2010–2011 cycle which would occur on September 30, 2011. ONR expects the first CCS payout to

occur at the beginning of the first full pay period in January 2012.

C. Training

An extensive training program is planned for everyone in the demonstration project including the supervisors, managers, and administrative staff. Training will be tailored, as discussed below, to fit the requirements of every employee included in the demonstration project and will address employee concerns as well as the benefits to employees. In addition, leadership training will be provided, as needed, to managers and supervisors as the new system places more responsibility and decision making authority on them. ONR training personnel will provide local coordination and facilities, supplemented by contractor support as needed. Training will be provided at the appropriate stage of the implementation process.

1. Types of Training

Training packages will be developed to encompass all aspects of the project and validated prior to training the workforce. *Specifically, training packages will be developed for the following groups of employees:*

a. Employees.

ONR demonstration project employees will be provided an overview of the demonstration project and employee processes and responsibilities.

b. Supervisors and Managers.

Supervisors and managers under the demonstration project will be provided training in supervisory and managerial processes and responsibilities under the demonstration project.

c. Support Personnel.

Administrative support personnel, HRO personnel, financial management personnel, and Management Information Systems Staff will be provided training on administrative processes and responsibilities under the demonstration project.

D. New Hires Into the Demonstration Project

The following steps will be followed to place employees (new hires) entering the system:

1. The career track and pay band will be determined based upon the employee's education and experience in relation to the duties and responsibilities of the position in which he or she is being placed, consistent with OPM qualification standards.

2. Basic pay will be set based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified candidates, programmatic urgency, and education and experience of the new candidate.

3. Employees placed through the DON RPL, the DoD PPP, or the Federal Interagency Career Transition Assistance Plan who are eligible for maintained pay will receive one half of the across-the-board GS percentage increase in basic pay and the full locality pay increase until the employee's basic pay is within the basic pay range of the career track and pay band to which assigned. Employees are eligible for maintained pay as long as there is no break in service and if the employee's rate of pay exceeds the maximum rate of his or her pay band.

E. Conversion or Movement From Demonstration Project

In the event the demonstration project is terminated or employees leave the demonstration project through promotion, change to lower grade, reassignment or transfer, conversion back to the GS system may be necessary. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. An employee will not be converted at a level which is lower than the GS grade held immediately prior to entering the Demonstration project; unless, since that time, the employee has undergone a reduction in pay band. The converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project and will be used to determine the pay action and GS pay administration rules for employees who leave the project to accept a position in the traditional Civil Service system. The following procedures will be used to convert the employee's demonstration project pay band to a GS equivalent grade and the employee's demonstration project rate of pay to the GS equivalent rate of pay.

1. Grade Determination

Employees will be converted to a GS grade based on a comparison of the employee's current adjusted rate of basic pay to the highest GS applicable rate range considering only those grade levels that are included in the employee's current pay band. The highest GS applicable rate range includes GS basic rates, locality rates, and special salary rates. Once a grade range is determined, the following procedures will be used to determine the GS grade:

a. Identify the highest GS grade within the current pay band that accommodates the employee's adjusted rate of basic pay (including any locality payment).

b. If the employee's adjusted rate of basic pay equals or exceeds the applicable step 4 rate of the identified highest GS grade, the employee is converted to that grade.

c. If the employee's adjusted rate of basic pay is lower than the applicable step 4 of the highest grade, the employee is converted to the next lower grade.

d. If under the above-described "step 4" rule, the employee's adjusted project rate exceeds the maximum rate of the grade assigned but fits in the rate range for the next higher applicable grade (*i.e.,* between step 1 and step 4), then the employee shall be converted to the next higher applicable grade.

e. For two-grade interval occupations, conversion should not be made to an intervening (even) grade level below GS–11.

f. Employees in Level IV of the Administrative Specialist and Professional Career Track will convert to the GS–13 level.

2. Pay Setting

Pay conversion will be done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project. The employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay as follows:

a. The employee's demonstration project adjusted rate of pay (including locality) is converted to a rate on the highest applicable adjusted rate range for the converted GS grade. For example, if the highest applicable GS rate range for the employee is a special salary rate range, the applicable special rate salary table is used to convert the employee's pay.

b. When converting an employee's pay, if the rate of pay falls between two steps of the conversion grade, the rate must be set at the higher step.

c. Employees whose basic pay exceeds the maximum basic pay of the highest GS grade for their pay band will be converted to the highest grade and step in their pay band. Upon conversion, the maximum base pay will be at the step 10 level normally with no provision for retained pay.

3. Employees in Positions Classified Above GS–15

Conversion and pay retention instructions for employees and

positions in Pay Band V of the S&E Professional Career Track will be contingent on guidance provided by DoD.

4. Determining Date of Last Equivalent Increase

The last equivalent increase will be the date the employee received a CCS pay increase, was eligible to receive a CCS pay increase, or received a promotion, whichever occurred last.

C. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing Human Resources Service Centers will continue to process personnel-related actions and provide consultative and other appropriate services.

D. Automation

ONR will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool will be used to support computation of performance related pay increases and awards and other personnel processes and systems associated with this project.

E. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VII. Demonstration Project Duration

Section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) does not require a mandatory expiration date for this demonstration project. The project evaluation plan addresses how each intervention will be comprehensively evaluated. Major changes and modifications to the interventions may be made using the procedures in DoDI 1400.37, if formal evaluation data warrant a change. At the 5-year point, the entire demonstration will be examined for either: (a) Permanent implementation, (b) modification and another test period, or (c) termination of the project.

VIII. Demonstration Project Evaluation Plan

Consistent with DoD guidance, ONR proposes following the same evaluation plan as is being used by NRL and the other STRL Demonstration Projects. Accordingly, standard language for Evaluation Plan, Evaluation, and Method of Data Collection (sections V.B., V.C, and V.D., respectively) provided by DoD is used in this document to describe ONR's plans and procedures for the demonstration project evaluation. The use of parallel evaluation methodologies will facilitate comparisons across the demonstration projects to derive higher-order conclusions about the benefits, challenges, and overall effectiveness of these programs.

A. Overview

Chapter 47 of title 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the proposed laboratory demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire laboratory demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* laboratory effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix G shows an intervention model for the evaluation of the demonstration project. The model is designed to evaluate two levels of organizational performance: Intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.,* cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: Context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (*i.e.,* downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers the extent to which the:

(1) HR changes are given a fair trial period;

(2) changes are implemented; and

(3) changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (*e.g.,* attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit System Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

(1) The expected effects of the intervention,

(2) the corresponding measures, and

(3) the data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For

example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.,* the job market, legislation, and internal support systems) or support factors (*e.g.,* training and automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. *The following data will be collected:*

(1) Workforce data;
(2) Personnel office data;
(3) Employee attitude surveys;
(4) Focus group data;
(5) Local site historian logs and implementation information;
(6) Customer satisfaction surveys; and
(7) Core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

IX. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, WGI buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The CNR or designee will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Implementation Costs

Current cost estimates associated with implementing the ONR demonstration project are shown in Figure 11. These include automation of systems such as the CCSDS, training, and project evaluation. The automation and training costs are startup costs. Transition costs are one-time costs. Costs for project evaluation will be ongoing for at least five years.

FIGURE 11—PROJECTED IMPLEMENTATION COSTS

[Then year dollars]

	FY 10	FY 11	FY 12	FY 13	FY 14
Training	$200K	$200K	$56K	$25K	$25K
Project Evaluation	100K	50K	100K	50K	100K
Automation	97K	25K	25K	25K	25K
Transition	0	500K	0	0	0
Totals	397K	775K	181K	100K	150K

X. Automation Support

A. General

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation must play an integral role in achieving that goal. Without the necessary automation to support the interventions proposed for the demonstration project, optimal cost benefit cannot be realized. In addition, adequate information to support decision-making must be available to managers if line management is to assume greater authority and responsibility for human resources management.

Automation to support the demonstration project is required at two distinct levels. At the DON and DoD level, automation support (in the form of changes to the DCPDS) is required to facilitate processing and reporting of demonstration project personnel actions. At the ONR level, automation support (in the form of local processing applications) is required to facilitate management processes and decision-making.

B. Defense Civilian Personnel Data System (DCPDS)

Since DCPDS is a legacy system, efforts have been made to minimize changes to the system; and, therefore, the resources required to make the necessary changes. The detailed specifications for required changes to DCPDS will be provided in the System Change Request (SCR), Form 804.

C. Core Document (COREDOC)

The COREDOC application is a DoD system which may require modification to accommodate the interventions in this demonstration project. Specifically,

there is an RD that replaces the position description in the basic application; career tracks and pay bands replace GS grades; and a CCS Assessment Summary that replaces performance elements.

D. RIF Support System (RIFSS)

The RIFSS is an automated tool used by human resources specialists to support RIF processing. Under the demonstration project, RIF rules are modified to increase the credit for contributions and limit the rounds of competition. The AutoRIF application, developed by DoD, may need to be modified to accommodate these process changes.

E. Contribution-Based Compensation System Data System

This automated system is required as an internal control and as a mechanism to equate contribution scores to appropriate rates of basic pay. This system will allow pay pool managers to develop a spreadsheet that will assist them in determining an appropriate merit increase or contribution award or both based on the overall contribution score for each individual. It will also be used as an internal control to ensure that the permanent and nonpermanent money allotted to each pay pool is not exceeded. It will further allow pay pool managers to visualize the effects of giving large basic pay increases or awards to high contributors, and the effects of withholding either the general or merit increase or both of those who are low contributors, or in the overcompensated range.

Appendix A: Summary of Demonstration Project Features Adopted by ONR

ONR demonstration project features (ONR FR Section)	Modification	Originating lab demo	Originating FR Notice reference
Flexibilities			
Hiring Authority (Section III.A.–C.)	• No substantive changes made	NRL	Pages 33981–33982, Section III.A–C.
Noncitizen Hiring (Section III.D.)	• No substantive changes made	NRL	Page 33982, Section III.D.
Expanded Detail Authority (Section III.E.).	• No substantive changes made	NRL	Page 33982, Section III.E.
Extended Probationary Period for New Employees (Section III.F.).	• No substantive changes made	NRL	Page 33982, Section III.F.
Definitions (Section III.G.)	• No substantive changes made	NRL	Pages 33982–33983, Section III.G.
Pay Setting Determinations Outside CCS (Section III.H.).	• Added procedures for Restoration to Duty for deployed individuals.	NRL	Pages 33983–33984, Section III.H.
Priority Placement Program (Section III.I.).	• No substantive changes made	NRL	Page 33984, Section III.I.
Expanded Temporary Promotion (Section III.J.).	• No substantive changes made	NRL	Page 33984, Section III.J.
Voluntary Emeritus Program (Section III.K.).	• Expanded eligibility for the Voluntary Emeritus Program to all retired and separated employees, not just engineers and scientists.	AMRDEC	Page 34889, Section III.D.2.
Position Classification (Section IV.A.)	Adopting three of NRL's four career tracks/pay plans ONR chooses not to adopt the Science & Engineering Technical career track because the types of positions that fall into this career track do not exist at ONR.	NRL	Pages 33984–33989, Section IV.A.
Integrated Pay Schedule (Section IV.B.)	The ARSAE designations will not be adopted but instead will be rolled into the new above GS–15 levels initiative to be established by DoD. Position management methods established by the new DoD above GS–15 level initiative, rather than the DoD 40-position limit.	NRL	Pages 33989–33991, Section IV.B.
Contribution-based Compensation System (CCS) (Section IV.C.).	• Revised critical elements to ensure applicability to ONR personnel. • Described a more general approach for annual budgeting for merit increases, to provide greater flexibility in establishing and amending internal procedures. • Clarified the use of merit increase funds during each payout cycle; funds may not be carried over to the next payout cycle.	NRL	Pages 33991–34001, Section IV.C.
Performance-based Reduction-in-Pay or Removal Actions (Section V.A.).	• No substantive changes made	NRL	Page 34001, Section V.A
Reduction-in-Force (RIF) Procedures (Section V.B.).	• Amended the CCS RIF assessment categories • Added a definition for Competition in RIF so employees released from retention level will have the right to be assigned to another position within the same career track/level, or retreat to a previously held position.	NRL	Page 34001, Section.V.B.
Administrative Procedures			
Initial Conversion or Movement to the Demonstration Project (Section VI.A.).	• Added procedures for converting employees who are on Temporary Promotions. • Clarified procedures for non-competitive movement into the demonstration project (*e.g.,* lateral transfer, reassignment, or realignment).	NRL	Page 34003, Section VI.A.

ONR demonstration project features (ONR FR Section)	Modification	Originating lab demo	Originating FR Notice reference
CCS Startup (Section VI.B.)	• No substantive changes made	NRL	Page 34003, Section VI.B.
Training (Section VI.C.)	• No substantive changes made	NRL	Page 34004, Section VI.C.
New Hires into the Demonstration Project (Section VI.D.).	• No substantive changes made	NRL	Page 34004, Section VI.D.
Conversion or Movement from the Demonstration Project (Section VII.E.).	• Clarified procedures for setting pay for employees whose basic pay exceeds the maximum basic pay of the highest GS grade for their career level.	NRL	Pages 34004–34005, Section VI.E.
Demonstration Project Duration (Section VII.).	• No substantive changes made	NRL	Page 34005, Section VII.
Demonstration Project Evaluation Plan (Section VIII.).	• Used standard STRL evaluation language provided by DoD; which is virtually identical to NRL's original section.	NRL	Pages 34005–34007, Section VIII.
Cost Containment and Controls (Section IX.).	• Described a more general approach to cost discipline, to enable ONR to develop internal procedures and make modifications over time, as needed.	NRL	Pages 34007–34008, Section IX.
Automation Support (Section X.)	• No substantive changes made	NRL	Page 34008, Section X.

Appendix B: Required Waivers to Laws and Regulations

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain title 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

Waivers of Law and Regulation

Title V, United States Code	Title 5, Code of Federal Regulations
Chapter 31, section 3111: Acceptance of Volunteer Service. Waived to allow for a Voluntary Emeritus Program in addition to student volunteers.	Part 300, subpart F, sections 300.601 to 300.605—Time-in-grade Restrictions. Waive in entirety
Chapter 31, section 3132: The Senior Executive Service: Definitions and Exclusions. Waived as necessary to allow for the Pay Band VI of the S&E Occupational Family.	Part 300, sections 300.601 through 605: Time-in-grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.
	Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Program in addition to student volunteers.
	Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.
	Part 315, section 315.901: Statutory requirement. Waived to the extent necessary to replace "grade" with "pay band."
Chapter 33, subchapter 1, section 3318(a)–Competitive Service; Selection from Certificate. Waive.	Part 332, subpart D, section 332.404—Order of Section of Certificates. Waive in entirety.
Chapter 33, section 3324: Appointments to Positions Classified Above GS–15. Waived the requirement for OPM approval of appointments to positions classified above GS–15.	Part 335, subpart A, section 335.103(c)(1)(i), (ii)—Agency Promotion Program.
	Waive to allow temporary promotions and details to a higher level position without competition.
	Part 335, subpart A, section 335.104—Eligibility for Career Ladder Promotion. Waive in entirety.
	Part 337, subpart A, section 337.101(a)—Rating Applicants. Waive when 15 or fewer qualified candidates.
Chapter 33, subchapter III, section 3341(b) Details—Within Executive or Military Departments. Waive in entirety.	
	Part 351, subpart G, section 351.701—Assignment Involving Displacement.
	(a) Waive to allow minimally successful or equivalent to be defined as an employee whose current CCS RIF Assessment Category score is 12 or better and does not have a current written notification of unacceptable performance.

Title V, United States Code	Title 5, Code of Federal Regulations
	(b) and (c) Assignment rights (bump and retreat). Waive to the extent that the distinction between bump and retreat is eliminated and to allow displacement to be limited to the employee's current career track and pay band or, if there are no displacement rights in the employee's current pay band, to any position previously held in the next lower pay band regardless of career track. Preference eligibles may displace up to the equivalent of 3 grades or intervals below the highest equivalent grade of their current pay band in the same or different career track regardless of whether they previously held the position provided they are fully qualified and the position is occupied by an employee with a lower retention standing. Preference eligibles with a compensable service connected disability of 30 percent or more may displace an additional 2 GS grades or intervals (total of 5 grades) below the highest equivalent grade of their current pay band provided they previously held the position and the position is occupied by an employee in the same subgroup with a later RIF service computation date.
	(d) Limitation. Waive.
	(e)(1) Waive.
	Part 351, subpart B, section 351.403(a)
	Competitive Level. Waive to allow establishing competitive levels consisting of all ONR demo positions in a competitive area, which are in the same pay band level and career track, and which are similar enough in duties, qualifications, and requirements, including any selective placement factors, pay schedules, and working conditions so that the incumbent of one position may be reassigned to any other position in the level without undue interruption.
	Part 351.402(b), subpart D: Competitive area. Waived to the extent necessary to allow for separate competitive areas for demonstration project and non-demonstration project employees.
	Part 351, subpart E, section 351.504—Performance Credit for RIF. Waive in entirety.
Chapter 43, section 4302: Waived to the extent necessary to substitute "pay band" for "grade".	Part 430, subpart B, section 430.207(b)—Waive to the extent this section requires one or more progress reviews during each appraisal period.
Chapter 43, subchapter I, section 4303—Actions Based on Unacceptable Performance. Waive to allow coverage of "reduction in pay level based on unacceptable performance." Waive to exclude from coverage (procedural and appeal rights) reductions in pay band with no reduction in pay, when such actions result from regression of pay into a lower pay band through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.	Part 430, subpart B, section 430.210—OPM Responsibilities. Waive in entirety. Part 432, section 432.101 to 432.107—Performance Reduction in Grade and Removal Actions. Waive to allow coverage of "reduction in pay level based on unacceptable performance." Waive to exclude from coverage (procedural and appeal rights) reduction in pay band with no reduction in pay, when such action results from regression of pay into a lower pay band through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.
Chapter 43, subpart I, section 4303(f)(3)—Waive to allow exclusion of employees in the excepted service who have not completed a trial period, except those with veterans' preference.	
Chapter 43, subchapter I, section 4304(b)(1) and (3)—Responsibilities of OPM. Waive in entirety.	
Chapter 45, subchapter I, section 4502(a) and (b)—Waive to permit ONR to approve awards up to $25,000 for individual employees.	Part 451, subpart A, section 451.103(c)(2)—Waive with respect to contribution awards under the ONR CCS.
	Part 451, subpart A, sections 451.106(b) and 451.107(b)—Waive to permit ONR to approve awards up to $25,000 for individual employees.
Chapter 51, sections 5101 to 5113—Classification. Waive in entirety except section 5104 to the extent needed to permit classification of pay bands and CCS descriptors into logically defined level groupings..	Part 511—Classification Under the GS. Waive in entirety with an exception for appeal rights and time constraints under subpart F, sections 511.603, 511.604, and 511.605.
Chapter 53, subpart I, section 5301—Pay Policy. Waive in entirety	
Chapter 53, subchapter I, section 5302(8) and (9)—Pay Definition and section 5304—Locality-Based Comparability Payments. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees and basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay. Employees in Pay Band V for the S&E Professional Track to be treated as ST employees for the purposes of these provisions.	
Chapter 53, subchapter I, section 5303—Annual Adjustments to Pay Schedules. Waive in entirety.	
Chapter 53, subpart I, section 5303—Special Pay Authority. Waive in entirety..	
Chapter 53, subchapter III, sections 5331 to 5336—GS Pay Rates. Waive in entirety.	Part 520, subpart C—Specialty Salary Rate Schedules. Waive in entirety.
	Part 531, subpart B—Determining Rate of Basic Pay. Waive in entirety.

Title V, United States Code	Title 5, Code of Federal Regulations
	Part 531, subpart D—Within Grade Increases. Waive in entirety.
	Part 531, subpart E—Quality Step Increases. Waive in entirety.
	Part 531, subpart F—Locality-Based Comparability Payments. Waive to the extent necessary to allow the demonstration project employees to be treated as GS employees, employees in Pay Band V of the S&E Professional Career to be treated as ST employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay.
Chapter 53, subchapter VI, sections 5361 to 5366—Grade and Pay Retention. Waive to entirety.	Part 536—Grade and Pay Retention. Waive in entirety.
Chapter 55, section 5545 (d)—Hazardous Duty Differential. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the S&E Professional Career Track.	Part 550, subpart G—Severance Pay. Waive to the extent necessary to allow ONR to define reasonable offer. Part 550, subpart I—Pay for Duty Involving Physical Hardship or Hazard. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the S&E Professional Career Track.
Chapter 57, subchapter IV, section 5753 to 5755—Recruitment and Relocation Bonuses, Retention Allowances, and Supervisory Differential. Waive to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Level V of the S&E Professional career track to be treated as ST employees for these purposes.	Part 575, subparts A, B, C, and D—Recruitment and Relocation Bonuses, Retention Allowances, and Supervisory Differential, Waive to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Level V of the S&E Professional career track to be treated as ST employees for these purposes.
Chapter 59, subchapter III, section 5924—Cost-of-living Allowances. Waive to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).	Part 591, subpart B—Cost-of-living Allowances and Post Differential—non-foreign areas. Waive to the extent necessary to allow demonstration project employees to be treated as GS employees and employees in Pay Band V of the S&E Professional Career Track to be treated as ST employees.
Chapter 75, sections 7501(1) and 7511 (a)(1)(A)(ii)—Removal Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference 7511(a)(I)(C)(ii)—Waive.	Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.
Chapter 75, subchapter II, section 7512—Adverse Actions. Waive to replace "grade" with "pay band", provide that adverse action provisions do not apply to conversion from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and exclude from coverage (procedural and appeal rights) reductions in pay band with no reduction in pay, when such actions result from regression of pay into a lower pay band through reductions or denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.	Part 752, subpart A—Adverse Actions. Waive to exclude from coverage (procedural and appeal rights) reductions in pay band with no reduction in pay, when such actions result from regression of pay into a lower pay band through reductions and denials of general increase ("slippage"). This exclusion will not apply to employees with veterans' preference.
	Part 752, section 752.401(a)(3)—Adverse Actions. Waive to replace "grade" with "pay band".
	Part 752, section 752.401(a)(4)—Adverse Actions. Waive to provide that adverse action provisions do not apply to conversion from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.

Appendix C: Definitions of Career Tracks and Pay Bands

ONR's career level definitions may be modified as experience is gained through their application in classification actions and performance appraisal.

Career Track: S&E Professional—Includes professional positions in S&E occupations such as physics, electronics engineering, chemistry, and student positions associated with these professions.

Level I	This includes student trainees. The education and employment must be part of a formal student employment program. Specific, clear, and detailed instructions and supervision are given to complement education. The level of education and experience completed is a major consideration in establishing the level of on-the-job training and work assignments.
Level II	This is the entry or developmental stage, preparing S&E's for the full and independent performance of their work. S&E's at this level perform supporting work in science or engineering requiring professional training but little experience, and conduct activities with objectives and priorities identified by supervisor or team leader. Assistance is given on new or unusual projects; completed work is reviewed for technical soundness.
Level III	This is the advanced developmental pay band of this career track. S&Es at this level conceive and define solutions to technical problems of moderate complexity; plan, analyze, interpret, and report findings of projects; and guide technical and programmatic work of a program's research efforts. Completed work and reports are reviewed to evaluate overall results.

Level IV	S&E's at this level are authorities within their professional areas or key program administrators. They direct technical activities or assist higher levels on challenging and innovative projects or technical program development with only general guidance on policy, resources and planning; develop solutions to complex problems requiring various disciplines; responsible for fulfilling program objectives.
Level V	S&Es at this level are renowned experts in their fields. They independently define and lead most challenging technical programs consistent with general guidance and/or independently direct overall R&D program managerial and/or supervisory aspects; conceive and develop elegant solutions to very difficult problems requiring highly specialized areas of technical expertise; are recognized within DoD and other agencies for broad technical area expertise and have established professional reputation in technical community nationally and internationally. The primary requirement for Level V positions is the knowledge of and expertise in specific scientific and technology areas related to the mission of their organization. However, the ability to manage and/or supervise R&D operations or programs is also considered a necessity. They may direct the work of an organizational unit; may be held accountable for the success of one or more specific programs or projects; monitor progress toward organizational goals and periodically evaluate and make appropriate adjustments to such goals; supervise the work of employees; or otherwise exercise important policy-making, policy-determining, or other managerial functions.

Career Track: Administrative Specialist and Professional—Professional and specialist positions in areas such as the following: safety and health, personnel, finance, budget, procurement, librarianship, legal, business, facilities management and student positions associated with these professions.

Level I	Includes student trainees. The education and employment must be part of a formal student employment program. Specific, clear, and detailed instructions and supervision are given to complement education. The level of education and experience completed is a major consideration in establishing the level of on-the-job training and work assignments.
Level II	This is the developmental stage preparing Administrative Specialists and Professionals for the full and independent performance of their work. Specific, clear and detailed instruction and supervision are given upon entry; recurring assignments are carried out independently. Situations not covered by instructions are referred to supervisor. Finished work is reviewed to ensure accuracy.
Level III	This is the advanced developmental career level of this career track. Employees at this level plan and carry out assignments independently, resolve conflicts that arise, coordinate work with others and interpret policy on own initiative. Completed work is reviewed for feasibility, compatibility with other work or effectiveness in meeting requirements or expected results.
Level IV	At this level, Administrative Specialists and Professionals are authorities within their professional areas or key program administrators or supervisors. They conduct or direct activities in an administrative and professional area with only general guidance on policy, resources and planning; develop solutions to complex problems requiring various disciplines; and are responsible for fulfilling program objectives.
Level V	Administrative Specialists and Professionals at this level are experts within their broad administrative area or professional field who serve as leaders, heads of branches or divisions, or key program administrators. They receive general guidance on policy, resources and planning that have an effect on public policies or programs; and are responsible for fulfilling program objectives. Results are authoritative and affect administrative programs or the well-being of substantial numbers of people.

Career Track: Administrative Support—Includes clerical, secretarial and assistant work in nonscientific and engineering occupations.

Level I	This includes student trainees as well as advanced entry level which requires a fundamental knowledge of a clerical or administrative field. Developmental assignments may be given which lead to duties at a higher group level. Performs repetitive tasks, specific, clear and detailed instruction and supervision; with more experience utilizes knowledge of standardized procedures and operations, assistance is given on new or unusual projects. Completed work is reviewed for technical soundness.
Level II	This level requires knowledge of standardized rules, procedures or operations requiring considerable training. General guidance is received on overall objectives and resources. Completed assignments may be reviewed for overall soundness or meeting expected results.
Level III	This is the senior level which requires expert knowledge of procedures and operations, which is gained through extensive training. Employees at this level receive general guidance on overall resources and objectives, and are skilled in applying knowledge of basic principles, concepts, and methodology of profession or administrative occupation and technical methods. Results are accepted as authoritative and are normally accepted without significant change.

Appendix D: Table of Occupational Series Within Career Tracks

Definitions for ONR's three career tracks are provided below along with the breakdown of their respective series. Some series may appear in two career tracks depending on the purpose of the position. The breakdown of occupational series reflects only those occupations that currently exist in ONR. Additional series may be added as a result of changes in mission requirements or OPM-recognized occupations. These additional series will be placed in the appropriate career track consistent with the definitions provided below.

S&E Professional Career Track: Includes professional positions in S&E occupations such as physics, electronics, engineering, chemistry, and student positions associated with these professions.

0180—Psychology Series.
0190—General Anthropology Series.
0335—Computer Clerk & Assistant.
0401—General Natural Resources Management and Biological Sciences Series.
0403—Microbiology Series.
0405—Pharmacology Series.
0413—Physiology Series.
0440—Genetics Series.
0855—Electronics Engineering Series.
0861—Aerospace Engineering Series.
0871—Naval Architecture Series.
0854—Computer Engineering Series.
0893—Chemical Engineering Series.
0896—Industrial Engineering Series.
1301—General Physical Sciences Series.
1310—Physics Series.

0601—General Health Science Series.
0602—Medical Officer Series.
0801—General Engineering Series.
0802—Engineering Technical Series.
0806—Materials Engineering Series.
0810—Civil Engineering Series.
0830—Mechanical Engineering Series.
0840—Nuclear Engineering Series.
0850—Electrical Engineering Series.
1313—Geophysics Series.
1320—Chemistry Series.
1321—Metallurgy Series.
1340—Meteorology Series.
1360—Oceanography Series.
1515—Operations Research Series.
1520—Mathematics Series.
1530—Statistics Series.
1550—Computer Science Series.

Administrative Specialist and Professional Career Track: Professional and specialist positions in areas such as the following: Safety and health, finance, budget, procurement, librarianship, legal, business, facilities management, and student positions associated with these professions.

0080—Security Administration Series.
0110—Economist Series.
0201—Human Resource Management Series.
0260—Equal Employment Opportunity Series.
0301—Miscellaneous Administration and Program Series.
0340—Program Management Series.
0341—Administrative Officer Series.
0343—Management and Program Analysis Series.
0391—Telecommunications Series.
0501—Financial Administration and Program Series.
0505—Financial Management Series.
0510—Accounting Series.
0560—Budget Analysis Series.
0905—General Attorney Series.
0950—Paralegal Specialist Series.
1035—Public Affairs Series.
1084—Visual Information Series.
1101—General Business and Industry Series.
1102—Contracting Series.
1150—Industrial Specialist Series.
1222—Patent Attorney Series.
1412—Technical Information Services Series.
1720—Education Specialist Series.
1801—General Inspection, Investigation, and Compliance Series.
2210—Information Technology Management.

Administrative Support: Includes clerical, secretarial, and assistant work in nonscientific and engineering occupations.

0086—Security Clerical and Assistance Series.
0203—Human Resource Assistance Series.
0303—Miscellaneous Clerk and Assistant Series.
0305—Mail and File Series.
0318—Secretary Series.
0326—Office Automation and Clerical Assistance Series.
0335—Computer Clerk and Assistant Series.
0503—Financial Clerical and Assistance Series.
0525—Accounting Technician Series.
0561—Budget Clerical and Assistance Series.
0986—Legal Assistance Series.

Appendix E: Classification and CCS Elements

The CCS Summaries shown in this appendix are draft templates intended to provide an understanding of the information covered by the CCS process. Under the demonstration project, the summaries will be generated by the CCSDS. They may be changed during the project to require additional information, to make them easier to use, or for other reasons.

The contents of the CCS elements, descriptors, discriminators, and basic acceptable standards may similarly be changed during the life of the demonstration project.

OFFICE OF NAVAL RESEARCH CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY

[Science & Engineering Professional]

Employee Name: Click here to enter text.	**Pay Pool Code:** Click here to enter text.	**Appraisal Period Ending:** Click here to enter text.
Title: Click here to enter text.	**Pay Plan/Series:** Click here to enter text.	**Career Level:** Click here to enter text.
SSN: Click here to enter text	**Supervisor:** Click here to enter text	

Most Recent OCS: Click here to enter text.
Present Salary: Click here to enter text.
Scores within NPR Equivalent to Present Salary: Click here to enter text.

Critical Elements	* Weight	Score	Net Score	Rating of Record Acceptable or Unacceptable
1. Scientific and Technical Leadership	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
2. Program Execution and Liaison	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
3. Cooperation and Supervision	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

* If zero, then element not applicable.

Basic Pay Increase %: *Click here to enter text.*
Contribution Award $: *Click here to enter text.*
Hours *Click here to enter text.*
Summary Rating A (Acceptable) or U (Unacceptable)

Must be U if any critical element is rated U
Click here to enter text.

Overall Contribution Score (Weighted Average): *Click here to enter text.*

SUPPLEMENTAL CRITERIA (OPTIONAL). FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Date	CCS Plan	Interim Review	Appraisal
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this summary and has a copy of Elements, Descriptors, Discriminators, and Standards applicable to his or her career track.

BILLING CODE 5001–06–P

Science & Engineering Professional

ELEMENT 1. SCIENTIFIC AND TECHNICAL LEADERSHIP

		DISCRIMINATORS				
Level	**Point Range**	**Planning & Scope of Impact**	**Complexity and Creativity**	**Communications and Reporting**	**Technical Credibility and Recognition**	**DESCRIPTORS**
I	0 - 21	Performs tasks specifically assigned by researcher under close supervision.	Performs tasks which are non-complex or include detailed instructions, requiring limited knowledge of subject matter	Writes in-house documents to convey information about his/her tasks or for similar purposes as assigned.	Recognized by personnel in own unit for providing high quality support and increasing subject matter knowledge	
II	18 - 47	Conducts in-house technical activities and/or may provide contract technical direction with guidance from supervisor or higher-level scientist or engineer.	Works closely with peers in collaborative solving problems of moderate complexity, involving limited variables, procedures established in related projects, and minor adaptations to well-established methods and techniques.	Provides data & written analysis for input to scientific papers, journal articles & reports and/or assists in preparing contractual documents or reviews technical reports. Presents technical results of own work orally or in writing, within own organization or to limited external contacts. Work acknowledged in least publication.	Recognized within own organization for technical ability in assigned areas.	
III	44 - 66	Defines, leads and guides highly challenging and innovative programs consistent with general guidance. Work delivers significant new scientific and/or technical results as well as applications or other outcomes that significantly expand the future capabilities of the Navy and Marine Corps. Individual's contributions are evident across ONR and DON, and usually outside DOD. Requires some direction and oversight.	Formulates and guides programs to address difficult problems in advancing technology and research. Works with international research community, initiating new sub-disciplines, and/or draws on multidisciplinary expertise to address critical technical challenges. Formulates strategic research objectives based on naval strategic guidance.	Effectively prepares and delivers communications at appropriate level for multiple/ various audiences. Ensures overall quality of reporting of all technical products. With minimal supervision prepares and delivers invited or contributes presentations and papers at national and international conferences on technical area.	Leads a program that is recognized nationally for its quality in an area of major importance to ONR's corporate agenda.	
IV	66 - 80	Independently defines, leads, and guides highly challenging and innovative programs consistent with general guidance. Work delivers significant new scientific and/or technical results as well as applications or other outcomes that significantly expand the future capabilities of the Navy and Marine Corps. Individual's contributions are evident across ONR and DON, and usually outside DOD. Requires minimal direction and oversight.	Formulates and guides programs to address difficult problems in advancing technology and research. Leads international research community, initiating new sub-disciplines, and/or draws on multidisciplinary expertise to address critical technical challenges. Recognizes external trends and drivers to formulate strategic research objectives.	Effectively prepares and delivers communications at appropriate level for multiple/ various audiences. Ensures overall quality of reporting of all technical products. Prepares and delivers invited or contributes presentations and papers at national and international conferences on technical area, or gives policy-level briefings.	Leads a program that is recognized nationally/ internationally for its quality in an area of major importance to ONR's corporate agenda.	
V	81 - 89	Leads a community of experts in the conceptualization and definition of major program areas that integrate a broad range of technical disciplines and specialties together with a range of anticipated Naval needs. Work delivers significant new scientific and/or technical results as well as applications or other outcomes that significantly expand the future capabilities of the Navy and Marine Corps. Results may drive technological trends and applications beyond DON and DOD.	Formulates and guides integrated programs that are so complex they must be subdivided into areas at least some of which have a major impact on advancing the field or are accepted to definitive of important areas of the field. Leads international research community, initiating new sub-disciplines, and/or draws on multidisciplinary expertise to address critical technical challenges that may require novel programmatic and organizational concepts. Recognizes external trends and drivers to formulate strategic research objectives.	Effectively prepares and delivers communications at appropriate level for multiple/ various audiences such that senior decision makers in DON and DOD (and beyond) are influenced to accept and endorse ONR research and technology programs. Ensures overall quality of reporting of all technical products. Prepares and delivers invited or contributes presentations and papers at national and international conferences on technical area, or gives policy-level briefings	Leads an integrated collection of multidisciplinary programs recognized nationally/ internationally for its quality in an area of major importance to ONR's corporate agenda and the DON	

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, makes and/or meets time and budget estimates on assigned projects or takes appropriate corrective action, communications are logical, clear, complete and appropriately influence the decision process, decisions and strategies contribute to the appropriate outcome of business dealings, and work products demonstrate thorough research, completion of established objectives, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supervisor or appropriate peer group.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

Science & Engineering Professional

ELEMENT 2. PROGRAM EXECUTION AND LIASION

		DISCRIMINATORS					
Level	Point Range	Resource Management	Program Assessment and Documentation	Stakeholder Liaison	Performer/ Peer Liaison	Teamwork	
I	0 - 21	Uses personal and assigned resources efficiently under guidance of supervisor or team leader	Accurately reports on work progress and thoroughly documents works accomplishments	Not applicable	Through effective collaboration within his/her team supports the achievement of project/program goals	Provides assistance to team members consistent with his/her level of education/experience	DESCRIPTORS
II	18 - 47	Manages elements of in house work units or assists in managing a scientific or support contract. Assures of and makes appropriate use of available resources. Uses personal and assigned resources efficiently under guidance of supervisor or team leader	Applies program assessment and documentation processes to effectively monitor and document program progress and results	Not applicable	Through effective collaboration within his/her team supports the achievement of project/program goals. Written documents and oral presentations are recognized within own work unit as providing high quality support and increasing subject matter knowledge	Contributes as a technical researcher or team member to all aspects of team's responsibilities. May technically guide or mentor technicians and/or less experienced and more junior level personnel	
III	44 - 66	Implements program plans including resource allocations (people, contracts, scheduling and funding) to ensure successful program execution. Tracks/monitors corporate business activities to ensure timely execution of program goals using all appropriate management information systems	Implements effective processes for monitoring and assessing the quality and progress of a program's research efforts. Defines scientific/technological objectives and metrics with minimal oversight. Maintains documentation on program performance and accomplishment	Through effective collaboration within ONR and DON enables the achievement of project/program goals. Within scope of program/responsibilities, serves as a trusted partner with the DON (acquisition, requirements, and operational commands), DoD and other Federal Agencies effectively	Actively engages with a wide variety of S&T experts in government, industry and academia to significantly increase ONR's ability to ensure wide access to diverse perspectives. Specifically, attracts and motivates world-class PIs, effectively translates ONR program objectives into specific S&T challenges, and guides and optimizes the number, quality and impact of S&T outputs	Fosters successful working relationships with officials in DON, DoD and other agencies to effectively carry out integrated program work. Effectively and professionally collaborates across ONR business units and support providers to properly plan and execute S&T programs. Contributes to ONR diversity goals through effective liaison with university campuses and other outreach assignments	
IV	66 - 80	Effectively defines and implements program plans including resource allocations (people, contracts, scheduling and funding) to ensure successful program execution with minimal guidance. Tracks/monitors corporate business activities to ensure timely execution of program goals using all appropriate management information systems	Establishes and implements effective processes for monitoring and assessing the quality and progress of a program's research efforts. Defines scientific/technological objectives and metrics. Maintains documentation on program performance and accomplishment	Based on widely recognized capabilities is called upon across ONR and/or across agencies, academia, and industry to advise, consult and speak in ways that can lead to new alliances, enhance integration, and/or set new S&T directions. Serves as a trusted partner with the DON (acquisition, requirements and operational commands), DoD and other Federal Agencies effectively	Actively engages with a wide variety of S&T experts in government, industry and academia to significantly increase ONR's ability to ensure wide access to diverse perspectives. Specifically, attracts and motivates world-class PIs, effectively translates ONR program objectives into specific S&T challenges, and guides and optimizes the number, quality and impact of S&T outputs	Fosters successful working relationships with officials in DON, DoD and other agencies to resolve highly complex problems and to effectively carry out integrated budget and program work. Effectively and professionally collaborates across ONR business units and support providers to properly plan and execute S&T programs. Successfully impacts ONR diversity goals by reinvigorating the S&T workforce, allocation of university funding, or developing S&T talent	
V	81 - 89	Defines near-term through long-range requirements needed to meet ONR product area objectives and devises innovative, effective strategies for acquiring long-term assets or dramatically improving asset utilization in a way that meets strategic goals. Actively works to improve ONR's business functions to support science and technology programs	For all programs within area of responsibility establishes and implements effective processes for monitoring and assessing quality and progress relative to program plan. Defines scientific/technological objectives and metrics. Maintains documentation on program performance and accomplishment	Based on widely recognized capabilities is called upon across ONR, other government agencies, academia, and industry to advise, consult and speak in ways that can lead to new alliances, enhance integration, and/or set new S&T directions. Serves as a trusted partner with the DON (acquisition, requirements and operational commands), DoD and other Federal Agencies effectively. Advocacy leads to adoption of ONR technology and/or transition to programs of record, or the enhancement of basic and applied research in emerging areas of importance to ONR	Employs and develops innovative techniques to identify and engage a wide variety of S&T experts in government, industry and academia to significantly increase ONR's ability to ensure wide access to diverse perspectives. Specifically, attracts and motivates world-class PIs, effectively translates ONR program objectives into specific S&T challenges, and guides and optimizes the number, quality and impact of S&T outputs. Represents the quality of ONR in such a way as to serve as a recruiting attraction for S&E's seeking to work with/for ONR	Fosters successful working relationships with high level officials throughout the S&T community, in DON, DoD and other agencies to resolve highly complex problems and to effectively carry out integrated budget and program work. Effectively and professionally collaborates across ONR business units and support providers to properly plan and execute S&T programs. Successfully impacts ONR diversity goals by reinvigorating the S&T workforce, allocation of university funding, or developing S&T talent	

ACCEPTABLE PERFORMANCE STANDARDS. With minor exceptions, makes and/or meets time and budget estimates on assigned projects or takes appropriate corrective action, communications are logical, clear, complete and appropriately influence the decision process; decisions and strategies contribute to the appropriate outcome of business dealings; and work products demonstrate thorough research, completion of established objectives, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supervisor or appropriate peer group

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

Science & Engineering Professional

ELEMENT 3. COOPERATION AND SUPERVISION

		DISCRIMINATORS			
Level	Point Range	Organization Development	Performance Management	Workforce Development	
I	0 - 21	Not applicable	Not applicable	Not applicable	
II	18 - 47	Not applicable	Not applicable	Not applicable	
III	44 - 66	Not applicable	Not applicable	Not applicable	
IV	66 - 80	Establishes an organization, position structure, and working environment that is fully responsive to mission and program goals and that attracts and retains high performing scientists, engineers and other personnel reflecting diversity. Within organizational unit, promotes adaptation of best practices in organizational development, human resources, and enterprise management to enhance ONR's attractiveness as an employer of choice for a diverse group of top scientists, engineers, technicians and support personnel.	Establishes internal controls, performance management and incentive techniques that effectively monitor progress and achievements, and provides appropriate individual and team recognition for contributions. Provides support and resources necessary to enable high performance of workforce. Takes timely and effective action to fulfill all program and personnel administrative requirements	Develops the workforce structure with a long-term view to encompass developing individuals, planning for succession and retirements, and recruiting to enable all work unit or team members to function optimally. Ensures continuous learning activities of workforce. Provides timely informative and responsive feedback to subordinates and successfully coaches subordinates to promote competency and professional progression	DESCRIPTORS
V	81 - 89	Establishes an organization, position structure, and working environment that is fully responsive to mission and program goals and that attracts and retains high performing scientists, engineers and other personnel reflecting diversity. Within the ONR S&E community, promotes adaptation of best practices in organizational development, human resources, and enterprise management to enhance ONR's attractiveness as an employer of choice for a diverse group of top scientists, engineers, technicians and support personnel	Establishes organizational goals and objectives that encourage mission identification, promote continuous improvement, and significantly increase individual, work unit or team contributions. Manages organizational change through collaborative techniques that lead to successful implementation	In the context of enhancing the Naval Research Enterprise, develops the workforce structure with a long-term view to encompass developing individuals, planning for succession and retirements, and recruiting to enable the optimal capability of Naval S&E personnel.	

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, makes and/or meets time and budget estimates on assigned projects or takes appropriate corrective action; communications are logical, clear, complete and appropriately influence the decision process; decisions and strategies contribute to the appropriate outcome of business dealings, and work products demonstrate thorough research, completion of established objectives, adherence to instructions and guidance of supervisor and team leader, and overall high quality as deemed by supervisor or appropriate peer group

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OFFICE OF NAVAL RESEARCH CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY

[Administrative Specialist and Professional]

Employee Name: Click here to enter text.	Pay Pool Code: Click here to enter text.	Appraisal Period Ending: Click here to enter text.
Title: Click here to enter text.	Pay Plan/Series: Click here to enter text.	Career Level: Click here to enter text.
SSN: Click here to enter text.	Supervisor: Click here to enter text.	

Most Recent OCS: Click here to enter text.
Present Salary: Click here to enter text.

Scores within NPR Equivalent to Present Salary: Click here to enter text.

Critical elements	* Weight	Score	Net score	Rating of record acceptable or unacceptable
1. Problem Solving and Leadership	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Critical elements	* Weight	Score	Net score	Rating of record acceptable or unacceptable
2. Cooperation and Customer Relations	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
3. Supervision and Resources Management	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

* If zero, then element not applicable.

Basic Pay Increase %: *Click here to enter text.*

Contribution Award $: *Click here to enter text.*

Hours: *Click here to enter text.*

Summary Rating A (Acceptable) or U (Unacceptable)

Must be U if any critical element is rated U *Click here to enter text.*

Overall Contribution Score (Weighted Average): *Click here to enter text.*

SUPLEMENTAL CRITERIA (OPTIONAL). FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and date	CCS plan	Interim review	Appraisal
Employee			
Supervisor			

Note: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this summary and has a copy of Elements, Descriptors, Discriminators, and Standards applicable to his or her career track.

BILLING CODE 5001–06–P

Administrative Specialist and Professional

ELEMENT 1: PROBLEM SOLVING AND LEADERSHIP

		DISCRIMINATORS			
Level	**Point Range**	**Complexity/Scope**	**Applicability of Guidelines**	**Level of Oversight**	
I (Student)	0	Applies standardized rules, procedures, and operations; and assists supervisor or other personnel in the resolution of standard or recurring problems	Locates and selects the most appropriate guidelines and procedures from established sources.	Independently carries out assigned work following supervisor's direction.	DESCRIPTORS
II	18-47	Applies knowledge to analyze and resolve problems which are difficult but for which there are established patterns and methods for solution	Uses judgment in selecting, interpreting, and adapting guidelines which are available but not completely applicable, or which have gaps in specificity.	Consults with supervisor to develop deadlines, priorities and overall objectives. Completed work is evaluated for technical soundness, appropriateness, and conformity to policy and requirements	
III	44-59	Applies expertise to analyze and resolve challenging and complex issues and/or problems. Participates as an effective team member and provides competent technical or subject matter expertise. Includes refinement of methods or development of new ones.	Uses initiative and resourcefulness in interpreting and applying policies, precedents, and guidelines which are applicable but are scarce, conflicting, of limited use, or stated only in general terms	Independently plans and carries out work, based on guidelines and precedents and supervisor's definition of objectives, priorities, and deadlines. Completed work is evaluated for technical soundness, appropriateness, and conformity to policy and requirements.	
IV	59-66	Identifies and resolves challenging and complex problems involving multiple disciplines or subject matter areas within a business management functional area. Participates as an active and integral part of a team, serving as technical/subject matter expert. Results impact work products, schedules, and tasks of the Division/Department and its customers.	Uses initiative and resourcefulness in interpreting guidelines, in deviating from traditional methods or researching trends and patterns to develop new methods, criteria, or propose new policies. Uses considerable judgment and originality in developing innovative approaches to define and resolve complex situations.	Supervisor outlines overall objectives. Employee then independently plans and carries out the work. Complex issues are resolved without reference to supervisor except for matters of a policy nature. Results of work are considered technically authoritative and are normally accepted without significant changes.	
V	66-80	Initiates or leads ONR-wide activities to address ONR/Navy business management requirements or issues, results have far reaching and direct impact on the mission and programs of ONR and/or Navy/DoD and government.	Guidelines are broadly stated and non-specific. Applies considerable judgment and ingenuity in interpreting guidelines that do exist. Develops and applies effective business management concepts, approaches, techniques, or hypotheses to resolve highly complex business management issues.	Independently plans, designs, and carries out functional area requirements such that overall objectives are met Supervisor provides only broadly defined missions and functions. Results of work are considered technically authoritative and are normally accepted without changes.	

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, work is performed in a timely, efficient, and cooperative manner, and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

Administrative Specialist and Professional

ELEMENT 2: COOPERATION AND CUSTOMER RELATIONS

		DISCRIMINATORS			
Level	**Point Range**	**Cooperation**	**Level and Purpose of Customer Interactions**	**Effectiveness in Developing and Executing Customer-Oriented Support Services**	**DESCRIPTORS**
I (Student)	0	Develops and maintains successful working relationships with colleagues and customers to effectively carry out assigned work.	Interacts with customers to carry out requests within area of responsibility; refers deviations or non-recurring problems to appropriate personnel.	Carries out services in a manner which fosters customer satisfaction and confidence in employee's organization.	
II	18-47	Seeks, builds, and nurtures collaborative relationships with customers and colleagues to improve customer service	Interacts with customers to understand customer needs, communicate information and coordinate actions; independently carries out actions or refers to appropriate personnel.	Contributes ideas for improvement of established services based on knowledge and an understanding of customer needs	
III	44-59	Seeks, builds, and nurtures collaborative relationships with customers and colleagues in other business management functional areas to improve customer service.	Works jointly with customers to define and understand customer needs or requirements and solve difficult customer problems. Develops and carries out strategies, techniques, or process for solving customer problems and meeting needs.	Generates ideas and/or strategies for the development and implementation of new and improved programs or services applicable to a specific administrative or technical functional area serving customers, or to a range of programs serving customers at division-wide level. OR effectively carries out and maintains such programs and services at a high level of customer awareness and satisfaction.	
IV	59-66	Leads and facilitates the development and maintenance of collaborative relationships with customer organizations across ONR functional and organizational areas to improve customer service.	Works jointly with customers to define complex or controversial problems or program needs; develops and carries out unique strategies, techniques, or criteria for resolving problems and meeting needs.	Generates key ideas and/or strategies for development and implementation of complex new and improved programs or services which affect a broad administrative or functional area serving ONR's customers; AND effectively carries out and maintains such programs and services at a high level of customer awareness and satisfaction.	
V	66-80	Fosters successful working relationships with high-level officials both inside and outside ONR, thereby enhancing ONR's ability to meet organizational goals. Seeks and builds coalitions with other support organizations to establish integrated approaches to meeting ONR's needs. Sets and maintains, through-out own organization, a tone of cooperation, cohesion, and teamwork.	Works at senior executive level to understand political, fiscal, and other factors affecting customer and program needs; to develop and establish concepts, theories, or programs to meet service needs or resolve unyielding problems. Negotiates and resolves conflicts among senior managers regarding activity-wide policy decisions.	Generates strategic objectives and plans for development and implementation of broadly-based programs and services to meet ONR's needs. Ensures overall effectiveness and customer-oriented focus of programs and services.	

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

Administrative Specialist and Professional

ELEMENT 3: SUPERVISION AND RESOURCES MANAGEMENT

Level	Point Range	DISCRIMINATORS: Resources Management: Size and Complexity of Area of Responsibility; Level of Efficiency, Creativity, and Initiative	Supervision and Subordinate Development (consider only if employee is a supervisor)	DESCRIPTORS
I (Student)	0	Uses personal and assigned resources efficiently under guidance of supervisor. Contributes ideas for streamlining procedures or for more efficiently using resources.	Not applicable	
II	18-47	Generates ideas for effectively streamlining handling of projects or programs which are difficult but for which there are established guidelines, patterns, or methods for solution. This streamlining results in savings of time, money, and administrative burden for organization or customer. AND/OR maintains an organization/program already so streamlined.	Not applicable.	
III	41-59	Generates ideas for effectively streamlining handling of moderately complex projects or programs involving analysis and resolution of issues or problems which result in savings of time, money, and administrative burden for organization or customer. AND/OR maintains an organization/program already so streamlined	Not applicable	
IV	59-66	Generates and implements ideas for effectively streamlining handling of complex or controversial projects or programs involving analysis and resolution of issues or problems which result in savings of time, money, and administrative burden for organization or customer. AND maintains an organization/program already so streamlined.	Carries out full range of supervisory duties with respect to lower level staff including one or more subordinate professionals. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Nurtures and maintains an organization and working environment that is effective in accomplishing its assigned goals and function.	
V	66-80	Defines near-term through to long-range asset requirements (e.g., people, funding, equipment) needed to meet ONR business management objectives and devises innovative, effective strategies for acquiring long-term assets for dramatically improving asset utilization in a way that meets strategic goals. Defines and monitors broad (corporate) metrics for measuring business management success in meeting ONR goals and DON needs, integrates new information technologies or business practices to achieve major enhancements in efficiency and effectiveness of business management performance, assessment, and documentation.	Establishes the overall infrastructure necessary for achieving mission goals Successfully mentors the career growth, assignment, and full utilization of top business management leaders and professionals, whose continuing achievements sustain or advance Navy and government business management policies and practices. Carries out full range of supervisory duties with respect to subordinates. Identifies and resolves developmental needs and problems, completes appropriate administrative actions, complies with EEO and Safety and other regulations and policies. Provides leadership in developing, implementing, evaluating and improving processes for enhancing performance of subordinates.	

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, work is performed in a timely, efficient, and cooperative manner, and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor.

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

OFFICE OF NAVAL RESEARCH CONTRIBUTION-BASED COMPENSATION SYSTEM (CCS) SUMMARY

[Administrative Support]

Employee Name: Click here to enter text.	**Pay Pool Code:** Click here to enter text.	**Appraisal Period Ending:** Click here to enter text.
Title: Click here to enter text.	**Pay Plan/Series:** Click here to enter text.	**Career Level:** Click here to enter text.
SSN; Click here to enter text.	**Supervisor:** Click here to enter text.	

Most Recent OCS: Click here to enter text. **Salary:** Click here to enter text.
Present Salary: Click here to enter text.
Scores within NPR Equivalent to Present

Critical Elements	* Weight	Score	Net Score	Rating of Record Acceptable or Unacceptable
1. Problem Solving	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
2. Cooperation/Customer Relations/Supervision	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

* If zero, then element not applicable.

Basic Pay Increase %: *Click here to enter text.*

Contribution Award $: *Click here to enter text.*

Hours: *Click here to enter text.*

Summary Rating A (Acceptable) or U (Unacceptable)

Must be U if any critical element is rated U

Click here to enter text.

Overall Contribution Score (Weighted Average):

Click here to enter text.

SUPPLEMENTAL CRITERIA (OPTIONAL). FOR EXAMPLE, SPECIFIC OBJECTIVES, STANDARDS, TASKINGS, AND/OR EXAMPLES:

REMARKS:

Signatures and Date	CCS Plan	Interim Review	Appraisal
Employee			
Supervisor			

NOTE: Employee's signature under "CCS Plan" signifies that he or she has been given a copy of this summary and has a copy of Elements, Descriptors, Discriminators, and Standards applicable to his or her career track.

BILLING CODE 5001–06–P

Administrative Support

ELEMENT 1: PROBLEM SOLVING

Instructions: Assign a value (0 - 47) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		DISCRIMINATORS		
Level	**Point Range**	**Complexity**	**Level of Oversight/Applicability of Guidelines**	DESCRIPTORS
I	0 - 21	Performs clerical or technical work involving application of a body of standardized rules, procedures or operations to resolve a full range of standard or recurring clerical/technical problems in a professional and cooperative manner.	Independently carries out recurring and non-complex work. following supervisor's direction regarding work to be done, priorities, and specific procedures/guidelines to be followed. Locates/selects the most appropriate guidelines and procedures from established sources; makes minor deviations applicable to specific cases.	
II	18 - 34	Performs clerical or technical work involving application of an extensive body of rules, procedures or operations to resolve a wide-variety of interrelated or nonstandard problems in a professional and cooperative manner.	Independently plans and carries out steps required to complete assignments; handles problems/deviations. Supervisor defines objectives, overall priorities and deadlines. Selects, interprets & applies guidelines which are available but not completely applicable or have gaps in specificity.	
III	31 - 47	Performs clerical or technical work involving: - application of principles, concepts and methodologies of a professional/administrative occupation to accomplishment of particularly challenging assignments, operations or procedures; or application of a wide range of highly technical principles, processes and methods, including refinement of methods or development of difficult but well precedence projects All work is performed in a in a professional and cooperative manner	Independently determines the approach and methodology used to accomplish work, plans and carries out work and resolves related conflicts. Supervisor sets overall objectives, broad priorities and resources available. Applies considerable judgment and analysis in selecting, interpreting and applying guidelines which are available but not completely applicable or have gaps in specificity.	

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, work is performed in a timely, efficient, and cooperative manner; and work products demonstrate completion of established objectives for the assignment, adherence to instructions and guidance of supervisor and team leader, and acceptable quality as deemed by supervisor

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

Administrative Support

ELEMENT 2: COOPERATION/CUSTOMER RELATIONS/SUPERVISION

Instructions: Assign a value (0 - 47) which best represents employee's contributions in the overall element. Descriptors define contributions at high end of each level.

		DISCRIMINATORS		
Level	**Point Range**	**Supervision and Subordinate Development (consider only if employee is a supervisor)**	**Cooperation**	**Customer Relations**
I	0 - 21	Not applicable	Interacts under established circumstances to obtain or give factual information within the immediate organization, office, project, or in related support units.	Independently carries out customer requests within area of responsibility or refers to other appropriate personnel
II	18 - 34	Not applicable	Initiates/engages in/facilitates cooperative interactions with others inside and outside to: coordinate joint actions, work out problems between own group and others, or gain understanding of other functions sufficient to recommend options to customers.	Interacts with customers to understand customer needs, determines appropriate services to meet needs; and independently carries out such actions or delegates/refers to appropriate personnel. Actively promotes rapport with customers
III	31 - 47	Carries out full range of supervisory duties with respect to lower level staff including one or more who is a senior Level II. Identifies and resolves developmental needs and problems, completes necessary administrative actions, complies with EEO/Safety and other regulations/policies. Develops/maintains resources and processes which enhance ability of subordinates to effectively carry out their duties	Meets descriptor for Level 2. In addition, is relied upon & consulted by team leader/members as a critical contributor to meeting overall goals. Serves as an example of high level administrative/ technical knowledge, and ability to gain cooperation /compliance by persuasion or negotiation.	Works jointly with customers to define organizational needs and problems; establishes customer alliances and translates customer needs to programs/services **OR** applies knowledge of protocol to assisting particularly high-level customers of his/her organization.

ACCEPTABLE PERFORMANCE STANDARDS: With minor exceptions, personal interactions foster cooperation and teamwork; timely, accurate and acceptable quality service is provided to customers; customer interactions demonstrate appropriate knowledge for level of interaction required by the position; and if **employee is a supervisor,** treatment of subordinates is based on merit and fitness considerations, is consistent with law/rules/regulations/policies, is judged fair and equitable by superiors, and fosters commitment/cooperation/teamwork amongst subordinates

SPECIFIC OBJECTIVES, TASKINGS, STANDARDS, AND/OR EXAMPLES MAY BE COMMUNICATED TO EMPLOYEES USING THE CCS SUMMARY OR OTHER APPROPRIATE MEANS

Appendix F: Computation of the IPS and the NPR

The ONR demonstration project will use an IPS which links basic pay to contribution scores determined by the CCS process. The area where basic pay and level of contribution are assumed to be properly related is called the NPR. An employee whose CCS score and rate of basic pay plot within the NPR is considered to be contributing at a level consistent with pay. Employees whose pay plots below the NPR for their assessed score are considered "undercompensated" while employees whose score and pay plot above the NPR are considered "overcompensated."

The purpose of this scoring and pay structure is to spread the full range of basic pay provided by the GS, between GS–1, step 1, and GS–15, step 10, into 80 intervals (scores and pay above those points are related using the same parameters). Each interval is a fixed percentage of the pay associated with the previous point.

For each possible contribution score available to employees, the NPR spans a basic pay range of 12 percent. The lower boundary (or "rail") is established by fixing the basic pay equivalent to GS–1, step 1, with a CCS score of zero. The upper boundary is fixed at the basic pay equivalent to GS–15, step 10, with a CCS score of 80. The distance between these upper and lower rails for a given overall contribution score is then computed to ensure the range of 12 percent of basic pay is maintained for each available CCS score. The middle rail of the NPR is computed as 6 percent above the lower rail. This point is used in connection with certain limits established for pay increases (*see* section IV.C.7).

From the above considerations, five variables, or inputs, were identified. They are as follows:

1. Variable A: GS–1, step 1 (lowest salary).
2. Variable B: GS–15, step 10 (highest salary).
3. Variable C: Current C-values.
4. Variable M: 6 percent (middle rail computation above the low rail).
5. Variable H: 12 percent (high rail computation above low rail).

Other variables are as follows:

1. Variable N: Number of C-value steps at GS–15, step 10.
2. Variable P (step increase): Salary value for each C-value equal to 1 + percentage increase.

From these variables, the following formula definitions were developed:

Low rail = $A*(P \wedge C)$
Mid rail = $(1+M)*A*(P \wedge C)$

High rail = (1+H)*A*(P∧C)
Where P = (B/(A*(1+H)))∧(1/N)

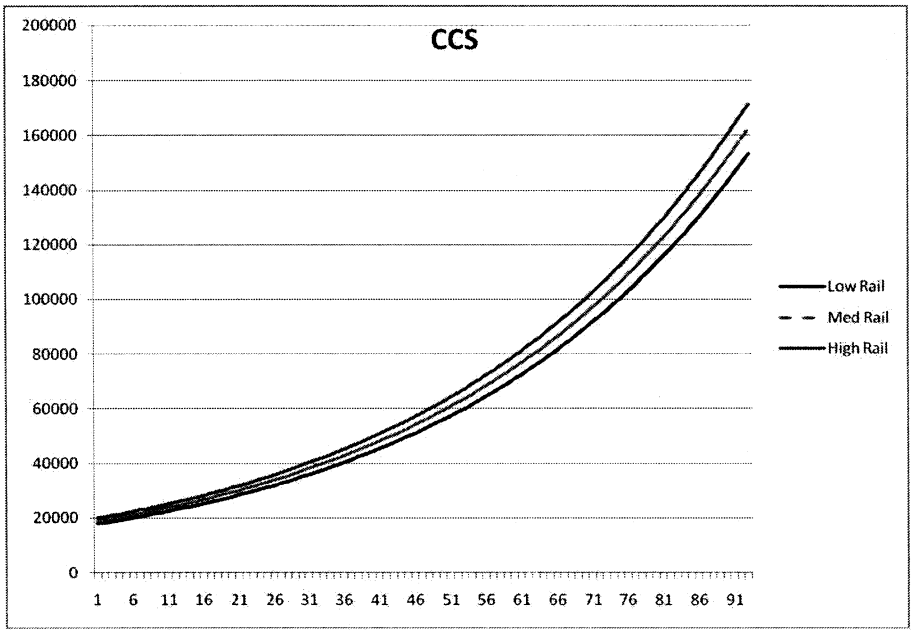
As an example, a result of the above computation, using the 2010 GS Salary Table, P (step increase) equals 1.023664623. Attachment (1) is a complete list of CCS pay band scores and basic pay ranges. Attachment (2) contains graphic representations of these tables for each career track. Once the C-values (0–80) are determined, the CCS pay bands and scores are extended at the same percentage increments as were computed for the step increase above. These C-values are extended to encompass the equivalent of EX–IV effective January 2010. In the example, EX–IV is equal to basic pay of $155,500 and is encompassed by the C-value 89 ($142,734 to $159,862).

SALARY RANGES ASSOCIATED WITH EACH C–VALUE USING 2010 INPUTS

[GS 1–Step 1: 17,803 Hi%: 12.00% #C–values: 80 GS 15–Step 10: 129,517 Mid%: 6.00%]

C–value	Low Rail	Mid Rail	High Rail	C–value	Low Rail	Mid Rail	High Rail
0	17803	18871	19939	48	54709	57992	61275
1	18224	19318	20411	49	56004	59364	62725
2	18656	19775	20894	50	57329	60769	64209
3	19097	20243	21389	51	58686	62207	65728
4	19549	20722	21895	52	60075	63679	67284
5	20012	21212	22413	53	61497	65186	68876
6	20485	21714	22943	54	62952	66729	70506
7	20970	22228	23486	55	64442	68308	72175
8	21466	22754	24042	56	65967	69925	73883
9	21974	23293	24611	57	67528	71579	75631
10	22494	23844	25193	58	69126	73273	77421
11	23026	24408	25790	59	70762	75007	79253
12	23571	24986	26400	60	72436	76782	81128
13	24129	25577	27025	61	74150	78599	83048
14	24700	26182	27664	62	75905	80459	85014
15	25285	26802	28319	63	77701	82363	87025
16	25883	27436	28989	64	79540	84312	89085
17	26496	28085	29675	65	81422	86308	91193
18	27123	28750	30377	66	83349	88350	93351
19	27764	29430	31096	67	85322	90441	95560
20	28422	30127	31832	68	87341	92581	97822
21	29094	30840	32585	69	89408	94772	100136
22	29783	31570	33357	70	91523	97015	102506
23	30487	32317	34146	71	93689	99311	104932
24	31209	33081	34954	72	95906	101661	107415
25	31947	33864	35781	73	98176	104066	109957
26	32703	34666	36628	74	100499	106529	112559
27	33477	35486	37495	75	102877	109050	115223
28	34270	36326	38382	76	105312	111631	117949
29	35081	37185	39290	77	107804	114272	120741
30	35911	38065	40220	78	110355	116977	123598
31	36761	38966	41172	79	112967	119745	126523
32	37630	39888	42146	80	115640	122579	129517
33	38521	40832	43143	81	118377	125479	132582
34	39433	41798	44164	82	121178	128449	135719
35	40366	42788	45210	83	124046	131488	138931
36	41321	43800	46279	84	126981	134600	142219
37	42299	44837	47375	85	129986	137785	145585
38	43300	45898	48496	86	133062	141046	149030
39	44324	46984	49643	87	136211	144384	152556
40	45373	48096	50818	88	139435	147801	156167
41	46447	49234	52021	89	142734	151298	159862
42	47546	50399	53252	90	146112	154879	163645
43	48671	51592	54512	91	149570	158544	167518
44	49823	52813	55802	92	153109	162296	171482
45	51002	54062	57123				
46	52209	55342	58474				
47	53445	56651	59858				

Normal Pay Range (using 2010 Salaries)



ONR Integrated Pay Schedules for Each Career Track and Career Level

ONR Integrated Pay					
S&E Professional					
Career Level	I	II	III	IV	V
GS Equivalent	1-4	5-10	11-13	14-15	SSTM
Score Range	0-21	18-47	44-66	66-80	81-89
Salary Range	$17,803 – $31,871	$27,341 – $59,505	$50,287 – $93,175	$84,697 – $129,517	$119,554 – $155,500

ONR Integrated Pay Schedule in Relation to S&E Professional Career Track

ONR Integrated Pay					
Administrative Specialists and Professional					
Career Level	I	II	III	IV[a]	V[a]
GS Equivalent	1-4	5-10	11-12	13	14-15
Score Range	0 – 21	18 - 47	44 - 59	59 - 66	66 -80
Salary Range	$17,803 – $31,871	$27,341 – $59,505	$50,287 – $78,355	$71,674 – $93,175	$84,697 – $129,517

ONR Integrated Pay Schedule in Relation to Administrative Specialists and Professional Career Track

ONR Integrated Pay			
Administrative Support			
Career Level	I	II	III
GS Equivalent	1-4	5-7	8-10
Score Range	0 – 21	18 – 34	31 - 47
Salary Range	$17,803 – $31,871	$27,341 – $44,176	$37,631 – $59,505

ONR Integrated Pay Schedule in Relation to Administrative Support Career Track

Appendix G: Intervention Model

Intervention	Expected effects	Measures	Data sources
1. COMPENSATION			
a. Pay banding	Increased organizational flexibility	Perceived flexibility	Attitude survey.
	Reduced administrative workload, paper work reduction.	Actual/perceived time savings	Personnel office data, PME results, attitude survey.
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees.	Workforce data.
	Slower pay progression at entry levels.	Progression of new hires over time by band, career path.	Workforce data.
	Increased pay potential	Mean salaries by band, group, demographics.	Workforce data.
		Total payroll costs	Personnel office data.
	Increased satisfaction with advancement.	Employee perceptions of advancement.	Attitude survey.
	Increased pay satisfaction	Pay satisfaction, internal/external equity.	Attitude survey.
	Improved recruitment	Offer/acceptance ratios; Percent declinations.	Personnel office data.
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness.	Attitude survey.
		Cost as a percent of payroll	Workforce data.
c. Pay differentials/adjustments	Increased incentive to accept supervisory/team leader positions.	Perceived motivational power	Attitude survey.
2. PERFORMANCE MANAGEMENT			
a. Cash awards/bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey.
	To support fair and appropriate distribution of awards.	Amount and number of awards by group, demographics.	Workforce data.
		Perceived fairness of awards	Attitude survey.
		Satisfaction with monetary awards	Attitude survey.
b. Performance based pay progression.	Increased pay-performance link	Perceived pay-performance link	Attitude survey.
		Perceived fairness of ratings	Attitude survey.
	Improved performance feedback	Satisfaction with ratings	Attitude survey.
		Employee trust in supervisors	Attitude survey.
		Adequacy of performance feedback.	Attitude survey.
	Decreased turnover of high performers/Increased turnover of low performers.	Turnover by performance rating scores.	Workforce data.
	Differential pay progression of high/low performers.	Pay progression by performance scores, career path.	Workforce data.
	Alignment of organizational and individual performance objectives and results.	Linkage of performance objectives to strategic plans/goals.	Performance objectives, strategic plans.
	Increased employee involvement in performance planning and assessment.	Perceived involvement	Attitude survey/focus groups.
		Performance management	Personnel regulations.
c. New appraisal process	Reduced administrative burden	Employee and supervisor perceptions of revised procedures.	Attitude survey.
	Improved communication	Perceived fairness of process	Focus groups.
d. Performance development	Better communication of performance expectations.	Feedback and coaching procedures used.	Focus groups.
			Personnel office data.
		Time, funds spent on training by demographics.	Training records.
	Improved satisfaction and quality of workforce.	Perceived workforce quality	Attitude survey.
3. "WHITE COLLAR" CLASSIFICATION			
a. Improved classification systems with generic standards.	Reduction in amount of time and paperwork spent on classification.	Time spent on classification procedures.	Personnel office data.
		Reduction of paperwork/number of personnel actions (classification/promotion).	Personnel office data.
	Ease of use	Managers' perceptions of time savings, ease of use.	Attitude survey.
b. Classification authority delegated to managers.	Increased supervisory authority/accountability.	Perceived authority	Attitude survey.
	Decreased conflict between management and personnel staff.	Number of classification disputes/appeals pre/post.	Personnel records.

Intervention	Expected effects	Measures	Data sources
		Management satisfaction with service provided by personnel office.	Attitude survey.
	No negative impact on internal pay equity.	Internal pay equity	Attitude survey.
c. Dual career ladder	Increased flexibility to assign employees.	Assignment flexibility	Focus groups, surveys.
	Improved internal mobility	Perceived internal mobility	Attitude survey.
	Increased pay equity	Perceived pay equity	Attitude survey.
	Flatter organization	Supervisory/non-supervisory ratios.	Workforce data.
			Attitude survey.
	Improved quality of supervisory staff.	Employee perceptions of quality or supervisory.	Attitude survey.
4. Modified RIF			
	Minimize loss of high performing employees with needed skills.	Separated employees by demographics, performance scores.	Workforce data, Attitude survey/focus group.
	Contain cost and disruption	Satisfaction with RIF Process	Attitude survey/focus group.
		Cost comparison of traditional vs. Modified RIF.	Personnel office/budget data.
		Time to conduct RIF—personnel office data.	Personnel office data.
		Number of Appeals/reinstatements.	Personnel office data.
5. Hiring Authority			
a. Delegated Examining	Improved ease and timeliness of hiring process.	Perceived flexibility in authority to hire.	Attitude survey.
	Improved recruitment of employees in shortage categories.	Offer/accept ratios	Personnel office data.
		Percent declinations	Personnel office data.
		Timeliness of job offers	Personnel office data.
		GPAs of new hires, educational levels.	Personnel office data.
	Reduced administrative workload/paperwork reduction.	Actual/perceived skills	Attitude survey.
b. Term Appointment Authority	Increased capability to expand and contract workforce.	Number/percentage of conversions from modified term to permanent appointments.	Workforce data.
			Personnel office data.
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status.	Workforce data.
			Personnel office data.
		Number/percentage of employees completing probationary period.	Workforce data.
			Personnel office data.
		Number of separations during probationary period.	Workforce data.
			Personnel office data.
6. Expanded Development Opportunities			
a. Sabbaticals	Expanded range of professional growth and development.	Number and type of opportunities taken.	Workforce data.
	Application of enhanced knowledge and skills to work product.	Employee and supervisor perceptions.	Attitude survey.
b. Critical Skills Training	Improved organizational effectiveness.	Number and type of training	Personnel office data
		Placement of employees, skills imbalances corrected.	Personnel office data
		Employee and supervisor perceptions.	Attitude survey
		Application of knowledge gained from training.	Attitude survey/focus group.
7. Combination of All Interventions			
All	Improved organizational effectiveness.	Combination of personnel measures.	All data sources.
	Improved management of workforce.	Employee/Management job satisfaction (intrinsic/extrinsic).	Attitude survey.
	Improved planning	Planning procedures	Strategic planning documents.
		Perceived effectiveness of planning procedures.	Attitude survey.
	Improved cross functional coordination.	Actual/perceived coordination	Organizational charts.
	Increased product success	Customer satisfaction	Customer satisfaction surveys.
	Cost of innovation	Project training/development costs (staff salaries, contract cost, training hours per employee).	Demo project office records. Contract documents.
8. Context:			
Regionalization	Reduced servicing ratios/costs	HR servicing ratios	Personnel office data, workforce data.

Intervention	Expected effects	Measures	Data sources
		Average cost per employee served.	Personnel office data, workforce data.
	No negative impact on service quality.	Service quality, timeliness	Attitude survey/focus groups.

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Federal Register

Friday,
May 28, 2010

Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

47 CFR Parts 447 and 457

Medicaid Program; Premiums and Cost Sharing; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 457

[CMS–2244–FC]

RIN 0938–AP73

Medicaid Program; Premiums and Cost Sharing

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule revises the November 25, 2008 final rule entitled, "Medicaid Programs; Premiums and Cost Sharing (73 FR 71828)," to address public comments received during reopened comment periods, and to reflect relevant statutory changes made in section 5006(a) of the American Recovery and Reinvestment Act of 2009 (the Recovery Act). This revised final rule implements and interprets section 1916A of the Social Security Act (the Act), which was added by sections 6041, 6042, and 6043 of the Deficit Reduction Act of 2005 (DRA), amended by section 405(a)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA) and further amended by section 5006(a) of the American Recovery and Reinvestment Act of 2009 (the Recovery Act). These provisions increase State flexibility to impose premiums and cost sharing for coverage of certain individuals whose family income exceeds specified levels. This revised rule also provides a further opportunity for public comment on revisions made to implement and interpret section 5006(a) of the Recovery Act. The Recovery Act prohibits States from charging premiums and cost sharing under Medicaid to Indians furnished items or services directly by the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations or through referral under contract health services.

DATES:

Effective Date: These regulations are effective on July 1, 2010.

Comment Date: To be assured of consideration, comments limited to the implementation of section 5006(a) of the Recovery Act must be received at one of the addresses provided below, no later than 5 p.m. on July 27, 2010.

ADDRESSES: In commenting, please refer to file code CMS–2244–FC.

You may submit comments in one of four ways (please choose only one of the ways listed). We cannot accept comments by facsimile (FAX) transmission.

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2244–FC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2244–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786–0693.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Statutory Authority

The Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171) was enacted on February 8, 2006. Sections 6041, 6042, and 6043 of the DRA established a new section 1916A of the Social Security Act (the Act), which was amended by section 405(a)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA) (Pub. L. 109–432, enacted on December 20, 2006). Section 1916A of the Act sets forth State options for alternative premiums and cost sharing, including options for higher cost sharing for non-preferred prescription drugs and for non-emergency use of a hospital emergency room.

Section 6041 of the DRA established new subsections 1916A(a) and (b) of the Act, which allow States to amend their State plans to impose alternative premiums and cost sharing on certain groups of individuals, for items and services other than drugs (which are subject to a separate provision discussed below), and to adopt certain rules with respect to the nonpayment and payment of the premiums and cost sharing. Subsections 1916A(a) and (b) of the Act set forth limitations on alternative premiums and cost sharing that vary based on family income, and exclude some specific services from alternative

cost sharing. Section 6041 of the DRA also created a new section 1916(h) of the Act, which requires the Secretary to increase the "nominal" cost sharing amounts under section 1916 of the Act for each year (beginning with 2006) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (CPI–U) as rounded up in an appropriate manner. Section 405(a)(1) of the TRHCA modified subsections 1916A(a) and (b) of the Act.

Section 6042 of the DRA created section 1916A(c) of the Act, which provides States with additional options to encourage the use of preferred drugs. Section 405(a)(1) of the TRHCA also modified section 1916A(c) of the Act. Under section 1916A(c) of the Act, States may amend their State plans to require increased cost sharing by certain groups of individuals for non-preferred drugs and to waive or reduce the otherwise applicable cost sharing for preferred drugs. States may also permit pharmacy providers to require the receipt of a cost sharing payment from an individual before filling a prescription.

Section 6043 of the DRA created section 1916A(e) of the Act, which permits States to amend their State plans to allow hospitals, after an appropriate medical screening examination under section 1867 of the Act (per the Emergency Medical Treatment and Active Labor Act), to impose higher cost sharing upon certain groups of individuals for non-emergency care or services furnished in a hospital emergency department. Section 405(a)(1) of the TRHCA modified section 1916A(e) of the Act. Under this option, if the hospital determines that an individual does not have an emergency medical condition and that an available and accessible alternate non-emergency services provider can provide the services in a timely manner without the imposition of the same cost sharing, before providing the non-emergency services and imposing cost sharing, it must inform the individual of the availability of such services from the accessible non-emergency services provider and coordinate a referral to that provider. After notice is given, the hospital may require payment of the cost sharing before providing non-emergency services, if the individual elects to receive the non-emergency services from the hospital. The cost sharing cannot be imposed if no available alternative non-emergency service provider exists.

Section 5006(a) of the American Recovery and Reinvestment Act of 2009 (the Recovery Act) (Pub. L. 111–5, enacted on February 17, 2009) amended sections 1916 and 1916A of the Act effective July 1, 2009. Specifically, Section 5006(a)(1)(A) of the Recovery Act amended section 1916 of the Act to add a new subsection (j), which prohibits premiums and cost sharing for Indians who are provided services or items covered under the Medicaid State plan by Indian health care providers or through referral under contract health services. Section 5006(a)(2) of the Recovery Act amended section 1916A(b)(3)(A) of the Act to add a new clause prohibiting premiums on an Indian furnished an item or service directly by Indian health care providers or through referral under contract health services, and also added a clause to 1916A(b)(3)(B) prohibiting cost sharing for that population. In addition, section 5006(a)(1)(B) of the Recovery Act amended section 1916 of the Act to specify that payments to Indian health care providers or to a health care provider through referral under contract health services for Medicaid services or items furnished to Indians cannot be reduced by the amount of any enrollment fee, premium, or cost sharing that otherwise would be due from the individual.

We also acknowledge the importance of providing adequate mental health benefits and will be separately addressing how the laws following the DRA, including the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Pub. L. 110–343), relate to the Medicaid program regarding the treatment of beneficiary cost sharing.

B. Regulatory History

On February 22, 2008, we published a proposed rule in the **Federal Register** (73 FR 9727) that proposed to implement and interpret the provisions of sections 6041, 6042, and 6043 of the DRA. A final rule entitled "Medicaid Program; Premiums and Cost Sharing" was published in the **Federal Register** on November 25, 2008 (73 FR 71828).

On January 27, 2009, prior to the effective date of the November 25, 2008 final rule, we published a final rule in the **Federal Register** (74 FR 4888) that temporarily delayed for 60 days the effective date of the November 25, 2008 final rule and reopened the comment period on the policies set out in the November 25, 2008 final rule.

On March 27, 2009, we published a second final rule in the **Federal Register** (74 FR 13346) that further delayed the effective date of the November 25, 2008 final rule until December 31, 2009. We stated that the delay was needed because our initial review had indicated that substantial revisions to the final rule would be needed. Also, the comment period was again reopened, for two purposes: for additional comments on the policies set forth in the November 25, 2008 final rule, and for comments on revisions needed to reflect section 5006(a) of the Recovery Act (related to the exclusion of Indians from payment of premiums and cost sharing).

On October 30, 2009, we published a proposed rule in the **Federal Register** (74 FR 56151) to delay further the effective date of the November 25, 2008 final rule until July 1, 2010. Upon review and consideration of the public comments received and the provisions of the Recovery Act, we determined that we needed more time to review and revise the November 25, 2008 final rule. On November 30, 2009, we published a third final rule in the **Federal Register** (74 FR 62501) that delayed the effective date of the November 25, 2008 final rule until July 1, 2010.

II. Provisions of the November 25, 2008 Final Rule and the Extended Comment Period and Analysis of and Response to Public Comments

A. Public Comments

We received approximately 50 timely items of correspondence during the public comment period for the February 22, 2008 proposed rule, which we addressed in the November 25, 2008 final rule. We received approximately 5 timely items of correspondence (including 20 specific comments) in response to the January 27, 2009 reopening of the comment period. In addition, we received approximately 10 timely items of correspondence (including 36 specific comments) in response to the March 27, 2009 reopening of the comment period. Summaries of those public comments and our responses are set forth in the various sections of this final rule under the appropriate heading.

B. General Comments

A majority of the public comments received for the January 27, 2009 and March 27, 2009 extended comment periods were similar to comments received on the February 22, 2008 proposed rule, which we addressed in the November 25, 2008 final rule. In light of the continued concerns reflected by these comments, and additional review of available research, State practice, and changes in overall economic circumstances throughout the country, we have reconsidered our responses to these comments. In

particular, we have given greater weight to concerns about maintaining access to services for needy families. A summary of the general comments received and our responses are as follows:

Comment: Several commenters stated that the rule would significantly reduce affordability of care and patients' access to adequate care, and would result in decreased utilization of essential health care services, increased adverse events, and worsened health status due to less use of health care characterized as "effective" and subsequent use of more costly care. These commenters requested that the final rule reflect the need for caution and care when imposing premiums and cost sharing charges on low-income Medicaid beneficiaries. These commenters asserted that the November 25, 2008 final rule would allow States to increase health care expenses for vulnerable citizens, result in more crisis situations that lead to more expensive hospitalizations, limit access to basic health care, and force out people who need services most. These commenters argued that increased flexibility for States to impose premiums or cost sharing is detrimental to low-income populations, unless there are explicit restrictions on maximum premium and cost sharing levels.

One commenter described her personal situation that she would have inadequate money for food or rent if her copayments were increased.

Response: We appreciate the significant concerns expressed in these comments and agree that there is ample evidence that cost is a significant barrier to people accessing coverage and care, particularly for those with low or moderate incomes. These are important issues with which States must contend when they determine whether to impose premiums and cost sharing for their Medicaid and Children's Health Insurance Program (CHIP) populations and as they design and implement these provisions. CMS also must be mindful of these issues as we promulgate rules and oversee the operation of Medicaid and CHIP. However, to the extent that these comments reflect fundamental disagreements with the statutory flexibility and requirements enacted in sections 1916 and 1916A of the Act, we note that CMS is charged with implementing applicable statutory provisions.

We have developed the revised final rule in accordance with the provisions set forth at sections 1916 and 1916A of the Act. This regulation is consistent with the statute and reflects little interpretive policy by CMS; therefore, we are unable to change major aspects of the revised final rule based on these comments.

In light of public comments, we have, however, reconsidered some of our prior responses to comments on specific interpretive issues, in order to increase the protections for vulnerable populations to the extent consistent with the statutory requirements. As we discuss in greater detail in responding to specific public comments on each issue below, in this revised rule we are:

- Reducing the maximum copayment amount from $5.70 (the maximum copayment amount for children in separate CHIP programs) to $3.40 per visit in fiscal year 2009 (which is then adjusted for inflation annually) for Medicaid expansion optional targeted low income children enrolled in managed care organizations, when a State does not have a fee-for-service system.
- Specifying that a State that adopts cost sharing rules that could result in aggregate costs to the family that exceed five percent of the family's income must: (1) Describe in its Medicaid State plan the methodology it will use to identify beneficiaries who are subject to premiums or cost sharing for specific items or services; and (2) track beneficiaries' incurred premiums and cost sharing through a mechanism developed by the State that does not rely on beneficiaries. These requirements are imposed so that the State is able to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have reached the five percent limit on family out-of-pocket expenses and so are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period. Ideally, for ease of administration and accuracy, States will use automated systems to track these cost sharing amounts.
- Specifying that a State must describe in its Medicaid State plan how the State identifies for providers, ideally through the use of automated systems, whether cost sharing for a specific item or service may be imposed on an individual beneficiary and whether the provider may require the beneficiary, as a condition for receiving the item or service, to pay the cost sharing charge.
- Specifying at a minimum the services listed at § 457.520 as the preventive services that must be excluded from cost sharing for children younger than age 18, which reflect the well baby and well child care and immunizations described by the Bright Futures guidelines of the American Academy of Pediatrics.
- Requiring States to describe in their Medicaid State plan their process for beneficiaries to request a reassessment of the family's aggregate limit for premiums and cost sharing if the family's income is reduced or if eligibility is being terminated due to nonpayment of premiums.
- Clarifying that the statutory exclusion of family planning services and supplies from cost sharing encompasses the entire range of such services for which the State claims or could claim the enhanced Federal matching rate for family planning services and supplies under section 1903(a)(5) of the Act, including contraceptives and other pharmaceuticals.
- Clarifying that the statutory exclusion of certain populations and services from cost sharing exceeding a nominal amount means that drugs not identified by a State as non-preferred drugs within a class of pharmaceuticals are subject to the same exclusions from cost sharing as preferred drugs.
- Requiring States to submit documentation with a State plan amendment proposing to establish or substantially modify alternative premiums or cost sharing under section 1916A of the Act that the State provided the public with advance notice of the amendment and reasonable opportunity for comment in a form and manner provided under applicable State law.

CMS will continue to carefully review State plan amendments submitted to implement or modify premiums or cost sharing to ensure that the processes described adhere to the statutory and regulatory requirements.

We further note that the concerns expressed by the commenters may be widely shared. To date, only 8 States have approved State plan amendments for alternative premiums and/or cost sharing under section 1916A of the Act. These provisions are usually applied to narrowly defined, higher income populations and/or to limited services, such as premiums for specific expansion populations or slightly more than nominal pharmacy copayments.

Comment: We also received a recommendation that the rule should reflect the change in course signaled by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) to strengthen quality of care, ensure the availability of preventive services, and enhance access to needed services to improve health outcomes. The commenter also recommended that rigorous data collection accompany any enhanced cost sharing, to determine whether higher co-payment requirements present a greater access

barrier to people with disabilities. The commenter further recommended that providers report to States and that States report to CMS at least a sample of the race and ethnicity of individuals for whom providers approved a waiver from mandatory co-payments on a case-by-case basis, in order to demonstrate that the waiver does not have a disparate effect on people of color or non-English-speaking individuals.

Response: While we agree with the commenter's overall sentiments, we believe it is important to consider these kinds of recommended information collection and reporting requirements separately, in conjunction with other similar potential information collection and reporting requirements. CMS has broad authority under section 1902(a)(6) of the Act to require States to report any needed information, but it is important to carefully consider such reporting requirements and ensure that they can be integrated with existing State responsibilities and are not overly burdensome. Because providers are not required to report on their claims for Medicaid reimbursement whether the provider collected a mandatory copayment, requiring providers to obtain and submit information about the race and ethnicity of individuals for whom the provider waived a copayment would be burdensome and costly for all involved, even for a sample of claims.

C. General Comments on the Exemption of Indians From Premiums and Cost Sharing

We received the following general comments concerning the exemption of Indians furnished items or services directly by an Indian health care provider (the Indian Health Service (IHS), an Indian Tribe, a Tribal Organization, or an Urban Indian Organization) or through referral under contract health services from payment of premiums and cost sharing effective July 1, 2009, in accordance with the section 5006(a) of the Recovery Act.

Comment: Several commenters urged CMS to fulfill its responsibilities for early Tribal consultation, which did not occur with the original cost-sharing rule.

Response: CMS believes that it is in compliance with applicable Tribal consultation responsibilities, but notes that considerable additional consultation was undertaken since the original cost sharing rule was published. Further, we are open to specific suggestions as to how to maximize the effectiveness of Tribal consultation. In our March 27, 2009 final rule, we specifically requested public comment on the new provisions exempting Indians from premiums and cost sharing, and we believe that there has been a full opportunity for Tribes to raise issues of concern. Moreover, the Recovery Act contains expanded consultation responsibilities for States in implementing options under the Federal Medicaid and CHIP statutes.

In keeping with the Department's Tribal consultation policy and the new provisions in the Recovery Act, CMS collaborated and consulted with the Tribal Technical Advisory Group (TTAG) and the IHS to solicit advice on implementing these provisions. The Tribal Affairs Group and the Center for Medicaid, CHIP and Survey and Certification within CMS jointly hosted two All Tribes Calls on June 5 and 12, 2009, to consult on implementation of section 5006 of the Recovery Act. Two face-to-face consultation meetings were held in Denver on July 8 and 10, 2009, to solicit advice and input on these provisions from federally-recognized Tribes, Indian health care providers, and Urban Indian Organizations. An All-States Call was held on June 10, 2009, with the State Medicaid and CHIP programs, to describe the CMS Tribal consultation process and the Recovery Act provisions and to solicit feedback and questions from States.

Comment: A commenter asserted that CMS should adopt the TTAG recommendation to adopt an interim rule to implement section 5006(a) of the Recovery Act by July 1, 2009, because, otherwise, violations of the new provision could occur and go undetected. The commenter stated that it is important for CMS to assure that mechanisms are put in place timely at the State level, to assure compliance with this new provision as of the effective date of July 1, 2009.

Response: The requirements of section 5006(a) of the Recovery Act were effective as of July 1, 2009, and CMS intends to work with States to implement the statutory requirements through its compliance reviews and reviews of State plan amendments. CMS issued a letter to State Medicaid Directors and State Health Officials on January 22, 2010 (SMDL# 10–001/ARRA# 6), providing guidance on implementation of section 5006 of the Recovery Act.

The Congress did not expressly provide authority for interim final rulemaking authority under the Recovery Act. In light of the strong public interest in timely protection of the exempt Indian populations, we provided the interim guidance to States described above and have diligently pursued the rulemaking process.

Comment: A commenter asked that CMS establish effective procedures to properly enforce this provision, including a new audit element to quickly detect any prohibited reductions in providers' payments or other violations. The commenter asserted that States must make supplemental payments to providers for any prohibited reductions in payment.

Response: Congress did not provide for any new enforcement mechanism for these provisions, and it is not clear that existing enforcement mechanisms are inadequate. All States have an appeal process through which beneficiaries and providers can appeal State determinations concerning the amount of medical assistance. CMS involvement is primarily through the State plan approval process. In addition, CMS has authority to initiate compliance actions under section 1904 of the Act in the event of systemic noncompliance by a State.

Comment: Another commenter recommended that CMS include requirements for administrative simplicity in the implementation of the Recovery Act's new exclusion of Native Americans from cost-sharing, including ease of tribal membership documentation.

Response: We agree that administrative simplicity is very important. Therefore, we have defined the term "Indian" for purposes of the exemption from premiums and cost sharing in broad terms that indicate the kinds of documentation that could support the application of the exception.

Specifically, *Indian* means any individual defined at 25 USC 1603(c), 1603(f), or 1679(b), or who has been determined eligible as an Indian, pursuant to 42 CFR 136.12. This means the individual:

(1) Is a member of a Federally-recognized Indian tribe;

(2) resides in an urban center and meets one or more of the four criteria: (a) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member; (b) is an Eskimo or Aleut or other Alaska Native; (c) is considered by the Secretary of the Interior to be an Indian for any purpose; or (d) is determined to be an Indian under regulations promulgated by the Secretary;

(3) is considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

Documentation that an individual is an Indian could include Tribal enrollment and membership cards, a certificate of degree of Indian blood issued by the Bureau of Indian Affairs, a Tribal census document, or a document issued by a Tribe indicating an individual's affiliation with the Tribe. The Indian health care programs and urban Indian health programs are responsible for determining who is eligible to receive an item or service furnished by their programs and so a medical record card or similar documentation that specifies an individual is an Indian as defined above could suffice as appropriate documentation. These documents are examples of documents that may be used, but do not constitute an all-inclusive list of such documents.

Comment: A commenter also stated that Tribal leaders are not cognizant of all the impacts that these changes will have on the elderly Indian populations enrolled in Medicaid. The commenter stated that none of this information has been provided by CMS or the IHS.

Response: As described above, CMS has engaged in an extensive Tribal consultation process, providing information to the Tribes, soliciting their input, and incorporating changes into this revised rule based on that input.

Comment: A commenter stated that for Indians who use the IHS system, Medicaid is considered the primary payer, and IHS is considered the payer of last resort according to 42 CFR 136.61. Therefore, the commenter asserted that a conflict exists between section 5006 of the Recovery Act specifying circumstances under which Indians may not be charged cost-sharing (and so defining when they may be charged cost sharing) and the IHS payer of last resort policy, as well as Federal responsibility in providing health care for Native Americans.

Response: We do not see any conflict between the exclusion of Indians from Medicaid premiums and cost sharing and the IHS payer of last resort rule, which was included in section 2901 of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148. We also do not see any conflict with overall Federal responsibilities toward Indian health care. Indeed, we believe that these policies are consistent and ensure that Medicaid programs will pay for health care coverage of Medicaid items and services primary to both IHS and to individual Indians.

Comment: A commenter expressed concern that CMS seems to feel that the statutory framework for the cost sharing rule reflects the principle that States are in the best position to weigh the Tribes' concerns, as Sovereign Nations, and that the States alone are to determine the appropriate levels and scope of alternative cost sharing. The commenter noted that the Tribes' poorest people who are on Medicaid cannot afford even the smallest cost sharing, and the commenter was concerned that CMS ensure that States follow requirements to consult with Tribes prior to implementing cost sharing that will directly affect the Tribes and indigent patients.

Response: We agree that there are special concerns about cost sharing for Indians, and we believe that Congress recognized these concerns in enacting the Recovery Act protections for Indians from cost sharing that are being implemented in this revised final rule, and the new requirements for CMS to maintain the TTAG and for States to engage in tribal consultation under section 5006(e) of the Recovery Act. We will continue to monitor State compliance with tribal consultation requirements in all aspects of the Medicaid program.

D. Comments From the January 27, 2009 and March 27, 2009 Extended Comment Periods on the November 25, 2008 Final Rule

Following is a summary of each provision in the February 22, 2008 proposed rule entitled "Medicaid Programs: Premiums and Cost Sharing" that was addressed in a public comment. We include a background summary of any changes included in the final rule published on November 25, 2008 based on comments received during the initial comment period; and then a summary of the additional comments on the final rule that were received during the reopened comment periods beginning on January 27 and March 27, 2009; and responses to those additional comments.

Maximum Allowable and Nominal Charges (§ 447.54)

Under DRA § 6041(b)(2), adding § 1916(h) to the Social Security Act, the Secretary was authorized to adjust the regulatory definition of nominal charges. In reviewing those definitions, we also addressed the issue of maximum charges by managed care organizations (MCO). CMS had previously, in interpreting regulatory provisions that addressed maximum charges only under fee-for-service systems, limited MCO charges to an estimate of the charges that would have been allowed under a fee-for-service system. In the February 22, 2008 proposed rule, we proposed to revise § 447.54 to provide updates for Federal fiscal year (FY) 2007 to the existing "nominal" Medicaid cost sharing amounts, specifically the nominal deductible amount described at § 447.54(a)(1) and the nominal copayment amounts described at § 447.54(a)(3) by applying an inflation factor, and described a methodology for future inflation-based updates that included rounding the maximum copayment amounts to the next highest 10-cent increment. We also proposed to add a new § 447.54(a)(4) to establish a maximum copayment amount for Federal FY 2007 for services provided by an MCO, in light of the difficulty in determining comparable fee-for-service charges. We noted that a similar MCO limit was applied under the CHIP program.

In the November 25, 2008 final rule, we updated the maximum nominal copayments to reflect amounts for Federal FY 2009. The amounts were rounded to the next highest 5-cent increment rather than 10-cent increment, to be consistent with the Medicare Part D program. In addition, we clarified that we would calculate the update each year without considering any rounding adjustment made in the previous year. A new paragraph (a)(4) was added to specify that the copayment amount for services provided by an MCO may not exceed the copayment amount for comparable services under a fee-for-service delivery system. In the circumstance when there is no fee-for-service delivery system under the plan, we specified that the copayment amount for services furnished by an MCO may not exceed the maximum copayment amount under a fee-for-service delivery system, which was $3.40 per visit for Federal FY 2009 (based on the maximum fee-for-service copayment under Medicaid), or for individuals referenced in an approved State child health plan under title XXI of the Act, a higher different maximum MCO copayment amount of $5.70 per visit (based on the maximum fee-for-service amount for children enrolled in separate CHIP programs under title XXI of the Act).

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: Several commenters recommended deletion of the $5.70 per

visit maximum Medicaid copayment specifically for children in CHIP-related Medicaid expansions under managed care plans when a State does not have a fee-for-service system. This amount was added in the final rule published on November 25, 2008.

Response: We agree with the underlying concern that copayments for such children would exceed levels otherwise considered nominal under the Medicaid program. Therefore, in this revised final rule, we have deleted the higher maximum copayment amount for Medicaid expansion children enrolled with MCOs. The same maximum copayment of $3.40 per visit for Federal FY 2009 will be applied for Medicaid expansion children as for all other Medicaid beneficiaries enrolled in MCOs. While our intent had been to align the Medicaid and CHIP programs by permitting the same copayment levels under either program, we have been convinced by the commenters that the status of the children under the Medicaid program should be of primary importance, because it indicates a State's determination that the children should be entitled to all the benefits and protections of the Medicaid program. We have always applied Medicaid-specific rules to Medicaid expansion programs, even if those rules vary from the rules applicable to separate CHIP programs. The importance of ensuring coverage for children and reducing barriers to such coverage has been affirmed generally by Congress in CHIPRA, which expanded and improved the CHIP program while maintaining the option of using CHIP funding for serving children through the Medicaid program.

Alternative Premiums and Cost Sharing: Basis, Purpose and Scope (§ 447.62)

In the February 22, 2008 proposed rule, we proposed to implement the flexibility for States to impose alternative premiums and cost sharing with the protections outlined in the TRHCA, including the imposition of nominal cost sharing for individuals with family income at or below 100 percent of the FPL limited to prescription drugs and non-emergency services furnished in a hospital emergency room.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule without change but added a provision that clarified that individuals with family income at or below 100 percent of the FPL could be charged nominal copayments to the extent consistent with section 1916 of the Act.

Specific comments on this section received during the reopened comment period, and our responses to those additional comments, are as follows:

Comment: Several commenters recommended that the alternative premium and cost sharing rules be simplified and clarified as much as possible, such as the different requirements based on the family's income level, because neither the State nor providers have the resources to implement these complex rules.

Response: We agree that the regulatory presentation of the statutory limitations on alternative premiums and cost sharing may have been confusing. In this revised final rule at § 447.62(a) and (b)(1), we have attempted to clarify the regulatory provisions to better ensure consistency with the statutory requirements in sections 1916 and 1916A of the Act. The basic provisions of this section, such as the different exclusions and limits based on a family's income level, are defined in statute and are by nature complex. We have attempted to describe these complex exclusions and limits in the simplest and most straightforward manner possible in this revised rule.

Comment: A commenter recommended that the rule be revised to make it clear that the Secretary of Health and Human Services' (HHS) authority to waive cost sharing provisions under section 1916A of the Act is limited in accordance with section 1916(f) of the Act.

Response: In this revised final rule, we included language in § 447.62(b) to clarify the text, taking into account the amendment to section 1916(f) of the Act made by section 6041(b)(1) of the DRA. In light of section 1916A of the Act and the provision of the DRA that applies section 1916(f) to 1916A of the Act, we are reviewing our policies under section 1115 of the Social Security Act.

Comment: Several commenters advised that giving States the flexibility to exclude additional groups of individuals from payment of premiums or cost sharing should not have the effect of discriminating against individuals on the basis of race, color, national origin, or disability (title VI of the Civil Rights Act of 1964, Americans with Disabilities Act (ADA), 42 CFR 430.2(b), 45 CFR Part 80).

Response: We agree. Existing HHS regulations under these civil rights and other statutes, including section 504 of the Rehabilitation Act, already prohibit both States and entities that receive Federal Medicaid funding from taking discriminatory actions. The HHS Office for Civil Rights (responsible for Departmental enforcement of most civil rights laws) and the Department of Justice (which also has responsibility for enforcement of certain civil rights laws, including the Americans with Disabilities Act), are available to investigate any questions or complaints as to illegal discrimination under these statutes and the implementing regulations.

Alternative Premiums, Enrollment Fees, or Similar Charges: State Plan Requirements (§ 447.64)

We proposed at § 447.64(a), that the State plan describe the group or groups of individuals that may be subject to such premiums, enrollment fees, or similar charges. We further proposed in § 447.64(b) that the State plan include a schedule of the premiums, enrollment fees, or similar charges. At § 447.64(c), we proposed that the State plan describe the methodology used to determine family income, including the period and periodicity of those determinations. We also proposed in § 447.64(d) that the State plan describe the methodology the State would use to ensure that the aggregate amount of premiums and cost sharing imposed for all individuals in the family does not exceed 5 percent of family income as applied during the monthly or quarterly period specified by the State. In addition, at § 447.64(e), we proposed that the State plan specify the process for informing beneficiaries, applicants, providers, and the public of the schedule. We further proposed in § 447.64(f) that the State plan describe the premium payment terms for the group or groups and the consequences for an individual who does not pay.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule with no substantive changes.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: Several commenters requested that the State agency, rather than beneficiaries or managed care organizations, be required to track each beneficiary's aggregate incurred premiums and cost sharing, to assure that a beneficiary's aggregate limit is not exceeded.

Response: We agree with the commenters' request because we are concerned that it would be overly burdensome for beneficiaries to track aggregate incurred cost sharing that may have been made in small cash transactions when such information can be more efficiently tracked through the State's eligibility, enrollment, and claims processing systems. In this

revised final rule, we have modified paragraph (d) of § 447.64 to specify that if a State chooses to charge premiums and cost sharing that could result in aggregate costs to a family that exceed 5 percent of the family's income, the State must develop a tracking mechanism and not rely on the so-called "shoebox" method that puts the burden on families to track cost sharing. Specifically, a State must describe in its Medicaid State plan the methodology it will use to identify beneficiaries who are subject to premiums or cost sharing for specific items or services and track their incurred premiums and cost sharing, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have incurred the 5 percent limit on family out-of-pocket expenses and are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period. Such methods must assure that families' cost sharing will not exceed the statutory limits. Ideally, for ease of administration and accuracy, States will use automated systems to track these cost sharing amounts.

We encourage States to track such costs through their Medicaid Management Information System (MMIS). Some States already use MMIS for this purpose. To the extent that they do so, enhanced Federal funding is available for development and operation of system improvements.

As part of our review of State plan amendments and our ongoing reviews and audits of State Medicaid programs, we will review how States that impose costs that could exceed the 5 percent limit meet these requirements, to assure their compliance with the statutory and regulatory requirements. We will also share best practices among States to promote effective and efficient tracking systems. We note that States that design their cost sharing rules so that costs cannot exceed the 5 percent limit need not develop a tracking system.

General Alternative Premium Protections (§ 447.66)

In the February 22, 2008 proposed rule at § 447.66(a), we proposed to implement statutory requirements of section 1916A(b)(3)(A) of the Act that limit the application of alternative premiums under section 1916A by requiring that States exclude certain classes of individuals from the imposition of premiums. In addition, we proposed at § 447.66(b) that a State may exempt additional classes of individuals from premiums.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule without change.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: Several commenters requested that the Recovery Act's exclusion of premiums and cost sharing for Indians under certain circumstances be broadened to exclude from premiums and cost-sharing all Indians receiving any Medicaid service from any Medicaid provider.

Response: The Recovery Act specifies under what circumstances States are required to exclude Indians from payments of premiums and cost sharing under sections 1916 and 1916A of the Act, and we are not authorized to expand on these statutory circumstances. In this revised final rule at § 447.66(a)(7), we are specifying that States may not impose alternative premiums upon an Indian who is eligible to receive or has received an item or service furnished by an Indian health care provider or through referral under contract health services under authorities for serving Indians. This language would not preclude States from excluding from premiums individuals based on other criteria that could have the effect of broadening the circumstances in which Indian populations would be exempt from premiums. We add at § 447.66(c) to clarify that nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums that may apply to an individual receiving Medicaid who is an Indian. And, at § 447.70(e) we specify that States may exempt additional individuals, items, or services from cost sharing. We anticipate that additional exemptions, if needed to protect Indian populations, will be an issue raised in the tribal consultation process.

Alternative Copayments, Coinsurance, Deductibles, or Similar Cost Sharing Charges: State Plan Requirements (§ 447.68)

In the February 22, 2008 proposed rule at § 447.68(a), we proposed that the State plan describe the group or groups of individuals that may be subject to such cost sharing. We further proposed in § 447.68(b) that the State plan must describe the methodology used to determine family income, including the period and periodicity of those determinations. We also proposed in § 447.68(c) that the State plan describe the item or service for which the charge is imposed. In § 447.68(d), we proposed that the State plan must describe methods, such as the use of integrated automated systems, for tracking cost sharing charges, informing beneficiaries and providers of the beneficiary's liability, and notifying them when a beneficiary has reached the aggregate maximum for a period. In § 447.68(e), we proposed that the State plan must specify the process of publicizing the schedule of cost sharing charges. In § 447.68(f), we proposed that the State plan must explain the methodology the State would use to ensure that the aggregate amount of premiums and cost sharing imposed for all individuals in the family does not exceed 5 percent as applied during the monthly or quarterly period specified by the State. In addition, at § 447.68(g), we proposed that the State plan specify how notice is provided of the time frame and manner of required cost sharing and the consequences for an individual who does not pay.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule without any substantive change.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: Several commenters requested that States be required to describe in their State plans a method by which States identify for Medicaid providers which beneficiaries, services, and items are exempted from cost sharing, in accordance with § 447.70 and § 447.71. Commenters also stated that States should be required to provide accurate and updated information to providers about appropriate cost sharing for each beneficiary. One commenter stated that States should be required to demonstrate, before implementing alternative premiums and cost sharing, that adequate State administrative systems are in place to protect families from exceeding the cost sharing limits. Other commenters requested that States, rather than beneficiaries or managed care organizations, be required to track beneficiaries' aggregate premiums and cost sharing, to assure that 5 percent of a family's income is not exceeded. Another commenter stated that CMS should require States to implement automated systems to support the tracking and computing of beneficiaries' copayments at the point-of-sale and to adopt policies that support electronic identification of non-preferred drugs. The commenter also stated that States must be required to make information

electronically available at the point-of-sale regarding a beneficiary's required cost sharing and whether the beneficiary's family has met its applicable monthly or quarterly aggregate limit. In addition, the commenter stated that CMS should make an enhanced 90 percent administrative match available to States that implement such a system.

Response: We agree with many of these comments that beneficiaries should not bear the full burden of accounting for aggregate cost sharing maximums. In this revised final rule, we have thus revised paragraph (d) of § 447.68 to specify that a State must describe in its Medicaid State plan the methodology it will use to identify beneficiaries who are subject to premiums or to cost sharing for specific items or services and, if cost sharing could exceed 5 percent of family income, to track beneficiaries' incurred premiums and cost sharing in order to inform beneficiaries and providers of beneficiaries' liability and to notify beneficiaries and providers when individual beneficiaries have reached the five percent limit on family out-of-pocket expenses to assure that costs do not exceed the 5 percent statutory limit. Also, a State is required to describe in its State plan the State's methods for assuring that providers and beneficiaries are effectively informed of cost sharing requirements in the State plan, in accordance with § 447.68(d). States must be mindful of the need for clear, non-technical explanations and that accommodations must be made for individuals for whom English is not the first language.

For example, one State informs providers and members (beneficiaries) of allowable cost sharing amounts via provider updates and a member Enrollment and Benefits booklet. Another State conducts public meetings and sends a letter to each beneficiary for whom cost sharing is applicable.

While this rule requires States imposing cost sharing that could exceed the 5 percent statutory cap to have a methodology to track costs and to assure that costs do not exceed the 5 percent limit, the rule does not require one particular system for tracking. Some of the methods that States are using to track families' incurred premiums and cost sharing and to assure that they do not exceed the aggregate maximum of 5 percent of the family's income include:

- On State has its premium collection vendor track premium payments. Its MCPs track enrollees' copayments. If a family reaches its aggregate maximum, the premium vendor will waive premiums and suspend invoicing for the remainder of the benefit period. The MCOs will notify their pharmacy and ambulance transportation providers to waive the family's copayments through a specified date.
- Another State uses MMIS to track and enforce cost sharing limits. The system calculates a family's quarterly out-of-pocket maximum based on the family's income, and tracks the family's cost sharing payments associated with submitted claims. If a family's maximum is reached, an indicator is changed in MMIS and providers are alerted as part of eligibility verification that the family is not subject to copayments.
- Another State calculates each family's cost sharing limit as part of the eligibility determination process, records this information in the eligibility system, copies the State's benefits administrator, and informs the family of the limit in the eligibility approval notice. It encourages families to track their payments, but it also has the benefits administrator track families' payments and notify the State if a family reaches its maximum. Families can also call the State to check on the amount of out-of-pocket expenses they have incurred. If the maximum is reached, the State moves the family to a no-cost benefits plan for the remainder of their plan year and notifies the family of this change in writing.
- Another State has its eligibility and enrollment broker inform families of their out-of-pocket limits in the letter notifying them of enrollment in a health plan. It also notifies the health plan. The health plan tracks families' cost sharing payments. If the limit is reached, the health plan notifies the family by letter and annotates the family's file in the electronic claims system in order to notify providers that no further cost sharing is required.
- Another State has its system track families' out-of-pocket payments, and stops deducting the copayment amount from the allowed amount on a provider's claim if a family reaches its limit. The system notes on an Explanation of Benefits (EOB) when a family reaches its maximum, and families may share the EOB with providers. Such a notice is also included in the point-of-sale system used by pharmacists. Monthly reports are generated to track copayments.

We are requiring that States describe their method of tracking when they impose cost sharing that could exceed the 5 percent statutory limit, and are recommending that, whenever possible, they employ automated systems to do so. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) governs the contents and format of electronic transactions providing information from a State's MMIS, including an electronic transaction sent by a State Medicaid program in response to an enrolled provider's electronic request for information related to a beneficiary's Medicaid eligibility (for example, information about a beneficiary's cost sharing responsibilities and payments). MMIS system changes and operations are subject to an enhanced Federal matching rate. As part of our review of State plan amendments and our ongoing reviews and audits of State Medicaid programs, we will review how States meet the premium and cost sharing requirements, to assure their compliance with the statutory and regulatory requirements. We will also share best practices to help other States learn about effective and efficient ways to track cost sharing.

General Alternative Cost Sharing Protections (§ 447.70)

In the February 22, 2008 proposed rule, we proposed that State plans may not impose alternative cost sharing under section 1916A(a) of the Act for certain services including emergency services and family planning services and supplies. We also proposed that State plans could not impose cost sharing for preferred drugs within a class for the same categories of individuals. We proposed that the State may exempt additional individuals or services from cost sharing. Also, we proposed that cost sharing applicable to a preferred drug be charged for a non-preferred drug if the prescribing physician determines that the preferred drug would not be as effective for the individual or would have adverse effects for the individual or both. We further proposed that such overrides meet the State's criteria for prior authorization and be approved through the State's prior authorization process.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule without substantive changes.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: One commenter recommended that the rule define the preventive services which are excluded from alternative cost-sharing (*see* § 447.70(a)(2)), such as by using the definition in the American Academy of Pediatrics Bright Futures guidelines.

Response: We agree. In this revised final rule, we revised § 447.70(a)(2) to

specify that, at the minimum, the preventive services listed at § 457.520 must be excluded from cost sharing for children younger than 18 years old, which reflect the well baby and well child care and immunizations described by the Bright Futures guidelines of the American Academy of Pediatrics. These guidelines are used for well baby and well child care services in the CHIP program. They provide an explanation of the periodicity schedule recommended by the American Academy of Pediatrics for preventive visits and appropriate immunizations for children. The referencing of such a schedule allows for flexibility in the definition of preventive services to reflect the most current medical practice standards. States are permitted to exempt preventive services beyond those described in the Bright Futures guidelines.

Comment: Several commenters recommended that the entire package of family planning services and supplies described and mandated at section 1905(a)(4)(C) of the Act be excluded from cost sharing, as required by sections 1916A(b)(3)(B)(vii) and 1916(a)(2)(D) of the Act, so that even nominal cost sharing is not permitted for non-preferred family planning drugs (for example, contraceptive drugs not on a State's preferred drug list) and cost sharing does not otherwise distinguish between family planning methods.

Response: While we agree with the concerns of commenters, we are not authorized by the statute to generally preclude alternate cost sharing under section 1916A(c) of the Act for family planning drugs. The protections under section 1916A(b)(3)(B)(vii) of the Act are "subject to the succeeding provisions of this section" which include the special provisions concerning alternate cost sharing under section 1916A(c) of the Act. But we believe it is reasonable to require that States have a consistent treatment of family planning drugs. In this revised final rule, we have revised § 447.70(a)(7) to clarify that the exclusion for family planning services and supplies encompasses contraceptives and other prescription drugs for which the State claims or could claim the Federal matching rate available under section 1903(a)(5) of the Act for family planning services and supplies.

Comment: Several commenters requested that the rule be made consistent with section 1916A(c)(2)(B) of the Act by limiting alternative cost sharing for non-preferred prescription drugs for the items or services listed at § 447.70(a) to no more than the nominal amount, in order to protect vulnerable populations such as pregnant women.

Response: While we understand the underlying concerns of commenters, we are not authorized by the statute to generally preclude alternate cost sharing under section 1916A(c) of the Act for the services listed at § 447.70(a). The protections under section 1916A(b)(3)(B)(vii) of the Act are "subject to the succeeding provisions of this section" which include the special provisions concerning alternate cost sharing under section 1916A(c) of the Act. As a result of our review of these comments, however, we realized that we had not integrated the protections at section 1916A(c)(3) of the Act into these regulations, and thus we have integrated into the revised final rule at § 447.70(d) the provision that drugs identified as non-preferred drugs are subject to the same exclusions and limits for cost-sharing as preferred drugs if the individual's prescribing physician determines that the preferred drug for treatment of the same condition either would be less effective for the individual or would have adverse effects for the individual or both. We deleted as unnecessary the additional requirement that the State's criteria for prior authorization, if any, must be met.

Alternative Premium and Cost Sharing Exemptions and Protections for Individuals With Family Incomes Above 100 Percent but at or Below 150 Percent of the FPL (§ 447.72)

In the February 22, 2008 proposed rule, we proposed at § 447.72(a) that the State plan exclude individuals with family incomes above 100 percent but at or below 150 percent of the FPL from the imposition of premiums. We also proposed at § 447.72(b) that cost sharing for those individuals under the State plan not exceed 10 percent of the payment the State Medicaid agency makes for that item or service, with the exception that cost sharing not exceed the nominal cost sharing amount for non-preferred drugs or twice the nominal cost sharing amount for non-emergency services furnished in a hospital emergency department. In the case of States that do not have fee-for-service payment rates, we proposed that any copayment imposed by a State for services provided by an MCO may not exceed $5.20 for FY 2007. In addition, we proposed at § 447.72(c) that aggregate premiums and cost sharing for individuals whose family income exceeds 100 percent, but does not exceed 150 percent of the FPL, not exceed the 5 percent aggregate maximum permitted under § 447.78(a).

In the November 25, 2008 final rule, we revised § 447.74(b) to specify that the copayment amount for services provided by an MCO may not exceed $3.40 per visit for Federal FY 2009 when the State does not have a comparable fee-for-service system. We added a higher copayment limit of $5.70 for Federal FY 2009 for services provided by an MCO for Medicaid expansion optional targeted low-income children in that circumstance. In addition, we revised the methodology for updating the maximum nominal amounts for Medicaid each October 1 by rounding to the next highest 5-cent increment rather than 10-cent increment, to be consistent with the Medicare Part D program.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: As we discussed above, several commenters recommended that the separate $5.70 per visit maximum co-payment added in the final rule published on November 25, 2008, be deleted for Medicaid expansion optional targeted low income children in managed care plans when a State does not have a fee-for-service system.

Response: We are accepting this comment for the reasons discussed above. The result is that the same per visit maximum will apply to all Medicaid managed care enrollees when the State does not have a fee-for-service system.

Alternative Premium and Cost Sharing Protections for Individuals With Family Incomes Above 150 Percent of the FPL (§ 447.74)

In the February 22, 2008 proposed rule at § 447.74(a), we proposed that a State plan may impose premiums upon individuals with family income above 150 percent of the FPL, subject to the aggregate limit on premiums and cost sharing at § 447.78. We also proposed at § 447.74(b) that cost sharing for those individuals under the State plan not exceed 20 percent of the payment the State Medicaid agency makes for that item or service. In the case of States that do not have fee-for-service payment rates, we proposed that any copayment that the State imposes for services provided by an MCO may not exceed $5.20 for FY 2007. In addition, we proposed at § 447.74(c) that aggregate cost sharing for individuals whose family income exceeds 150 percent of the FPL not exceed the maximum permitted under § 447.78(a).

In the November 25, 2008 final rule, we revised § 447.74(b) to specify that

the copayment amount for services provided by an MCO may not exceed $3.40 per visit for Federal FY 2009. We added a higher limit for Medicaid expansion optional targeted low-income children of $5.70 for Federal FY 2009. In addition, we revised the methodology for updating the nominal amounts for Medicaid each October 1 by rounding to the next highest 5-cent increment rather than 10-cent increment, to be consistent with the Medicare Part D program.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: One commenter stated that the cost sharing permitted for higher income individuals would be excessive. The commenter stated that for individuals with incomes above 150 percent FPL, the cost sharing amount would increase to 20 percent. The commenter also recommended that cost sharing be capped at a reasonable amount.

Response: Cost sharing limits are specified in this rule as required by section 1916A of the Act. However, because a 20 percent cost sharing amount can be difficult or even impossible for Medicaid beneficiaries to pay given their limited incomes, in this revised final rule at § 447.62(b)(3), we clarify that States have the option to impose premiums and cost sharing that are below the maximum levels permitted under this subpart.

Public Schedule (§ 447.76)

In the February 22, 2008 proposed rule, we proposed at § 447.76(a) that State plans provide for schedules of premiums and cost sharing and specified the information contained on such schedules. In addition, at § 447.76(b), we proposed that the State make the public schedule available to beneficiaries at the time of enrollment and reenrollment, applicants, all participating providers, and the general public.

In the November 25, 2008 final rule, we added § 447.76(a)(7) to specify that the State must make available either a list of preferred drugs or a method to obtain such a list upon request.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: One commenter requested that States give adequate notice to pharmacy providers, beneficiaries, and the public of changes to cost-sharing requirements when State plan amendments implementing the changes are submitted to CMS, no later than 60 days prior to the effective date.

Response: We agree that providers need adequate time to adjust their procedures and protocols to incorporate changes, and that beneficiaries and their advocates need time to prepare for changes in cost sharing. Such notice is consistent with administration of the State plan in the best interests of beneficiaries. In this revised final rule, we added a new paragraph (c) to § 447.76 to require a State to provide the public with advance notice and reasonable opportunity to comment in a form and manner provided under applicable State law prior to submitting for CMS approval a Medicaid State plan amendment (SPA) to establish alternative premiums or cost sharing under section 1916A of the Act or to modify substantially an existing plan for alternative premiums or cost sharing. Also, the State must submit documentation with the SPA to demonstrate that this requirement was met. This requirement is similar to the requirements at § 447.205 about public notice prior to submitting a Medicaid SPA revising providers' payment rates for services and at § 457.65(b)–(d) about public notice prior to submitting a CHIP SPA eliminating or restricting eligibility or benefits or implementing or increasing cost sharing charges or the cumulative cost sharing maximum.

Section 447.76 also requires States to make a public schedule with cost sharing information available to beneficiaries, applicants, providers, and the general public. Therefore, the public schedule must be changed as necessary to remain current. In this revised final rule, we modified § 447.76 (b)(1), to clarify that beneficiaries must receive advance written notice when their premiums, cost sharing charges, or aggregate limits are revised.

Aggregate Limits on Alternative Premiums and Cost Sharing (§ 447.78)

In the February 22, 2008 proposed rule at § 447.78(a), we proposed that for individuals with family income above 100 percent of the FPL the aggregate amount of premiums and cost sharing imposed under sections 1916 and 1916A of the Act not exceed 5 percent of a family's income for a monthly or quarterly period, as specified in the State plan. We received no comments questioning this proposal, and received at least one comment supporting the broad reach of this language. Thus, we included this language in the November 25, 2008 final rule. While sections 1916A(b)(1)(B)(ii) and (2)(A) of the Act for families with income above 100 percent of the FPL only specifically reference sections 1916A(c) and (e) of the Act in reference to the 5 percent aggregate limit, we read these provisions together with the provision at section 1916A(a)(2)(B) to establish a 5 percent aggregate limit regardless of which statutory option the State selects. To read these provisions in isolation would frustrate the statutory purpose and permit a State to effectively impose aggregate cost sharing far in excess of 5 percent of family income by using the two statutory cost sharing options cumulatively. Such a result would be an inadequate beneficiary protection, and would not achieve the statutory purpose of the aggregate limit. The clear statutory purpose is to limit family cost sharing obligations to 5 percent of family income and that purpose can be achieved only if the aggregate limit applies to all cost sharing imposed under the State plan for all family members, including cost sharing imposed under section 1916. Thus, we believe that Congress intended the three aggregate limit provisions to establish a single aggregate limit for cost sharing under either section 1916 or 1916A regardless of the underlying authority for the cost sharing. Applying all cost sharing under the State plan to the aggregate limit is also consistent with simplicity of administration and the best interests of beneficiaries as required by section 1902(a)(19) of the Act because it eliminates any need to distinguish between the statutory authority for any particular cost sharing.

At § 447.78(b) of the proposed rule, we proposed that for individuals with family income at or below 100 percent of the FPL the aggregate amount of cost sharing under sections 1916 and 1916A of the Act not exceed 5 percent of a family's income for the monthly or quarterly period, as required by section 1916A(a)(2)(B) of the Act, and consistent with the reading above. We also proposed at § 447.78(c) that family income should be determined in a manner for that period as specified by the State in the State plan. We clarified that States may use gross income to compute family income and that they may use a different methodology for computing family income for purposes of determining the aggregate limits than for determining income eligibility.

In the November 25, 2008 final rule, we revised § 447.78(c) to include the phrase, "including the use of such disregards as the State may provide."

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: One commenter recommended that the total aggregate amount of cost sharing for individuals in a family be limited to 2 percent of the family's income.

Response: We are unable by rule-making to revise the total aggregate limit of 5 percent specified in statute at sections 1916A(b)(1)(B)(ii) and 1916A(b)(2)(A) of the Act. However, in this revised final rule, we clarify at § 447.62(b)(3) that States have the option to impose premiums and cost sharing below the maximum levels under this subpart. Also, we recognize that some families include children in Medicaid and CHIP, so we encourage States to consider implementing a 5 percent limit on families' aggregate premiums and cost sharing in both Medicaid and CHIP.

Comment: One commenter stated that families should be permitted to request a change in the aggregate limit on their cost sharing when the household's income changes.

Response: We had not previously considered this issue, and we agree with the commenter. In this revised final rule, we have modified § 447.78(c) to require that State plans include a process for individuals to request a reassessment of the family's aggregate limit if the family's income is reduced or if eligibility is being terminated due to nonpayment of a premium.

Enforceability of Alternative Premiums and Cost Sharing (§ 447.80)

In the February 22, 2008 proposed rule at § 447.80(a), we proposed to permit a State to condition Medicaid eligibility for individuals in a specified group or groups upon prepayment of premiums, to terminate the eligibility of an individual for failure to pay after 60 days or more, and to waive payment in any case where requiring the payment would create undue hardship. At § 447.80(b), we proposed that a State permit a provider, including a pharmacy, to require an individual to pay cost sharing imposed under section 1916A of the Act as a condition of receiving an item or service. However, at § 447.80(b)(1), we specified that a provider, including a pharmacy or hospital, may not require an individual whose family income is at or below 100 percent of the FPL to pay the cost sharing charge as a condition of receiving the item or service. In addition, at § 447.80(b)(2), we proposed that a hospital that has determined after an appropriate medical screening under section 1867 of the Act that an individual does not have an emergency medical condition, before it can require payment of the cost sharing and treat the non-emergency medical condition, must first provide the individual with the name and location of an available and accessible alternate non-emergency services provider, information that the alternate provider can provide the services with imposition of no or lesser cost sharing, and a referral to coordinate scheduling of treatment. Finally, at § 447.80(b)(3), we proposed that a provider may reduce or waive cost sharing imposed under section 1916A of the Act on a case-by-case basis.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule without substantive changes.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: One commenter recommended that States not be given the option to deny treatment for Medicaid beneficiaries or terminate them from Medicaid eligibility if they are unable to pay a premium or copayment. Also, the commenter recommended that States be encouraged to use alternative payment schedules.

Response: Under section 1916A(d) of the Act, States have the flexibility to take certain specified actions in the event of nonpayment of premiums, and may allow providers to condition the delivery of services on payment of the alternative cost sharing. The statute expressly permits States and providers to use such enforcement flexibly, to respond to individual circumstances. For example, a State may waive premiums on a case-by-case basis due to hardship. Also, providers may reduce or waive cost sharing on a case-by-case basis.

Comment: One commenter asked who would want to decide if an emergency was "serious enough" so a copayment would not be charged.

Response: We clarify here that we interpret an emergency to include circumstances consistent with the "prudent layperson" standard set forth in section 1932(b)(2) of the Act and § 438.114(a). Under that standard, an emergency service is one needed to evaluate or stabilize an emergency medical condition, which is a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of medical attention to result in jeopardy to health (including the health of an unborn child), serious impairment to bodily functions, or the serious dysfunction of any bodily organ or part. This would, at a minimum, include the required medical screening under current regulations at § 489.24, including circumstances under which services are required to stabilize the patient.

Comment: One commenter recommended that copayments for non-emergency use of hospital emergency departments not be imposed if Medicaid beneficiaries are using the emergency room due to lack of access to primary care physicians or other alternative care.

Response: We agree that this is what the statute requires. The requirements at § 447.80(b)(2) are intended to assure that alternative copayments for non-emergency use of hospital emergency departments are not imposed if alternative non-emergency services providers are not available and accessible in a timely manner to treat the individual's medical condition.

Comment: Several commenters recommended that § 447.80(b) specify that giving providers the discretion to waive mandatory copayments on a case-by-case basis may not have the effect of discriminating against individuals who do not speak English or against individuals on the basis of race, color, national origin, or disability (title VI of the Civil Rights Act of 1964, Americans with Disabilities Act, 42 CFR 430.2(b), 45 CFR Part 80).

Response: Existing HHS regulations under these civil rights and other statutes, including section 504 of the Rehabilitation Act, already prohibit both States and entities that receive Medicaid funding from taking discriminatory actions. The HHS Office for Civil Rights (responsible for Departmental enforcement of most civil rights laws) and the Department of Justice (which also has responsibility for enforcement of certain civil rights laws, including the Americans with Disabilities Act), are available to investigate any questions or complaints as to illegal discrimination under these statutes and the implementing regulations.

Comment: A commenter agreed with the rule that providers should be able to decide when to reduce or waive cost sharing on a case-by-case basis. If a State significantly increases cost sharing, the pharmacy provider, rather than the State, must decide whether to condition rendering pharmacy services on the receipt of full payment of cost-sharing from the beneficiary. Otherwise, the providers will likely be the ones paying the higher charges, especially in States where pharmacy providers are quite often unable to collect the current nominal co-payments.

Response: We agree. This policy is consistent with the statute and the

revised final rule at § 447.82(a). If a State elects the option permitting providers to require a beneficiary to pay an allowable cost sharing charge as a condition for receiving an item or service, the provider has the discretion to reduce or waive the application of cost sharing on a case-by-case basis. In this revised final rule, we added a new paragraph (c) to § 447.82 requiring States to identify for providers, ideally through the use of automated systems, whether cost sharing for a specific item or service may be imposed on an individual beneficiary and whether the provider may require the beneficiary, as a condition for receiving the item or service, to pay the cost sharing charge.

Comment: A commenter advised that the rule should provide guidance for how hospitals are to implement cost sharing for non-emergency services rendered in a hospital emergency department without violating the Emergency Medical Treatment and Active Labor Act (EMTALA), which requires hospitals to screen patients who request an emergency examination and not delay treatment to stabilize a patient in order to inquire about the individual's method of payment or insurance status.

Response: We are revising § 447.80(c)(1) to state that nothing in paragraph (b)(2) relating to alternate cost sharing for non-emergency services in hospital emergency departments shall be construed to limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under EMTALA, which is codified at section 1867 of the Act relating to EMTALA, and is the basis for the regulation at § 489.24.

Restrictions on Payments to Providers (§ 447.82)

In the February 22, 2008 proposed rule at § 447.80(a), we proposed to require States to reduce the amount of the State's payments to providers by the amount of beneficiaries' cost sharing obligations, regardless of whether the provider successfully collects the cost sharing. We noted in the rule's preamble that States have the ability to increase total State plan rates to providers to maintain the same level of State payment when cost sharing is introduced.

In the November 25, 2008 final rule, we accepted the provisions of the proposed rule without change.

Specific comments to this section submitted during the reopened comment periods and our responses to those additional comments are as follows:

Comment: One commenter recommended that States not be required to reduce payments to providers by the required copayments if the provider waives or reduces the cost sharing amounts. Another commenter stated that the DRA cost sharing is tantamount to a hidden rate reduction for MCOs and other providers. Since cost sharing is deducted from providers' payments, MCOs must decide whether to absorb high administrative costs to track cost sharing or to forego the collection of the fees. Also, commenters requested that MCOs be required to pay providers in full when providers decide not to collect cost sharing from beneficiaries; otherwise, providers will leave the network.

Response: The requirement that States not reimburse providers for unpaid cost sharing is a longstanding Medicaid policy set forth at § 447.57, and is consistent with the overall policy set forth at § 447.15, that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the State plan to be paid by the individual. There is no indication of any intent to change this longstanding policy in the DRA provisions that added section 1916A to the Act.

Consistent with such requirements, section 5006(a) of the Recovery Act added section 1916(j)(1)(B) of the Act to require that payment due to an Indian health care provider or a health care provider through referral under contract health services for directly furnishing an item or service to a Medicaid-eligible Indian not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deductible, copayment, cost sharing, or similar charge that would otherwise be due. Each State through its regular administrative and political processes, in consultation with the Tribes as required by section 5006(e) of the Recovery Act, must decide how to implement this requirement and how to assure that providers are paid in full under such circumstances.

III. Provisions of the Revised Final Rule

In this revised final rule, we are adopting the provisions as set forth in the November 25, 2008 final rule, subject to the following changes.

A. Implementation of Section 5006(a) of the Recovery Act

The following provisions are open for public comment. The provisions implement and interpret section 5006(a) of the Recovery Act, which exempts Indians from premiums and cost sharing under certain circumstances effective July 1, 2009. Also, the provisions respond to public comments received on these new statutory requirements during the March 27, 2009 extended comment period on the November 25, 2008 final rule.

Section 5006(a) of the Recovery Act amends sections 1916 and 1916A of the Act, to exempt Indian applicants and beneficiaries from Medicaid premium and cost sharing requirements under certain circumstances and to assure that Indian health care providers, and health care providers providing contract health services (CHS) under a referral from an Indian health care provider, will receive full payment. Premiums and cost sharing exemptions for Indians under CHIP are not affected. The provisions took effect on July 1, 2009.

Specifically, the Recovery Act:

- Exempts Indians from payments of enrollment fees, premiums, or similar chargesif they either are eligible to receive or have received an item or service furnished by an Indian health care provider or through referral under CHS.
- Exempts Indians from payment of a deductible, coinsurance, copayment, or similar charge for any item or service covered by Medicaid if the Indian is furnished the item or service directly by an Indian health care provider or through referral under CHS.
- Prohibits any reduction of payment that is due under Medicaid to an Indian health care provider or a health care provider through referral under CHS for directly furnishing an item or service to an Indian. The State must pay these providers the full Medicaid payment rate for furnishing the item or service. Their payments may not be reduced by the amount of any enrollment fee, premium, deductible, copayment, or similar charge that otherwise would be due from the Indian.

Definitions

In administering the Recovery Act's cost sharing provisions related to Indians, the following definitions apply—

- *Indian health care provider* means a health care program operated by the Indian.
- Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).
- *Indian* means any individual defined at 25 U.S.C. 1603(c), 1603(f), or 1679(b), or who has been determined eligible as an Indian, pursuant to 42 CFR 136.12. This means the individual:

(1) Is a member of a Federally-recognized Indian tribe;

(2) resides in an urban center and meets one or more of the four criteria: (a)Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member; (b) is an Eskimo or Aleut or other Alaska Native; (c) is considered by the Secretary of the Interior to be an Indian for any purpose; or (d) is determined to be an Indian under regulations promulgated by the Secretary;

(3) is considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

The IHS administers the CHS Program for the provision of services to Indians when those services are not available at IHS or Tribal facilities. Any IHS-eligible Indian Medicaid beneficiary who receives a referral, including any authorization for payment, by an IHS or Tribal provider to an outside provider for contract health service is eligible for the exemption from cost sharing for that service. States will need to educate non-IHS providers about such documents, so that providers will know to waive cost sharing requirements for referrals through CHS for which payment may be made by Medicaid. States must inform providers, ideally through the use of automated systems, whether an individual is exempted from premiums or cost sharing. Reference materials about CHS may be accessed on the IHS Web page at: *http://www.ihs.gov/NonMedicalPrograms/chs/.*

State Medicaid programs must consult with the IHS, Tribes, Tribal Organizations, and Urban Indian Organizations within the State to determine what documents the Indian health care providers will use for exemption of Indians from enrollment fees, premiums, or other similar charges and from deductibles, coinsurance, copayments, or similar charges for referrals to providers through the CHS Program.

Cost Sharing: Basis and Purpose (§ 447.50)

We added a new paragraph (b) with definitions for "Indian" and "Indian health care provider."

Requirements and Options (§ 447.51)

We added a new paragraph (a)(2) that exempts Indians from payments of enrollment fees, premiums, or similar charges if they are eligible to receive or have received an item or service furnished by an Indian health care provider or through referral under CHS.

Applicability; Specification; Multiple Charges (§ 447.53)

We added a new paragraph (b)(6) to exclude from cost sharing under Medicaid all items and services furnished to an Indian directly by an Indian health care provider or through referral under CHS.

Restrictions on Payments to Providers (§ 447.57)

We added a new paragraph (c) to specify that payment under Medicaid due to an Indian health care provider or a health care provider through referral under CHS for directly furnishing an item or service to an Indian may not be reduced by the amount of any enrollment fee, premium, or similar charge or any deductible, copayment, cost sharing, or similar charge that otherwise would be due. Note that there is no exemption for cost sharing, such as deductibles, coinsurance or co-payments, on services rendered to eligible individuals at non-Indian health care providers where there was not referral or authorization through CHS as defined below.

Contract health service means any health service that is (1) delivered based on a referral by, or at the expense of, an Indian health program; and (2) provided by a public or private medical provider or hospital that is not a provider or hospital of the Indian health program.

General Alternative Premium Protections (§ 447.66)

We added a new paragraph (a)(7) to exclude Indians from payments of enrollment fees, premiums, or similar charges if they are eligible to receive or have received an item or service furnished by an Indian health care provider or through referral under contract health services.

In addition, we added a new paragraph (c) to specify that a State may apply additional limitations on imposition of premiums that may apply to an individual receiving Medicaid who is an Indian.

General Alternative Cost Sharing Protections (§ 447.70)

We added a new paragraph (a)(10) to exclude from cost sharing under Medicaid all items and services furnished to an Indian directly by an Indian health care provider or through referral under CHS.

Restrictions on Payments to Providers (§ 447.82)

We added a new paragraph (b) to specify that payment under Medicaid due to an Indian health care provider or a health care provider through referral under CHS for furnishing an item or service directly to an Indian may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deductible, copayment, cost sharing, or similar charge that otherwise would be due.

B. Additional Changes to the Medicaid Regulations in Response to Public Comments Requirements and Options (§ 447.51)

We revised paragraphs (a) and (c) to clarify the requirements for consistency with section 1916 of the Act, to specify the categorically needy populations for which the State Medicaid agency may impose an enrollment fee, premium, or similar charge in accordance with section 1916(c), (d), (g), or (i) of the act.

Applicability; Specification; Multiple Charges (§ 447.53)

We revised the definition of "emergency services" in paragraph (b)(4) to cite the definition which includes the "prudent layperson" standard at section 1932(b)(2) of the Act and § 438.114(a).

Maximum Allowable and Nominal Charges (§ 447.54)

We revised paragraph (a)(1) and (a)(3)(ii) to clarify the requirements for consistency with section 1916 of the Act. Also, we revised the example in paragraph (a)(1) for a 6-month certification period rather than a 3-month period for consistency with States' practices.

We also revised paragraph (a)(4), in response to public comments, to delete a higher maximum copayment of $5.70 per visit for services provided by an MCO, when the State does not have a fee-for-service delivery system, for Medicaid expansion optional targeted low income children for whom enhanced Federal match is paid under section XXI of the Act. Since these are Medicaid-eligible children, they will be subject to the Medicaid limit for such coverage of $3.40 per visit, rather than the limit imposed for separate CHIP programs under title XXI.

In addition, we revised paragraph (b) to correct a citation to § 431.57. Also, the paragraph was revised for consistency with sections 1916(a)(3) and 1916(b)(3) of the Act that the Secretary of Health & Human Services will only

approve a waiver of the requirement that cost sharing charges must be limited to a nominal amount if the State establishes to the Secretary's satisfaction that alternative sources of nonemergency, outpatient services are actually available and accessible to Medicaid beneficiaries in a timely manner.

Standard Co-Payment (§ 447.55)

We revised paragraph (b) to correct a citation to § 447.54(a) and (c).

Alternative Premiums and Cost Sharing: Basis, Purpose and Scope (§ 447.62)

We revised paragraph (a) to clarify the requirements for consistency with section 1916A of the Act.

We also revised paragraph (b) to take into account the amendment to section 1916(f) of the Act made by section 6041(b)(1) of the DRA.

Alternative Premiums, Enrollment Fees, or Similar Charges: State Plan Requirements (§ 447.64)

We revised paragraphs (a), (c), and (d) to clarify the requirements for consistency with section 1916A of the Act.

We also revised paragraph (d), in response to public comments, to require that if a State imposes cost sharing that could result in aggregate costs to a family that exceed five percent of the family's income, the State must develop a tracking mechanism and not rely on the so-called "shoebox" method that puts the burden on families to track cost sharing. Specifically, a State must describe in its Medicaid State plan the methodology it will use to identify beneficiaries who are subject to premiums or cost sharing for specific items or services and track the premiums and cost sharing incurred, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have reached the five percent limit on family out-of-pocket expenses and are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period. Such methods must assure that families' cost sharing will not exceed the statutory limit.

Alternative Copayments, Coinsurance, Deductibles, or Similar Cost Sharing Charges: State Plan Requirements (§ 447.68)

We revised paragraphs (b), (c), (d), (f)(1), and (f)(2) to clarify the requirements for consistency with section 1916A of the Act.

We revised paragraph (d) to specify that a State must describe in its Medicaid State plan the methodology it will use to identify beneficiaries who are subject to premiums or cost sharing for specific items or services and, if cost sharing could exceed five percent of family income, to track beneficiaries' incurred premiums and cost sharing through a tracking system developed by the State, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have reached the five percent limit on family out-of-pocket expenses to assure that costs do not exceed the five percent statutory limit.

Paragraph (f) is revised to clarify that the aggregate limit under § 447.78 on a family's premium and cost sharing applies to section 1916 and/or 1916A for all individuals in the family enrolled in Medicaid.

General Alternative Cost Sharing Protections (§ 447.70)

We renumbered and revised this section to make it consistent with section 1916A of the Act. In addition, we revised this section in response to public comments.

We revised the definition of "emergency services" in paragraph (a)(6) (previously (a)(1)(vi)) and referenced this term in paragraph (b) to cite the definition which includes the "prudent layperson" standard at section 1932(b)(2) of the Act and § 438.114(a).

We revised paragraph (a)(2) (previously (a)(1)(ii)) to specify at a minimum the services listed at § 457.520 as the preventive services excluded from alternative cost sharing for children younger than age 18, which reflect the well baby and well child care and immunizations described by the Bright Futures guidelines of the American Academy of Pediatrics.

We revised paragraph (a)(7) (previously (a)(1)(vii)) to specify that the family planning services and supplies exempted from cost sharing include contraceptives and other pharmaceuticals for which the State claims or could claim Federal match at the enhanced rate under section 1903(a)(5) of the Act for family planning services and supplies.

We revised paragraph (a)(9) (previously (a)(1)(ix)) to explain that disabled children receiving medical assistance by virtue of sections 1902(a)(10)(A)(ii)(XIX) and 1902(cc) of the Act who are exempted from alternative cost sharing are those covered in accordance with the Medicaid eligibility option offered by the Family Opportunity Act.

We revised paragraph (a)(11) (previously (a)(1)(x)) and paragraph (c) (previously (b)) to specify that drugs not identified by the State's Medicaid program as non-preferred drugs within a class are subject to the same exclusions and limits for cost sharing as drugs identified by the State as preferred drugs within a class.

We revised paragraph (b) (previously (a)(2)) for consistency with section 1916A(e)(2)(B) of the Act to specify that cost sharing of no more than the nominal amounts defined in § 447.54 may be imposed on the exempt populations specified in paragraph (a) of this section for nonemergency services furnished in a hospital emergency department, under certain conditions.

Also, we revised paragraph (d) (previously (c)) to specify that drugs identified by a State's Medicaid program as non-preferred drugs within a class are subject to the same exclusions and limits for cost sharing as preferred drugs within a class if the individual's prescribing physician determines that the preferred drug for treatment of the same condition either would be less effective for the individual or would have adverse effects for the individual or both. We deleted as unnecessary the additional requirement that the State's criteria for prior authorization, if any, must be met.

Alternative Premium and Cost Sharing Exemptions and Protections for Individuals With Family Incomes at or Below 100 Percent of the FPL (§ 447.71)

We revised paragraphs (b)(1), (b)(3), and (c) and added a new paragraph (d) to clarify the requirements for consistency with sections 1916 and 1916A of the Act. Paragraph (d) specifies that a State may not impose on individuals with family income at or below 100 percent of the FPL the DRA's alternative premiums and cost sharing defined at section 1916A of the Act, but may impose cost sharing that does not exceed the nominal amounts specified at § 447.54.

Alternative Premium and Cost Sharing Exemptions and Protections for Individuals With Family Incomes Above 100 Percent but at or Below 150 Percent of the FPL (§ 447.72)

We revised the introduction to paragraph (b) and its subsection (2) and paragraph (c) to clarify the requirements for consistency with section 1916A of the Act.

We revised paragraph (b)(3), in response to public comments, to delete a higher maximum copayment of $5.70

per visit for services provided by an MCO, when the State does not have a fee-for-service delivery system, for Medicaid expansion optional targeted low income children for whom enhanced Federal match is paid under section XXI of the Act. Since these are Medicaid-eligible children, they will be subject to the Medicaid limit for such coverage of $3.40 per visit in FY 2009, rather than the limit imposed for separate CHIP programs under title XXI.

Alternative Premium and Cost Sharing Protections for Individuals With Family Incomes Above 150 Percent of the FPL (§ 447.74)

We revised paragraphs (a), (b), and (c) to clarify the requirements for consistency with section 1916A of the Act.

We also revised paragraph (b) to delete a higher maximum copayment of $5.70 per visit for services provided by an MCO, when the State does not have a fee-for-service delivery system, for Medicaid expansion optional targeted low income children for whom enhanced Federal match is paid under section XXI of the Act. Since these are Medicaid-eligible children, they will be subject to the Medicaid limit for such coverage of $3.40 per visit in FY 2009, rather than the limit imposed for separate CHIP programs under title XXI.

Public Schedule (§ 447.76*)*

We revised paragraph (b)(1) for a minor change by replacing the words "and the" with the word "or" before "aggregate".

Also, in response to public comments, we added a new paragraph (c) to require a State to provide the public with advance notice and reasonable opportunity to comment in a form and manner provided under applicable State law prior to submitting for CMS approval a Medicaid State plan amendment (SPA) to establish alternative premiums or cost sharing under section 1916A of the Act or to modify substantially an existing plan for alternative premiums or cost sharing. Also, the State must submit documentation with the SPA to demonstrate that this requirement was met.

Aggregate Limits on Alternative Premiums and Cost Sharing (§ 447.78)

We revised paragraphs (a), (b), (c), and (c)(2) to clarify the requirements for consistency with section 1916A of the Act. In particular, we clarify that the total aggregate limit of 5 percent of a family's income applies for premiums and/or cost sharing imposed under section 1916 and/or 1916A of the Act for all individuals in the family enrolled in Medicaid.

We also revised paragraph (c), in response to public comments, to require that States describe in their State plan for alternative premiums or cost sharing the process for individuals to request a reassessment of the family's aggregate limit if the family's income is reduced or if eligibility is being terminated due to nonpayment of a premium.

Enforceability of Alternative Premiums and Cost Sharing (§ 447.80)

We revised paragraphs (a)(3) and (b) and added a new paragraph (c) to clarify and specify the requirements for consistency with section 1916A of the Act related to alternative cost sharing for nonemergency services provided in hospital emergency departments. Also, we revised paragraph (b)(2) to reference the definition of "emergency services" at section 1932(b)(2) of the Act and § 438.114(a).

Restrictions on Payments to Providers (§ 447.82)

We revised this section to make the existing text a new paragraph (a).

We added a new paragraph (c) to require that a State describe in its Medicaid State plan how the State identifies for providers, ideally through the use of automated systems, whether cost sharing for a specific item or service may be imposed on an individual beneficiary and whether the provider may require the beneficiary, as a condition for receiving the item or service, to pay the cost sharing charge.

C. Changes to the CHIP Regulations

Maximum Allowable Cost Sharing Charges on Targeted Low-Income Children in Families With Income From 101 to 150 Percent of the FPL (§ 457.555)

We revised paragraphs (a)(1)(i) and (a)(2) for minor changes in clarification.

IV. Response to Comments on Revised Final Rule

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

A proposed rule was published on February 22, 2008 with a public comment period. A final rule was issued on November 25, 2008. The November 25, 2008 final rule published in the **Federal Register** included a description of changes to the proposed rule based on the public comments and our responses to comments received during the public comment period. On January 27, 2009 and March 27, 2009, we published final rules to delay the effective date of the November 25, 2008 final rule and to reopen the public comment period. The March 27, 2009 final rule specifically indicated that analysis of comments received during the first reopened comment period indicated a need for revisions to the November 25, 2008 final rule, and also specifically requested public comments on changes needed to address section 5006(a) of the Recovery Act. On October 30, 2009, we published a proposed rule in the **Federal Register** to delay the effective date of the November 25, 2008 final rule until July 1, 2010.

In keeping with the Department's Tribal consultation policy and the new provisions in the Recovery Act, CMS collaborated and consulted with the Tribal Technical Advisory Group (TTAG) and the IHS to solicit advice on implementing these provisions. The Tribal Affairs Group and the Center for Medicaid, CHIP, and Survey and Certification within CMS jointly hosted two All Tribes Calls on June 5 and 12, 2009, to consult on implementation of section 5006 of the Recovery Act. Two face-to-face consultation meetings were held in Denver on July 8 and 10, 2009, to solicit advice and input on these provisions from federally-recognized Tribes, Indian health care providers, and Urban Indian Organizations. An All States Call was held on June 10, 2009, with the State Medicaid and CHIP programs to describe the CMS Tribal consultation process and the Recovery Act provisions and to solicit feedback and questions from States. We believe the requirement of a notice of proposed rulemaking has been effectively met through the issuances described in the

preceding paragraphs. However, to the extent that the requirement has not been met, we find good cause to waive a notice of proposed rulemaking because it is unnecessary when the purposes of the requirement have been met through the prior issuances, which clearly indicated the intent to revise the November 25, 2008 final rule and invited public comment to inform our revisions.

Specifically, the two 2009 final rules included a reopening of the public comment period, indicated that the November 25, 2008 final rule would be revised, and requested specific comments on the changes required by section 5006(a) of the Recovery Act. In doing so, these final rules effectively proposed revision of the November 25, 2008 final rule and invited public comment. These actions fully satisfied the requirements for notice of proposed rulemaking, and further process would be unnecessary.

With respect to the provisions of this revised final rule that concern section 5006(a) of the Recovery Act, we further find good cause to waive the notice of proposed rulemaking based on the strong public interest in protecting beneficiaries from premiums and cost sharing in accordance with law. Section 5006(a)(1) became effective on July 1, 2009, and prompt implementation is necessary to ensure that its protections are applied without delay. Delay in implementation would harm the Indian beneficiaries whom the statute was specifically intended to help.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 30-day public comment period.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding

Section 447.64 Alternative Premiums, Enrollment Fees, or Similar Charges: State Plan Requirements

Section 447.64 requires a State imposing alternative premiums, enrollment fees, or similar charges on individuals to describe in the State plan:

(a) The group or groups of individuals that may be subject to the premiums, enrollment fees, or similar charges.

(b) The schedule of the premiums, enrollment fees, or similar charges imposed.

(c) The methodology used to determine family income for purposes of the imitations on premiums related to family income level that are described in § 447.78(c) of this chapter, including the period and periodicity of those determinations.

(d) The methodology used by the State to:

(1) Identify beneficiaries who are subject to premiums or to cost sharing for specific items or services; and

(2) If the State adopts cost sharing rules that could place families at risk of reaching the total aggregate limit for premiums and cost sharing under Medicaid, defined at § 447.78 as 5 percent of the family's income, track beneficiaries' incurred premiums and cost sharing through a mechanism developed by the State that does not rely on beneficiaries, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have reached the 5 percent limit on family out-of-pocket expenses and are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period.

(e) The process for informing the beneficiaries, applicants, providers, and the public of the schedule of premiums, enrollment fees, or similar charges for a group or groups of individuals in accordance with § 447.76.

(f) The notice of, timeframe for, and manner of required premium payments for a group or groups of individuals and the consequences for an individual who does not pay.

The burden associated with this requirement is the time and effort it would take for a State to include this detailed description in the State plan. We estimate it would take one State approximately 20 minutes to incorporate this information in their plan. We believe 56 States will be affected by this requirement for a total annual burden of 18.67 hours.

Section 447.68 Alternative Copayments, Coinsurance, Deductibles, or Similar Cost Sharing Charges: State Plan Requirements

Section 447.68 requires a State imposing alternative copayments, coinsurance, deductibles, or similar cost sharing charges on individuals to describe in the State plan:

(a) The group or groups of individuals that may be subject to the cost sharing charge.

(b) The methodology used to determine family income, for purposes of the limitations on cost sharing related to family income that are described in § 447.78(c) of this chapter, including the period and periodicity of those determinations.

(c) The schedule of the copayments, coinsurance, deductibles, or similar cost sharing charges imposed for each item or service for which a charge is imposed.

(d) The methodology used by the State to identify beneficiaries who are subject to premiums or cost sharing for specific items or services and, if the State adopts cost sharing rules that could place families at risk of reaching the total aggregate limit for premiums and cost sharing under Medicaid, defined at § 447.78 as 5 percent of the family's income, track beneficiaries' incurred premiums and cost sharing through a tracking system developed by the State, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when the individual beneficiaries reached the 5 percent limit on family out-of-pocket expenses and are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period.

(e) The process for informing beneficiaries, applicants, providers, and the public of the schedule of cost sharing charges for specific items and services for a group or groups of individuals in accordance with § 447.76 of this chapter.

(f) The methodology used to ensure that:

(1) The aggregate amount of premiums and cost sharing imposed under section 1916 and section 1916A of the Act for all individuals in the family enrolled in Medicaid with family income above 100

percent of the Federal poverty level (FPL) does not exceed 5 percent of the family's income of the family involved.

(2) The aggregate amount of cost sharing under section 1916 and section 1916A of the Act for all individuals in the family enrolled in Medicaid with family income at or below 100 percent of the FPL does not exceed 5 percent of the family's income of the family involved.

(g) The notice of, timeframe for, and manner of required cost sharing and the consequences for failure to pay.

The burden associated with this requirement is the time and effort it would take for a State to include this detailed description in the State plan. We estimate it would take one State approximately 20 minutes to incorporate this information in their plan. We believe 56 States will be affected by this requirement for a total annual burden of 18.67 hours.

Section 447.76 Public Schedule

Section 447.76(a) requires States to make available to the groups in paragraph (b) of this section a public schedule that contains the following information:

(1) Current premiums, enrollment fees, or similar charges.

(2) Current cost sharing charges.

(3) The aggregate limit on premiums and cost sharing or just cost sharing.

(4) Mechanisms for making payments for required premiums and charges.

(5) The consequences for an applicant or beneficiary who does not pay a premium or charge.

(6) A list of hospitals charging alternative cost sharing for non-emergency use of the emergency department.

(7) Either a list of preferred drugs or a method to obtain such a list upon request.

The burden associated with this requirement is the time and effort it would take the State to prepare and make available to appropriate parties a public schedule. We estimate that it would take 20 minutes per State. We believe 56 States and territories will be affected by this requirement for an annual burden of 18.67 hours.

Section 447.76(c) requires the State, prior to submitting to the Centers for Medicare & Medicaid Services for approval a Medicaid State plan amendment to establish alternative premiums or cost sharing under section 1916A of the Act or an amendment to modify substantially an existing plan for alternative premiums or cost sharing, to provide the public with advance notice of the amendment and allow reasonable opportunity to comment with respect to such amendment in a form and manner provided under applicable State law. The State must submit documentation with the SPA to demonstrate that this requirement was met.

The burden associated with this requirement is the time and effort it would take for a State to provide advance notice to the public and prepare and submit documentation with the SPA. We estimate it would take 1 State approximately 3 hours to meet this requirement; therefore, the total annual burden associated with this requirement is 3 hours.

Section 447.80 Enforceability of Alternative Premiums and Cost Sharing

Section 447.80(b)(2) states that a hospital that has determined after an appropriate medical screening pursuant to § 489.24, that an individual does not need emergency services before providing treatment and imposing alternative cost sharing on an individual in accordance with § 447.72(b)(2) and § 447.74(b) of this chapter for non-emergency services as defined in section 1916A(e)(4)(A) of the Act, must provide:

(1) The name and location of an available and accessible alternate non-emergency services provider, as defined in section 1916A(e)(4)(B) of the Act;

(2) Information that the alternate provider can provide the services in a timely manner with the imposition of a lesser cost sharing amount or no cost sharing; and

(3) A referral to coordinate scheduling of treatment by this provider.

The burden associated with this requirement is the time and effort it would take for a hospital to provide the name and location of an alternate provider who can provide services of a lesser cost sharing amount or no cost sharing and a referral to that provider. We estimate the burden on a hospital to be 5 minutes. We believe the number of hospital visits will be 4,077,000; therefore, the total annual burden is 339,750 hours.

B. Comments on ICRs

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. We will revise OMB number 0938–0993 to reflect any additional burden not currently approved.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this revised final rule with comment period; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, 2244–FC, Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eop.gov.*

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects of $100 million or more in any 1 year. We estimate this final rule with comment period will not reach the economically significant threshold of $100 million in benefits and costs and consequently is not a major rule under the Congressional Review Act.

The economic impact associated with this final rule relates to changes it proposes to the November 25, 2008, final rule. The main change estimated to have a budget impact is the Recovery Act's exemption of Indians from premiums and cost sharing under certain circumstances. The estimated budget impact of section 5006 of the Recovery Act has been included in the FY 2011 President's budget. The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a

substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration's (SBA) definition of a small business (having revenues of less than $7 million to $34.5 million in any 1 year.) Individuals and States are not included in the definition of a small entity. Therefore, the Secretary has determined that this final rule with comment period will not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. Therefore, the Secretary has determined that this final rule with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold is approximately $133 million. This final rule with comment period will not impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $133 million in any one year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule with comment period will not have substantial direct requirement costs on State and local governments, preempt State law, or otherwise have Federalism implications.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—Health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs—Health, Health insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 447.50 is amended by adding a new paragraph (b) to read as follows:

§ 447.50 Cost sharing: Basis and purpose.

* * * * *

(b) *Definitions.* For the purposes of this subpart:

(1) *Indian* means any individual defined at 25 USC 1603(c), 1603(f), or 1679(b), or who has been determined eligible as an Indian, pursuant to § 136.12 of this part. This means the individual:

(i) Is a member of a Federally-recognized Indian tribe;

(ii) Resides in an urban center and meets one or more of the following four criteria:

(A) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(B) Is an Eskimo or Aleut or other Alaska Native;

(C) Is considered by the Secretary of the Interior to be an Indian for any purpose; or

(D) Is determined to be an Indian under regulations promulgated by the Secretary;

(iii) Is considered by the Secretary of the Interior to be an Indian for any purpose; or

(iv) Is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

■ 3. Section 447.51 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 447.51 Requirements and options.

(a) The plan must provide that the Medicaid agency does not impose any enrollment fee, premium, or similar charge for any services available under the plan upon:

(1) Categorically needy individuals, as defined in § 435.4 and § 436.3 of this subchapter, except for the following populations in accordance with sections 1916(c), (d), (g), and (i) of the Act:

(i) A pregnant woman or an infant under one year of age described in subparagraph (A) or (B) of section 1902(l)(1) of the Act, who is receiving medical assistance on the basis of section 1902(a)(10)(A)(ii)(IX) of the Act and whose family income equals or exceeds 150 percent of the Federal poverty level (FPL) applicable to a family of the size involved;

(ii) A qualified disabled and working individual described in section 1905(s) of the Act whose income exceeds 150 percent of the FPL;

(iii) An individual provided medical assistance only under section 1902(a)(10)(A)(ii)(XV) or section 1902(a)(10)(A)(ii)(XVI) of the Act and the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA); and

(iv) A disabled child provided medical assistance under section 1902(a)(10)(A)(ii)(XIX) of the Act in accordance with the Family Opportunity Act; and

(2) An Indian who either is eligible to receive or has received an item or service furnished by an Indian health care provider or through referral under contract health services.

* * * * *

(c) For each charge imposed under paragraph (a) or (b) of this section, the plan must specify—

* * * * *

■ 4. Section 447.53 is amended by revising paragraph (b)(4) and adding a new paragraph (b)(6) to read as follows:

§ 447.53 Applicability; specification; multiple charges.

* * * * *

(b) * * *

(4) *Emergency services.* Services as defined at section 1932(b)(2) of the Act and § 438.114(a).

* * * * *

(6) *Indians.* Items and services furnished to an Indian directly by an

Indian health care provider or through referral under contract health services.

* * * * *

§ 447.54 [Amended]

■ 5. Section 447.54 is amended by—

■ A. Republishing the introductory text.

■ B. Revising paragraph (a)(1), paragraph (a)(3)(ii), and paragraph (a)(4).

■ C. Revising paragraph (b).

The revisions read as follows:

§ 447.54 Maximum allowable and nominal charges.

Except as provided at § 447.62 through § 447.82 of this part, the following requirements must be met:

(a) *Non-institutional services.* Except as specified in paragraph (b) of this section, for non-institutional services, the plan must provide that the following requirements are met:

(1) For Federal FY 2009, any deductible it imposes does not exceed $2.30 per month per family for each period of Medicaid eligibility. For example, if Medicaid eligibility is certified for a 6-month period, the maximum deductible which may be imposed on a family for that period of eligibility is $13.80. In succeeding years, any deductible may not exceed these amounts as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year, and then rounded to the next higher 5-cent increment.

* * * * *

(3) * * *

(ii) Thereafter, any copayments may not exceed these amounts as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year and then rounded to the next higher 5-cent increment.

(4) For Federal FY 2009, any copayment that the State imposes for services provided by a managed care organization (MCO) may not exceed the copayment permitted under paragraph (a)(3)(i) of this section for comparable services under a fee-for-service delivery system. When there is no fee-for-service delivery system, the copayment may not exceed $3.40 per visit. In succeeding years, any copayment may not exceed these amounts as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year and then rounded to the next higher 5-cent increment.

(b) *Waiver of the requirement that cost sharing amounts be nominal.* Upon approval from CMS, the requirement that cost sharing charges must be nominal may be waived, in accordance with sections 1916(a)(3) and 1916(b)(3) of the Act and § 431.57 of this chapter, for non-emergency services furnished in a hospital emergency department, if the State establishes to the satisfaction of the Secretary that alternative sources of nonemergency, outpatient services are actually available and accessible to Medicaid beneficiaries in a timely manner.

* * * * *

■ 6. Section 447.55 is amended by revising paragraph (b) to read as follows:

§ 447.55 Standard co-payment.

* * * * *

(b) This standard copayment amount for any service may be determined by applying the maximum copayment amounts specified in § 447.54(a) and (c) to the agency's average or typical payment for that service. For example, if the agency's typical payment for prescribed drugs is $4 to $5 per prescription, the agency might set a standard copayment of $.60 per prescription. This standard copayment may be adjusted based on updated copayments as permitted under § 447.54(a)(3).

■ 7. Section 447.57 is amended by adding a new paragraph (c) to read as follows:

§ 447.57 Restrictions on payments to providers.

* * * * *

(c) Payment under Medicaid due to an Indian health care provider or a health care provider through referral under contract health services for directly furnishing an item or service to an Indian may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deductible, copayment, cost sharing, or similar charge that otherwise would be due from the Indian.

■ 8. Section 447.62 is revised to read as follows:

§ 447.62 Alternative premiums and cost sharing: Basis, purpose and scope.

(a) Section 1916A of the Act sets forth options for a State through a Medicaid State plan amendment to impose alternative premiums and cost sharing, which are premiums and cost sharing that are not subject to the limitations under section 1916 of the Act as described in §§ 447.51 through 447.56. For States that impose alternative premiums or cost sharing, § 447.64, § 447.66, § 447.68, § 447.70, § 447.71, § 447.72, § 447.74, § 447.76, § 447.78, § 447.80, and § 447.82 prescribe State plan requirements and options for alternative premiums and cost sharing for a group or groups of individuals (as specified by the State) for services or items (as specified by the State) and the standards and conditions under which States may impose them. The State may vary the premiums and cost sharing among groups of individuals or types of services or items, consistent with the limitations specified in this subpart and section 1916A(a)(1) of the Social Security Act. Otherwise, premiums and cost sharing must comply with the requirements described in § 447.50 through § 447.60.

(b) Waivers of the limitations described in this subpart on deductions, cost sharing, and similar charges may be granted only in accordance with the provisions of section 1916(f) of the Act.

§ 447.64 [Amended]

■ 9. Section 447.64 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 447.64 Alternative premiums, enrollment fees, or similar charges: State plan requirements.

* * * * *

(a) The group or groups of individuals that may be subject to the premiums, enrollment fees, or similar charges.

* * * * *

(c) The methodology used to determine family income for purposes of the limitations on premiums related to family income level that are described in § 447.78(c) of this chapter, including the period and periodicity of those determinations.

(d) The methodology used by the State to:

(1) Identify beneficiaries who are subject to premiums or cost sharing for specific items or services; and

(2) If the State adopts cost sharing rules that could place families at risk of reaching the total aggregate limit for premiums and cost sharing under Medicaid, defined at § 447.78, track beneficiaries' incurred premiums and cost sharing through a mechanism developed by the State that does not rely on beneficiaries, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have incurred family out-of-pocket expenses up to that limit and are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period.

* * * * *

■ 10. Section 447.66 is amended by—

■ A. Adding a new paragraph (a)(7).
■ B. Adding a new paragraph (c).
The additions read as follows:

§ 447.66 General alternative premium protections.

(a) * * *

(7) An Indian who is eligible to receive or has received an item or service furnished by an Indian health care provider or through referral under contract health services.

* * * * *

(c) Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums that may apply to an individual receiving Medicaid who is an Indian.

■ 11. Section 447.68 is amended by revising paragraphs (b) through (d) and (f) to read as follows:

§ 447.68 Alternative copayments, coinsurance, deductibles, or similar cost sharing charges: State plan requirements.

* * * * *

(b) The methodology used to determine family income, for purposes of the limitations on cost sharing related to family income level that are described in § 447.78(c) of this chapter, including the period and periodicity of those determinations.

(c) The schedule of the copayments, coinsurance, deductibles, or similar cost sharing charges imposed for each item or service for which a charge is imposed.

(d) The methodology used by the State to identify beneficiaries who are subject to premiums or cost sharing for specific items or services and, if families are at risk of reaching the total aggregate limit for premiums and cost sharing under Medicaid defined at § 447.78, track beneficiaries' incurred premiums and cost sharing through a mechanism developed by the State that does not rely on beneficiaries, in order to inform beneficiaries and providers of beneficiaries' liability and notify beneficiaries and providers when individual beneficiaries have incurred family out-of-pocket expenses up to that limit and are no longer subject to further cost sharing for the remainder of the family's current monthly or quarterly cap period.

* * * * *

(f) The methodology used to ensure that:

(1) The aggregate amount of premiums and cost sharing imposed under section 1916 and section 1916A of the Act for all individuals in the family enrolled in Medicaid with family income above 100 percent of the Federal poverty level (FPL) does not exceed 5 percent of the family's income of the family involved.

(2) The aggregate amount of cost sharing imposed under section 1916 and section 1916A of the Act for all individuals in the family enrolled in Medicaid with family income at or below 100 percent of the FPL does not exceed 5 percent of the family's income of the family involved.

* * * * *

■ 12. Section 447.70 is revised to read as follows:

§ 447.70 General alternative cost sharing protections.

(a) States may not impose alternative cost sharing for the following items or services. Except as indicated, these limits do not apply to alternative cost sharing for prescription drugs identified by a State's Medicaid program as non-preferred within a class of such drugs or for non-emergency use of the emergency room.

(1) Services furnished to individuals under 18 years of age who are required to be provided Medicaid under section 1902(a)(10)(A)(i) of the Act, including services furnished to individuals with respect to whom child welfare services are being made available under Part B of title IV of the Act on the basis of being a child in foster care and individuals with respect to whom adoption or foster care assistance is made available under Part E of that title, without regard to age.

(2) Preventive services, at a minimum the services specified at § 457.520, provided to children under 18 years of age regardless of family income, which reflect the well baby and well child care and immunizations in the Bright Futures guidelines issued by the American Academy of Pediatrics.

(3) Services furnished to pregnant women, if those services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

(4) Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1905(o) of the Act).

(5) Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if the individual is required, as a condition of receiving services in that institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(6) Emergency services as defined at section 1932(b)(2) of the Act and § 438.114(a), except charges for services furnished after the hospital has determined, based on the screening and any other services required under § 489.24 of this chapter, that the individual does not need emergency services consistent with the requirements of paragraph (b) of this section.

(7) Family planning services and supplies described in section 1905(a)(4)(C) of the Act, including contraceptives and other pharmaceuticals for which the State claims or could claim Federal match at the enhanced rate under section 1903(a)(5) of the Act for family planning services and supplies.

(8) Services furnished to women who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Act (breast or cervical cancer provisions).

(9) Services furnished to disabled children who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XIX) and 1902(cc) of the Act, in accordance with the Family Opportunity Act.

(10) Items and services furnished to an Indian directly by an Indian health care provider or through referral under contract health services.

(11) Preferred drugs within a class, or drugs not identified by the State's Medicaid program as a non-preferred drug within a class, for individuals for whom cost sharing may not otherwise be imposed as described in paragraphs (a)(1) through (10) of this section.

(b) For the exempt populations specified in paragraph (a) of this section, a State may impose nominal cost sharing as defined in § 447.54 of this chapter for services furnished in a hospital emergency department, other than those required under § 489.24, if the hospital has determined based on the medical screening required under § 489.24 that the individual does not need emergency services as defined at section 1932(b)(2) of the Act and § 438.114(a), the requirements of § 447.80(b)(1) are met, and the services are available in a timely manner without cost sharing through an outpatient department or another alternative non-emergency health care provider in the geographic area of the hospital emergency department involved.

(c) In the case of a drug that a State's Medicaid program either has identified as a preferred drug within a class or has not otherwise identified as a non-preferred drug within a class, cost sharing may not exceed the nominal levels permitted under section 1916 of the Act as specified in § 447.54 of this chapter. Cost sharing can be imposed

that exceeds the nominal levels permitted under section 1916 of the Act for drugs that are identified by a State's Medicaid program as non-preferred drugs within a class in accordance with section 1916A(c) of the Act.

(d) In the case of a drug that is identified by a State's Medicaid program as a non-preferred drug within a class, the cost sharing is limited to the amount imposed for a preferred drug if the individual's prescribing physician determines that the preferred drug for treatment of the same condition either would be less effective for the individual or would have adverse effects for the individual or both.

(e) States may exempt additional individuals, items, or services from cost sharing.

■ 13. Section 447.71 is amended by—

■ A. Revising paragraphs (b)(1), (b)(3), and (c).

■ B. Adding a new paragraph (d).

The additions and revisions read as follows:

§ 447.71 Alternative premium and cost sharing exemptions and protections for individuals with family incomes at or below 100 percent of the FPL.

* * * * *

(b) * * *

(1) The State may impose cost sharing under authority provided under section 1916 of the Act and consistent with the levels described in such section and § 447.54.

* * * * *

(3) The State may impose cost sharing for non-emergency services furnished in a hospital emergency department that does not exceed the nominal amount as defined in § 447.54 as long as the services are available in a timely manner without cost sharing through an outpatient department or other alternative non-emergency services health care provider in the geographic area of the hospital emergency department involved.

(c) Aggregate cost sharing under sections 1916 and 1916A of the Act for all individuals in the family enrolled in Medicaid may not exceed the maximum permitted under § 447.78(b).

(d) The State may not impose alternative premiums and cost sharing in accordance with section 1916A of the Act on individuals whose family income is at or below 100 percent of the FPL, but may impose cost sharing that does not exceed the nominal amount as defined at § 447.54 and section 1916 of the Act.

■ 14. Section 447.72 is amended by revising paragraphs (b) and (c) to read as follows:

§ 447.72 Alternative premium and cost sharing exemptions and protections for individuals with family incomes above 100 percent but at or below 150 percent of the FPL.

* * * * *

(b) Cost sharing may be imposed under the State plan for individuals whose family income exceeds 100 percent, but does not exceed 150 percent, of the FPL if the cost sharing does not exceed 10 percent of the payment the agency makes for the item or service, with the following exceptions:

(1) Cost sharing for non-preferred drugs cannot exceed the nominal amount as defined in § 447.54.

(2) Cost sharing for non-emergency services furnished in the hospital emergency department cannot exceed twice the nominal amount as defined in § 447.54. A hospital must meet the requirements described at § 447.80(b)(2) before the cost sharing can be imposed.

(3) In the case of States that do not have fee-for-service payment rates, any copayment that the State imposes for services provided by an MCO to a Medicaid beneficiary, including a child covered under a Medicaid expansion program for whom enhanced match is claimed under title XXI of the Act, may not exceed $3.40 per visit for Federal FY 2009. Thereafter, any copayment may not exceed this amount as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year and then rounded to the next highest 5-cent increment.

(c) Aggregate cost sharing under sections 1916 and 1916A of the Act for all individuals in the family enrolled in Medicaid may not exceed the maximum permitted under § 447.78(a).

■ 15. Section 447.74 is revised to read as follows:

§ 447.74 Alternative premium and cost sharing protections for individuals with family incomes above 150 percent of the FPL.

(a) States may impose premiums under the State plan consistent with the aggregate limits set forth in § 447.78(a) on individuals whose family income exceeds 150 percent of the FPL.

(b) Cost sharing may be imposed under the State plan on individuals whose family income exceeds 150 percent of the FPL if the cost sharing does not exceed 20 percent of the payment the agency makes for the item (including a non-preferred drug) or service, with the following exception: In the case of States that do not have fee-for-service payment rates, any copayment that the State imposes for services provided by an MCO to a Medicaid beneficiary, including a child covered under a Medicaid expansion program for whom enhanced match is claimed under title XXI of the Act, may not exceed $3.40 per visit for Federal FY 2009. Thereafter, any copayment may not exceed this amount as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year and then rounded to the next highest 5-cent increment.

(c) Aggregate premiums and cost sharing under sections 1916 and 1916A of the Act for all individuals in the family enrolled in Medicaid may not exceed the maximum permitted under § 447.78(a).

■ 16. Section 447.76 is amended by revising paragraph (b)(1) and adding a new paragraph (c) to read as follows:

§ 447.76 Public schedule.

* * * * *

(b) * * *

(1) Beneficiaries, at the time of their enrollment and reenrollment after a redetermination of eligibility, and when premiums, cost sharing charges, or aggregate limits are revised.

* * * * *

(c) Prior to submitting to the Centers for Medicare & Medicaid Services for approval a State plan amendment (SPA) to establish alternative premiums or cost sharing under section 1916A of the Act or an amendment to modify substantially an existing plan for alternative premiums or cost sharing, the State must provide the public with advance notice of the amendment and reasonable opportunity to comment with respect to such amendment in a form and manner provided under applicable State law, and must submit documentation with the SPA to demonstrate that this requirement was met.

■ 17. Section 447.78 is revised to read as follows:

§ 447.78 Aggregate limits on alternative premiums and cost sharing.

(a) The total aggregate amount of premiums and cost sharing imposed under sections 1916 and 1916A of the Act for all individuals in a family enrolled in Medicaid with family income above 100 percent of the FPL may not exceed 5 percent of the family's income for the monthly or quarterly period, as specified by the State in the State plan.

(b) The total aggregate amount of cost sharing imposed under sections 1916 and 1916A of the Act for all individuals

in a family enrolled in Medicaid with family income at or below 100 percent of the FPL may not exceed 5 percent of the family's income for the monthly or quarterly period, as specified by the State in the State plan.

(c) Family income shall be determined in a manner, for such period, and at such periodicity as specified by the State in the State plan, including the use of such disregards as the State may provide and the process for individuals to request a reassessment of the family's aggregate limit if the family's income is reduced or if eligibility is being terminated due to nonpayment of a premium.

(1) States may use gross income or any other methodology.

(2) States may use a different methodology for determining the family's income to which the 5 percent aggregate limit is applied than is used for determining income eligibility.

■ 18. Section 447.80 is amended by—

■ A. Revising paragraph (a)(3), the introductory text of paragraph (b), and paragraph (b)(2).

■ B. Adding a new paragraph (c).

The additions and revisions read as follows:

§ 447.80 Enforceability of alternative premiums and cost sharing.

* * * * *

(a) * * *

(3) Waive payment of a premium in any case where the State determines that requiring the payment would create an undue hardship for the individual.

(b) With respect to alternative cost sharing, a State may amend its Medicaid State plan to permit a provider, including a pharmacy or hospital, to require an individual, as a condition for receiving the item or service, to pay the cost sharing charge, except as specified in paragraphs (b)(1) through (3) of this section.

* * * * *

(2) A hospital that has determined after an appropriate medical screening pursuant to § 489.24 of this chapter, that an individual does not need emergency services as defined at section 1932(b)(2) of the Act and § 438.114(a), before providing treatment and imposing alternative cost sharing on an individual in accordance with § 447.72(b)(2) and § 447.74(b) of this chapter for non-emergency services as defined in section 1916A(e)(4)(A) of the Act, must provide:

(i) The name and location of an available and accessible alternate non-emergency services provider, as defined in section 1916A(e)(4)(B) of the Act.

(ii) Information that the alternate provider can provide the services in a timely manner with the imposition of a lesser cost sharing amount or no cost sharing.

(iii) A referral to coordinate scheduling of treatment by this provider.

* * * * *

(c) Nothing in paragraph (b)(2) of this section shall be construed to:

(1) Limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1867 of the Act; or

(2) Modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency medical services by any managed care organization.

§ 447.82 [Amended]

■ 19. Section 447.82 is revised to read as follows:

§ 447.82 Restrictions on payments to providers.

(a) The plan must provide that the State Medicaid agency reduces the payment it makes to a provider by the amount of a beneficiary's cost sharing obligation, regardless of whether the provider successfully collects the cost sharing.

(b) Payment that is due under Medicaid to an Indian health care provider or a health care provider through referral under contract health services for directly furnishing an item or service to an Indian may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deductible, copayment, cost sharing, or similar charge that otherwise would be due.

(c) The plan must describe how the State identifies for providers, ideally through the use of the automated systems, whether cost sharing for a specific item or service may be imposed on an individual beneficiary and whether the provider may require the beneficiary, as a condition for receiving the item or service, to pay the cost sharing charge.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 20. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 21. Section 457.555 is amended by revising paragraphs (a)(1)(i) and (a)(2) to read as follows:

§ 457.555 Maximum allowable cost sharing charges on targeted low-income children in families with income from 101 to 150 percent of the FPL.

(a) * * * *

(1)(i) For Federal FY 2009, any co-payment or similar charge the State imposes under a fee-for-service delivery system may not exceed the amounts shown in the following table:

State payment for the service	Maximum Copay-ment
$15 or less	$1.15
$15.01 to $40	$2.30
$40.01 to $80	$3.40
$80.01 or more	$5.70

* * * * *

(2) For Federal FY 2009, any co-payment that the State imposes for services provided by a managed care organization may not exceed $5.70 per visit. In succeeding years, any copayment may not exceed this amount as updated each October 1 by the percentage increase in the medical care component of the CPI–U for the period of September to September ending in the preceding calendar year and then rounded to the next higher 5-cent increment.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 22, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: May 18, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–12954 Filed 5–27–10; 8:45 am]

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